

**ECOLOGICAL AND SOCIAL JUSTICE AS BASIS ON MARINE ENVIRONMENT PROTECTION AND PRESERVATION IN THE SYSTEM OF INDONESIAN LAW**

*KEADILAN EKOLOGI DAN Keadilan Sosial sebagai Dasar Perlindungan dan Pelestarian Lingkungan Laut dalam Sistem Hukum Indonesia*

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**Abstract:** this study aimed to determine ecological and social justice as the basis for protecting and preserving the marine environment in the Indonesian legal system. This research was empirical normative legal research. The subject of the study was the implementation of favourable legal provisions in every particular legal event that occurred in society to achieve the predetermined goals. If not careful in its application (still characterized by anthropocentrism), this political economy policy could conflict with the social ecology currently developing in Indonesia through the concept of a green economy and a blue economy. The characteristics of the socialism system in the political economy related to environmental justice after the amendment to the 45th Constitution began to shift in the era of globalization so that it began to respond to ecological modernization. However, due to colliding with the concept of socialism, the ecological justice system in the Indonesian legal system had the nuances of social-ecological justice. This concept would significantly affect the fairness of compensation for oil pollution by tanker accidents in Indonesia.

**Abstrak:** penelitian ini bertujuan untuk menjabarkan keadilan ekologi dan keadilan sosial sebagai dasar perlindungan dan pelestarian lingkungan laut dalam sistem hukum Indonesia. Penelitian ini merupakan penelitian hukum normatif empiris. Pokok kajiannya adalah pelaksanaan atau implementasi ketentuan hukum positif pada setiap peristiwa hukum tertentu yang terjadi dalam masyarakat guna mencapai tujuan yang telah ditentukan. Kebijakan sistem ekonomi politik ini jika tidak berhati-hati dalam penerapannya (masih berciri *antroposentrisme*) dapat bertentangan dengan konsep ekologi sosial yang tengah berkembang di Indonesia melalui konsep ekonomi hijau dan ekonomi biru. Ciri sistem sosialisme dalam sistem ekonomi politik terkait dengan keadilan lingkungan pasca amandemen UUD 45 mulai bergeser dalam era globalisasi sehingga mulai merespon modernisasi ekologi. Namun karena terbentur konsep sosialisme yang bersentral pada peran dan dominasi negara, maka sistem keadilan ekologi dalam konteks sistem hukum Indonesia bernuansa keadilan ekologi sosial. Hal ini tentu saja akan sangat berpengaruh pada keadilan ganti kerugian pencemaran minyak oleh kecelakaan kapal tanker di Indonesia.

## INTRODUCTION

Indonesia's marine area, which reaches an area of 3.11 million km, causes the potential of the marine sector to be invaluable, especially from its marine natural wealth sector (Siahaan, 2018). The potential of marine wealth has become so important as prioritized by Indonesia in the concept of green economy and blue economy which leads to sustainable development as conveyed by the President of the Republic of Indonesia when giving his speech at the Rio +20 Conference (United Nations Conference on Sustainable Development) in Rio de Janeiro, Brazil on June 20-22, 2012 (Lilley, 1999).

The marine environment is part of a country's economy (Gore, 1995). With a coastline of about 95,181 km, Indonesian waters have high potential. This size is second only to Canada as a country that has the second longest coastline in the world. The economic value of the sea is estimated at US\$3 trillion - US\$5 trillion or equivalent to IDR 36,000 trillion - IDR 60,000 trillion per year. This figure does not include other potentials derived from the wealth of biotechnology, marine tourism and the development of sea transportation. Indonesia's great maritime potential is captured as one of the leading visions and missions of the current Jokowi administration. In addition, the great economic and ecological potential that is stored as a maritime country, the potential for natural damage that can be caused due to excessive exploration that can threaten the sustainability of development should also receive attention. For this reason, the government is currently pushing for a maritime economic policy with a blue economy model. Basically, the blue economy combines economic development and environmental preservation.

Natural resources are used as efficiently as possible so that there is minimal/no waste. Indonesia has direct marine potential and wealth such as fisheries (pelagic and demersal fish, shrimp, shellfish, seaweed). The potential of this direct marketed product (the market) continues to be an increasing foreign exchange earner. On the other hand, the indirect potential for non-goods (non-market) marine tourism still needs to be developed, as well as the potential for renewable energy (among others: ocean currents, tides, ocean waves, ocean thermal

energy conversion), minerals on the seabed, oil and gas. earth, shipping, maritime industry, and marine services, still have the potential to be developed. It is estimated that this potential reaches a value of US\$ 171 billion per year, in detail it can be stated as follows: fisheries US\$ 32,000,000,000/year (IPB, 1997), coastal areas US\$ 56,000,000,000 per year (ADB 1997), biotechnology US\$ 40,000,000,000 per year (PKSPL-IPB, 1997), marine tourism US\$ 2,000,000,000 per year (DEPBUDPAR, 2000), petroleum US\$ 21,000,000,000 per year (ESDM 1999) and sea transportation US\$ 20,000 .000,000 per year.

Given the very strategic role of the sea because some people rely on the sea for their livelihoods and livelihoods, the sea needs to get major attention in law enforcement, especially from the consequences of ecosystem damage due to pollution. Sources of marine pollution can come from: (1) pollution caused or originating from ships; (2) pollution originating from oil drilling installations; (3) sources of pollution on land; and (4) air pollution. The problem of oil pollution due to tanker accidents in Indonesia needs serious attention regarding the right to sue (*ius standi*), evidence related to scientific verification to explain causal relationships, application of the principle of compensation, the scope and extent of environmental issues to determine the amount of compensation. , and environmental recovery criteria related to the formal truth system adopted in the civil compensation claim system (Harjiyatni & Anthoni, 2020).

The main purpose of law is to create an orderly social order, to create order and balance. With the achievement of order in society, it is hoped that human interests will be protected. In achieving its objectives, the law is tasked with dividing rights and obligations between individuals in society, dividing authority and regulating how to solve legal problems and maintaining legal certainty. Law is solely aimed at justice. The content of the law is determined by our ethical beliefs about what is fair and what is not. In other words, the law aims to realize or realize justice. Justice involves two things, namely concerning the nature of justice and concerning the content or norms to act concretely in certain circumstances (Brechin, Wilshusen & Fortwangler, 2012).

The essence of justice is the assessment of a treatment or action, examining it with a norm which according to a subjective view (subjectively for the benefit of the group, group and so on) exceeds other norms. In this case there are two parties involved, namely the party who treats and the party who receives the treatment. Law is not just a collection of stand-alone rules. The importance of a legal regulation is its systematic relationship with other legal regulations. Law as a system means that the law is an order, a unified whole consisting of parts or elements that are closely related to each other. The legal system is a unit consisting of elements that interact with each other and work together to achieve the goals of the unit. This unit is applied to a complex of juridical elements such as legal regulations, legal principles and legal understanding. The principle of law is the tendencies required by our moral view on the law, which are general characteristics with all their limitations as a general trait, but which must not exist. Legal principles are legal principles, in this case they are not concrete legal regulations but are basic thoughts that are general in nature or are the background of concrete regulations contained in and behind every legal system that is embodied in statutory regulations and judge decisions which are positive law. and can be found by looking for general properties in the concrete rules (McCarthy & Robinson, 2016).

Enforcement in the environmental law system requires one element of law enforcement, namely, justice. Environmental justice is not a concept that has multiple definitions. Collin sees environmental justice primarily in relation to the equitable distribution of environmental rights and benefits among race, class and income of society. According to Collin, procedural aspects in the form of public participation in decision making are considered to be included in substantive rights which are part of distributive justice. Environmental justice does not only include distribution aspects, but also procedural aspects as Arcioni and Mitchell view which states that, apart from being related to distribution aspects, environmental justice is also related to public opportunities to participate in decision-making related to environmental management (Prakoso, Sudarsono, Istislam, & Fadli, 2021).

The view that sees environmental justice is broader than distribution and procedural

issues. Bullard identifies five basic elements of environmental justice which include: the right of individuals to be protected from pollution; preference for pollution prevention; shifting the burden of proof on them or those who throw away waste/emissions (dischargers) or to those who do not provide different treatment, but based on differences in impact the environment perceived by the community (disparate impacts) and statistical evidence showing these differences, and; differences in risk sharing are overcome by targeted actions and resources (Bullard, 1994).

Environmental justice based on the taxonomy of justice is divided into four categories (Kuehn, 2000), namely, environmental justice as distributive justice, environmental justice as corrective justice, environmental justice as procedural justice and environmental justice as social justice. In the discussion of the formulation of this problem, environmental justice is social justice. Kuehn defines social environmental justice as being used together to strengthen the understanding of environmental justice as a social justice.

As a term, ecology was first used by a German biologist Ernst Haeckel who defined it as the science of the relationship between organisms and the external world around them. At the same time, the term environment is also used, which must be understood as an inseparable equivalent between life and the environment or the environment and life which are related to each other. Here the environment is understood as synonymous with ecology as relating to the life of organisms (including humans) and their ecosystems and the interactions between them.

The ecosystem itself is understood here as a community of organisms and their physical environment that interact as an ecological (Capra, 1996). Ecological principles intended as networks, cycles, solar energy, partnership, diversity and dynamic balance (Capra, 2003). First, the principle of networking is defined as a living system that develops in other living systems, as a network within a network. Each living system communicates with other living systems and shares resources that enable each living system to develop in its own identity.

All living things are living things that have spatial boundaries (boundary creatures), but living things, including humans, are related and are part of a system of relationships that depend on one another (McGinnis, 1999). Second, the

cyclical principle is the principle of recycling, all living organisms naturally live and develop thanks to the supply of energy and matter as food from an uninterrupted series of energy and material supplies from the environment in which each organism lives and develops. At the same time, every living system continuously produces the rest of the production process as waste that will be used as energy and material for the life of other organisms. Third, the principle of solar energy. What is meant here is solar energy not as a fact of nature but as an important principle in nature (Purwendah & Mangku, 2021).

Fourth, the principle of partnership. This principle explains that the exchange of energy and resources in this ecosystem or universe is possible only through cooperation that covers the entire web of life. Life in the universe takes place not by war and competition to defeat each other, but through cooperation, partnership and networking. Fifth, the principle of diversity. The higher the diversity of life in nature, the more the ecosystem is resistant to various shocks, obstacles and obstacles. A uniform pattern of life will naturally kill life because it is contrary to the nature of diverse life (Sanawiah, Safaat, Fadli & Bakri, 2017).

On the other hand, diverse, multicultural life patterns will preserve life precisely because it allows partnership, interdependence, cyclical linkages as the basic principles of ecology. The six principles of dynamic balance. Ecosystems are basically flexible networks and fluctuate non-stop. Its flexibility is a consequence of a series of feedback loops that allow the system to remain in dynamic equilibrium. Therefore, it is necessary to have a sustainable human community based on the ecological principles that apply in the ecological community. Human communities that have been mismanaged because of abandoning ecological principles must be reorganized in line with the principles of life in ecological communities. In this article, we will discuss Ecological Justice and Social Justice as the basis for the protection and preservation of the marine environment in the Indonesian legal system.

## METHODS

This research is an empirical normative legal research (applied law research). The subject of the study is the implementation or

implementation of positive legal provisions in every particular legal event that occurs in society in order to achieve the predetermined goals. Empirical normative legal research begins with written positive legal provisions that apply to legal events in concreto in society so that in research there is always a combination of two stages of study, namely: The first stage is a study of applicable normative law, in this case in the form of ecological justice and social justice as the basis for the protection and preservation of the marine environment in the Indonesian legal system; The second stage is the application of events *in concreto* to achieve the predetermined goals. This application can be realized through empirical research on cases and legal documents. The results of the implementation will create an understanding of whether the implementation of normative legal provisions has been carried out properly or not.

Because this type of research is empirical normative legal research, the data needed are secondary data and primary data. This study aims to be reform-oriented research, namely research that intensively evaluates the fulfillment of current regulations and recommends changes to any required regulations. This legal research is an explanatory legal study, which aims to examine the suitability of the application of the theory and practice of ecological justice and social justice as the basis for the protection and preservation of the marine environment in the Indonesian legal system. Expressions of truth that are explanatory (explanatory or explanatory) are expressions of truth from a research that aims to explain the data found in research activities.

## RESULTS AND DISCUSSION

### Social Justice Theory and Ecological Justice

The theory of justice that is used to discuss the problem will begin with the theory of social justice and ecology which will then be understood as a theory of eco-social justice as a justice that is expected to be achieved. The theory of eco-social justice in the discussion of compensation for oil pollution due to tanker accidents needs to be supported by the theory of justice from John Rawls and Aristotle. In the Indonesian concept, justice is understood as a social justice as conveyed by Soekarno in his discussion on the Indonesian Constitution in

the BPUPK session (1 June 1945) as follows; society or the nature of a society is just and prosperous, happy for everyone, no humiliation, no oppression, no exploitation. No exploitation *del'homme par L'homme*. Everyone is happy, enough clothing, enough food, *gemah ripah loh jinawi, tata tentrem kerta raharja*.

Through proportional justice, humans can avoid disgraceful traits, such as greed, corruption, selfishness, arbitrariness and cruelty. The fifth precept of social justice becomes a necessity for a state of "just and civilized humanity", so that the fifth principle which reads, "Social justice for all Indonesian people", becomes the final goal of the Pancasila ideology. According to Franz Magnis-Suseno, the meaning of "social" in the word social justice is related to structure, meaning that the question of social justice is a question of structure in society. He distinguished between social justice and individual justice. The latter is meant by him as justice which is not related to the structure in society but is related to individual freedom (Jiwan, 2012).

In this understanding of justice, social meaning means that the problem of distribution of various resources is carried out based on a parliamentary legislative process rather than the consequences of an unfavorable political-social-economic structure. Justice is not only enforced if all benefits are evenly distributed, but also if the unequal distribution has the same impact on giving benefits to everyone, as illustrated in John Rawls' statement (1995), "Injustice, then, is simply inequalities that are not to the benefit of all". In this respect for Rawls, social justice is no different from distributive justice, and it is clear that justice should be created within the structure of society.

There is an alignment to create a situation of social justice in society by taking into account the rights and interests of individuals. Individuals are recognized and cared for their existence. Departing from this opinion, we need a concept of a state that is able to respond and organize a just social life. The appropriate concept for that is the concept of the welfare state. This concept of a welfare state causes things that were once private initiatives, are now taken over by the government, for better social justice and to prevent unemployment and create stability in the face of economic conjunctions (Sulaiman,

et. al., 2021).

If we link the existing types of environmental sustainability concepts with the concept of social justice, it can be said that social justice is a requirement for the fulfillment of environmental sustainability. Social justice seeks access to welfare in a social structure that can be the basis for implementing ecological justice. For example, if there is a social order that is socially just, then the type of ecological justice, which conserves critical natural resources (critical natural capital) for human welfare through repair, replacement, or protection efforts, will be able to be realized. The relationship between social justice and ecological justice can be seen through Andrew Dobson's opinion stating that social justice has a function to support sustainability and sustainable development. He gave an example of this functional relationship, namely when social justice overcomes the problem of poverty, it will have an impact on increasing environmental sustainability. So, if you pay attention, in the relationship between social justice and ecological justice, there is an understanding of the rights to the welfare of life (Friedman, et. al., 2018).

The problem of unequal welfare and poverty can be identified as a problem of environmental damage. Quote opinion Bartelmus: both poverty and affluence identified as the driving forces behind environmental degradation and resource depletion, sweepingly termed pollution of poverty and pollution of affluence. The former refers to the pressures of growing populations in poor countries on marginal and vulnerable lands, forests, and congested cities. In industrialized countries, on the other hand, impacts of high-level economic growth and consumption are responsible in most cases for environmental degradation.

Both poverty and prosperity, which are identified as the driving forces behind environmental degradation and resource depletion, are broadly referred to as pollution caused by poverty and pollution caused by prosperity. Poverty pollution refers to the pressure of population growth in poor countries on marginal and vulnerable lands, forests, and densely populated cities... In industrialized countries, on the other hand, the impact of economic growth and high levels of consumption are responsible

in many cases for environmental degradation (Purwendah, & Periani, 2020).

The linkage of justice in a state order is expected to lead to a welfare state based on social justice which is closely related to the prosperity and welfare of the community. Of course, it cannot be separated from the meaning of ecological justice. future generations as weak. In this regard, John Rawls (1995) offers two principles related to ecological justice, namely: (1) each present and future person has the same indefeasible claim to a fully adequate set of essential and non-substitutable ecosystem services, which is compatible with the same set for all, and (2) inequalities in the distribution of all other ecosystem services are to be to the greatest benefit of the least-advantage members of the present and all future generations. The two principles can be discussed more applicable by four principles of ecological justice, namely: precautionary and prevention principles, polluter pays principle, strict liability; and sustainable development principle.

The concept of sustainable development or development can fall within the understanding of economics. Therefore, it would be better if the principle of sustainable development was expanded to become the principle of ecological sustainability so that it would also mean the sustainability of life (*sustainable livelihood*).

### **International Environmental Protection Principles**

The definition of environmental law is related to two aspects, the first is related to the scope of legal subjects and their institutional competencies; second, related to responsibility for environmental damage. The 1972 Stockholm Declaration, in its 2nd Principle, states that the so-called natural resources on earth are “air, water, soil, flora, fauna and natural ecosystems”. Meanwhile, European Community law agrees on the environment as the relationship between living things with water, air, soil and all biological forms. UNCLOS, as the main source of international law of the sea, includes rare or fragile ecosystems and habitats as the scope of protection of the marine environment.

In the context of national law, Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) provides the understanding of the environment as a unitary

space with all objects, circumstances, and living things, including humans and their behavior, which affect nature itself. survival, and the welfare of humans and other living creatures. Environmental protection has general principles, namely: sovereignty, principle of preventive action, cooperation, sustainable development, and precautionary principle.

Sovereignty over natural resources and the responsibility not to cause damage to the environment of other states or to areas beyond national jurisdiction, as the oldest principle in international law, sovereignty is the main characteristic of a state. A state has internal sovereignty and external sovereignty. Internal sovereignty means that the state has legislative, executive and judicial jurisdiction over every activity in its territory. The acknowledgment of sovereignty over natural wealth was first stated in UN General Assembly Resolution Number 1803 of 1962 concerning Permanent Sovereignty over Natural Wealth. Principle 21 of the Stockholm Declaration states that states, under the Charter of the United Nations and the principles of international law, are sovereign to exploit their natural resources and are responsible for ensuring that activities within their jurisdiction or control do not cause environmental damage to other states or to areas outside the national jurisdiction of a state. Based on this principle, the state has sovereignty over its territory and carries out activities in its territory. The principle of state sovereignty over its natural wealth cannot be separated from the state's obligation to ensure that it does not damage the environment of other countries and the environment in its own jurisdiction (Latifah, 2018).

Principle of preventive action, besides being mentioned in the 21st Principle of the Stockholm Declaration, the principle of preventive action is also mentioned in the 2nd Principle of the United Nations Conference on Environment and Development (UNCED). This principle has two perspectives. First, this principle requires minimizing environmental damage as the main goal. Second, the state is obliged to prevent environmental damage within and through its jurisdiction, including regulatory, administrative and other measures. Even in the United States of Foreign Affairs Law, it is

stated that the obligation of the state is not only to take preventive actions, but also to reduce and control any environmental losses that occur.

In terms of transboundary pollution, the principle has two perspectives. First, this principle requires minimizing environmental damage as the main goal. Second, the state is obliged to prevent environmental damage within and through its jurisdiction, including regulatory, administrative and other measures. Even in the United States of Foreign Affairs Law, it is stated that the obligation of the state is not only to take preventive actions, but also to reduce and control any environmental losses that occur. In the case of cross-border pollution, each country is asked to carry out two obligations, firstly to take the necessary actions in good faith; secondly to regulate public and private activities that are the subject of its jurisdiction.

Cooperation, this principle of cooperation stems from the general principle of good neighborliness which can be found in customary international law as well as in Article 74 of the United Nations Charter. This principle is reflected in several international treaties and is supported by major state practices in hazardous and emergency activities. Cooperation is contained in the 24th Principle of the Stockholm Declaration and the 27th Principle of the Rio Declaration which states that countries must work together in the principle of good faith and the spirit of partnership as an effort to protect the environment.

Sustainable development, the principle of sustainable development emphasizes that development carried out now must not reduce the rights of future generations. In other words, the development carried out must pay attention to the ability of the environment to meet the needs of future generations. The principle of sustainability has several aspects, namely: (1) the need to take into consideration the needs of present and future generation, (2) the acceptance on environment protection grounds, of limit placed upon the use and exploitation of natural resources, (3) the role of equitable principles in the allocation of rights and obligation. The principle to be used for allocating costs of pollution prevention and control measures to encourage rational use of scarce environmental resources and to avoid distortions in international

trade and investment is the so-called polluter pays principle. That principle means that that polluter should bear the expenses of carrying out the above-mentioned measures decided by the public authorities to ensure that the environment is in an acceptable state. In other words, the cost of these measures should be reflected in the cost of goods and services which cause pollution in production and/or consumption. Such measures should not be accompanied by subsidies that would create significant distortions in international trade and investment.

Precautionary Principle, in the 15th Principle of the Rio Declaration it is stated that where there are threats of serious or irreversible damage, lack of full scientific knowledge certainly shall not be used as areas for postponing cost-effective measures to prevent environmental degradation". That principle means that polluters should bear the expenses of carrying out the above-mentioned measures decided by the public authorities to ensure that the environment is in an acceptable state. In other world the cost of these measures should be reflected in the cost of goods and services which cause pollution in production and/or consumption. Such measures should not be accompanied by subsidies that would create significant distortions in international trade and investment.

Where there is a threat of serious or irreversible damage, the full scientific depletion will certainly not be used as an area to delay effective measures to prevent environmental degradation. The principle means that the polluter must bear the costs of taking care of the above-mentioned actions decided by the public authorities to ensure that the environment is in an acceptable state. In other words, the costs for these actions should be reflected in the costs of goods and services that cause pollution in production and/or consumption. Such measures should not be accompanied by subsidies that would create significant distortions in international trade and investment (Wever, et. al., 2012).

### **The Concept of Ecological Justice and Social Justice in the Indonesian Legal System Between Idealism and Reality**

The law in its function as the protection of human interests has a purpose. In order for human interests to be protected, the law must be implemented. The implementation of the law

can be carried out either normally, peacefully or occurs because of a violation of the law. In the event of a violation of the law, the law that was violated must be enforced. It is through law enforcement that the law becomes a reality. In law enforcement there are three elements that must be considered, namely, legal certainty (*rechtssicherheit*), expediency (*zweckmässigkeit*) and justice (*gerechtigkeit*). Legal certainty is a justifiable protection against arbitrary actions, which means that someone will get something that is expected under certain circumstances. People expect legal certainty for order. The law in this case is tasked with creating legal certainty because it aims for public order. In other cases, the community expects benefits in implementing or enforcing the law. Law is for humans, so its implementation or enforcement must benefit humans. Justice as the third element is very much needed by the community, in its implementation the law must be fair because the law is not identical with justice. Justice is very subjective, individualistic and does not generalize. In law enforcement, a compromise is needed between the three elements, although in practice it is very difficult to compromise these three things proportionally (Glaeser, 2019).

The main purpose of law is to create an orderly social order, to create order and balance. With the achievement of order in society, it is hoped that human interests will be protected. In achieving its goals, the law is tasked with dividing rights and obligations between individuals in society, dividing authority and regulating how to solve legal problems and maintaining legal certainty (Mertokusumo, 1999). Law is solely aimed at justice. The content of the law is determined by our ethical beliefs about what is fair and what is not. In other words, the law aims to realize or realize justice. Justice involves two things, namely concerning the nature of justice and concerning the content or norms to act concretely in certain circumstances (Armitage, 2002).

The essence of justice is the assessment of a treatment or action, examining it with a norm which according to a subjective view (subjectively for the benefit of the group, group and so on) exceeds other norms. In this case there are two parties involved, namely the party who treats and the party who receives the treatment. Law is not just a collection of stand-alone rules. the

importance of a legal regulation is its systematic relationship with other legal regulations. Law as a system means that the law is an order, a unified whole consisting of parts or elements that are closely related to each other. The legal system is a unit consisting of elements that interact with each other and work together to achieve the goals of the unit (Sudira, 2019).

This unit is applied to a complex of juridical elements such as legal regulations, legal principles and legal understanding. The principle of law is the tendencies required by our moral view on the law, which are general characteristics with all their limitations as a general trait, but which must not exist. Legal principles are legal principles, in this case they are not concrete legal regulations but are basic thoughts that are general in nature or are the background of concrete regulations contained in and behind every legal system that is embodied in statutory regulations and judge decisions which are positive law. and can be found by looking for general properties in the concrete rules.

Enforcement in the environmental law system requires one element of law enforcement, namely, justice. Environmental justice is not a concept that has multiple definitions. Collin sees environmental justice primarily in relation to the equitable distribution of environmental rights and benefits among race, class and income of society. According to Collin, procedural aspects in the form of public participation in decision making are considered to be included in substantive rights which are part of distributive justice. Environmental justice does not only contain distribution aspects, but also procedural aspects as Arcioni and Mitchell view which states that, apart from being related to distribution aspects, environmental justice is also related to the public's opportunity to participate in decision-making related to environmental management (Collin, 2008).

The view that sees environmental justice is broader than distribution and procedural issues. Bullard identifies five basic elements of environmental justice which include: the right of individuals to be protected from pollution; preference for pollution prevention; shifting the burden of proof on them or those who throw away waste/emissions (dischargers) or those who do not provide different treatment, but based on differences in environmental impacts

(Millner, 2003) perceived by the community (disparate impacts) and statistical evidence showing these differences, and; differences in risk sharing are addressed by targeted actions and resources. Environmental justice based on the taxonomy of justice is divided into four categories, namely, environmental justice as distributive justice, environmental justice as corrective justice, environmental justice as procedural justice and environmental justice as social justice. In the discussion of the formulation of this problem, environmental justice is social justice. Kuehn defines social environmental justice as being used concurrently to strengthen the understanding of environmental justice as a social justice (Bullard, 1994).

As a term, ecology was first used by a German biologist Ernst Haeckel who defined it as the science of the relationship between organisms and the external world around them (Kuehn, 2000). At the same time, the term environment is also used, which must be understood as an inseparable equivalent between life and the environment or the environment and life which are related to each other. Here the environment is understood as synonymous with ecology as relating to the life of organisms (including humans) and their ecosystems and the interactions between them. The ecosystem itself is understood here as a community of organisms and their physical environment that interact as an ecology. Ecological principles are intended by Capra as the principles of networks, cycles, solar energy, partnership, diversity and dynamic balance (Capra, 1996).

First, the principle of networking is defined as a living system that develops in other living systems, as a network within a network. Each living system communicates with other living systems and shares resources that enable each living system to develop in its own identity. All living things are living things that have spatial boundaries (boundary creatures), but living things, including humans, are related and are part of a system of relationships that depend on each other. Second, the cyclical principle is the principle of recycling, all living organisms naturally live and develop thanks to the supply of energy and matter as food from an uninterrupted series of energy and material supplies from the environment in which each organism lives and develops. At the same time,

every living system continuously produces the rest of the production process as waste that will be used as energy and material for the life of other organisms. Third, the principle of solar energy. What is meant here is solar energy not as a fact of nature but as an important principle in nature. Fourth, the principle of partnership. This principle explains that the exchange of energy and resources in this ecosystem or universe is possible only through cooperation that covers the entire web of life (McCarthy, 2012).

Life in the universe takes place not by war and competition to defeat each other, but through cooperation, partnership and networking. Fifth, the principle of diversity. The higher the diversity of life in nature, the more the ecosystem is resistant to various shocks, obstacles and obstacles. A uniform pattern of life will naturally kill life because it contradicts the diverse nature of life. On the other hand, diverse, multicultural life patterns will preserve life precisely because it allows partnership, interdependence, cyclical linkages as the basic principles of ecology. The six principles of dynamic balance. Ecosystems are basically flexible networks and fluctuate non-stop. Its flexibility is a consequence of a series of feedback loops that allow the system to remain in dynamic equilibrium. Therefore, it is necessary to have a sustainable human community based on the ecological principles that apply in the ecological community. Human communities that have been mismanaged due to abandoning ecological principles must be reorganized in line with the principles of life in ecological communities.

### **Ecological Justice and Social Justice as the Basis for the Protection and Preservation of the Marine Environment in the Indonesian Legal System**

In the discussion of the first formulation, the author will analyze the suitability of three important principles (precautionary principle, polluter pays principle and strict liability) as an instrument in realizing compensation for oil pollution due to tankers with the value of social ecological justice in the national legal system. What are the principles adopted in our national legal system regarding the principle of compensation for oil pollution due to tanker accidents and how are these principles realized in the national legal system? Correlation of principles in the legal system through the

concept of justice (ecological and social justice) is expected to protect the interests of the marine environment. Theory is the main tool used to express systematic relationships in social and natural phenomena to be studied and is also a tool of science. Principles are fundamental statements or general or individual truths that are used by a person or group as a guide for thinking or acting (Situmorang, 2021).

The theory of ecological justice and social justice is used to express systematic relationships and scientific tools to explain the importance of protecting and managing the marine environment for the marine environment and its benefits for humans. This theory is important to be discussed in the discussion of the principle of conformity of international legal principles into the national legal system. The theory of justice will explain the relationship between state responsibilities and obligations towards environmental protection and management through the application of legal principles to the marine environment. The principle of protecting the marine environment is considered as the truth that forms the basis for thinking and acting in the context of protecting and managing the marine environment. The theory of ecological justice and social justice is used as a framework for environmental protection and management as expected to be realized through the responsibility of the state which is obliged to protect the interests of the environment and society.

The theory of ecological and social justice places the environment as a natural resource aimed at the welfare of society through state responsibility through the concept of fairness and proportion. The construction of justice as a basic legal idea in protecting and utilizing the environment and how the environment is allocated for the welfare of citizens in accessing the marine environment. The theory of justice in legal science, especially legal dogmatic talks about the purpose of law including justice, certainty and expediency. The idea of law as a cultural idea cannot be formal, on the contrary it is focused on *rechtsidee*, namely justice (Tanya, et. al., 2010). Justice as an ideal as shown by Aristotle cannot say otherwise, except that the equals are treated equally, the unequal are treated unequally. So that in order to fulfill the ideals of justice in a concrete way, we must look at its finality, and to complete justice and finality,

certainty is needed.

John Rawls' theory of justice is understood as fairness, defined as a well-ordered society when it is not only designed to improve the welfare of its members but when it is also effectively governed by a public conception of justice, namely a society in which: (1) everyone accepts and knows that others share the same principles of justice, (2) the existing basic social institutions are generally in line with these principles (Rawls, 1995). Although the knife of justice is used in conducting analytical studies in this discussion, because justice is an integrated assessment, we will also describe the thoughts of justice from several figures that are in synergy with the conceptions of ecological justice and social justice, namely the understanding of justice as a legal ideal as stated by Aristotle. Environmental justice, as expected as a fair value, is actually a legal ideal. The concept of environmental justice in this case must of course meet the concept of justice that is aspired to, justice that is oriented towards the environment as a legal subject, commensurate with the understanding of other legal subjects in the legal system.

Ecological justice as a measuring instrument for environmental law principles must first be understood etymologically. Ecology comes from the words *oikos* and *logos* (Greek), which can literally be interpreted as knowledge or understanding of the household. The household referred to here is the earth, even the universe, and everything in it, including living and nonliving things that support it with all the complexities of its relationships. Etymologically, ecology has a close relationship with economics, which comes from the words *oikos* and *nomos*, which means how to organize a household. Thus, it is understood that economics is the application of ecology, and in other words, ecology must be the horizon of economics. The problem of ecological injustice stems from the separation between economics and ecology. Economics is the science of regulating and creating the welfare of life and the adequacy of resources for the needs of human life.

Economics seeks to strive for scarce resources to be utilized for human life. Considerations of price, calculation, production, consumption, efficiency and growth are a number of things that are the domain of economic struggle (Cobb Jr.,

1992). Ecology has a focus on the relationships and dynamics that occur in the growth process according to the economy as mentioned earlier. The relationship in question is the relationship between the growth, both the process and the result of the utilization of existing resources, with environmental sustainability. The question that wants to be answered in ecology is whether economic growth will have an impact on damaging or preserving the environment.

Welfare is not merely the main goal of economic growth it must also pay attention to the sustainability and availability of existing resources for the benefit of current and future generations. In addition, ecology must also pay attention to the participation of each individual in a large community, in this case the community of a country. From the relationship between economic and ecological understanding, Cobb stated that; That we should each pay the real social cost of the goods we enjoy just, and both economic and ecological effects would be beneficial. The future development of the economy would be far less destructive of the environment if these policies were in effect. That each of us has to pay the tangible social costs of the goods we enjoy, and that both the economic and ecological impact will be beneficial. Future economic developments will be far more damaging to the environment if this policy is enforced.

Social ecological justice is very necessary considering the natural resources on earth are critical for human welfare. Natural resources have important and strategic functions and objectives for humans, so that efforts that can be made to preserve them are by renewing, substituting and protecting. Regarding natural resources, there are characteristics that can be renewed and some cannot be renewed because of their irreversible nature. Natural resources exist for the benefit of human welfare and are therefore the responsibility of nature itself. Theoretically, the effort to protect and preserve natural resources is to replace and/or protect them. The purpose of this protection and preservation is not for the natural resources themselves but for a single species of life which exists. Natural resources have their own natural value, namely, The recognition that nature, and all its various component events and processes, is a particular historical phenomenon and should be valued

as such. Natural resources have value from historical processes. Natural resources may be replaced or renewed but because of the inherent historical process in natural resources and that is what is of value, the effort to renew or replace causes the loss of that value. For this reason, the efforts made to preserve natural resources according to this concept are only protection efforts.

If we associate the concept of environmental sustainability with the concept of social justice, it can be said that social justice is a requirement for the fulfillment of environmental sustainability. Social justice that seeks access to welfare in a social structure can be the basis for implementing ecological justice. If there is a social order with social justice, then ecological justice that preserves critical natural resources (critical natural capital) for the sake of human welfare through repair, replacement or protection efforts will be able to be realized. Human activities through industry and the economy that aim to continuously increase profits have a serious impact on the preservation of nature. The sustainability of these industrial and economic activities cannot be separated from the role and function of the supporting economic and political system by producing various policies and regulations.

Ecological justice can be seen narrowly and broadly, narrowly ecological justice focuses on the distribution of the adverse impacts of natural exploitation. Broadly speaking, ecological justice centers on the distribution of both the adverse and beneficial impacts of humans on nature. Ecological justice can be seen from two sides, the first side sees ecological justice as part of social justice because it views the environment as a resource that must be distributed, the focus is on humans. The second side sees nature (ecology) as a party who also has the dignity to get justice. The understanding of ecology is of course broader than economics, so that economic law alone for ecological justice is not sufficient, therefore all elements of justice, including social justice, can be applied to understand ecological justice. Ecological justice needs to include various elements, namely, recognition, respect and to a certain extent equality and freedom supported by the provision of facilities and infrastructure (Adrian, 2021).

The constitutionalizing of environmental

legal norms can be seen in: the recognition of subjective rights in environmental management as stipulated in Article 28 H paragraph (1) of the 1945 Constitution and the recognition that environmentally sound elements are important elements in the national economy as stated in Article 33 paragraph (4) of the 1945 Constitution. This article is referred to as the Green Constitution, by stating that; The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight and by maintaining a balance of progress and national economic unity. This article is still focused on the concept of human justice, central in sustainable development of the environment is still in human power. The 1945 Constitution is still halfway in protecting the interests of the environment as a legal subject in itself. This means that the Indonesian constitution still recognizes anthropocentrism subjective rights, yet does not explicitly state environmental rights as legal subjects (Smith, 1995).

Old-style social democracy as a whole is not against ecological concerns, but finds it difficult to conform to it. Its corporatist emphasis, its orientation on the maximum empowerment of human resources and its enormous emphasis on the welfare state make it difficult to adapt systematically to ecological problems. With the concept of social justice for all Indonesian people, the Indonesian political economy shows the special characteristics of the classical social democracy style, although Indonesia will understand democracy as Pancasila democracy with the characteristics of kinship, deliberation and mutual cooperation. This ideology of political economic democracy will of course greatly influence the implementation of environmental justice (ecological justice) both substantively and procedurally for its enforcement.

The classical concept of social democracy aims at a welfare state. The welfare state envisioned through classical social democracy requires greater government intervention in economic life, distrusts the market and is wary of the government in terms of moral issues. The welfare state presupposes an idealism towards equity. Efforts to equalize are the main concern of all social democratic groups. Greater equity should be achieved through various strategies of leveling. Progressive taxation, taking from the

rich to give to the poor. The welfare state has two goals, to create a more equal society, and at the same time protect individuals throughout their life cycle.

Classical social democracy (old left) has a special characteristic of its political economy system, namely, wide involvement of the state in social and economic life, the state dominates civil society, collectivism, Keynesian demand management, plus corporatism, restricted market roles: social or mixed economy, maximum human resource empowerment, strong egalitarianism, a comprehensive welfare state, protecting citizens from birth to death, linear modernization, low ecological awareness, internationalism is included in bipolar (bipolar). How the concept of social democracy affects the resolution of cases, we will describe how the political economy ideology is inconsistent with the aspired ecological concept. The green constitution contained in Article 33 of the 45 Constitution, still does not determine the position of the environment as a legal subject alongside humans as a legal subject. This is clear as stated in Article 33 Paragraph (1) of the 1945 Constitution which states that, "The economy is structured as a joint effort based on the principle of kinship". From Article 33 Paragraph (1), it can be concluded that social democracy in Indonesia is characterized by a family economy. Furthermore, in Paragraph (2) it is stated that, "Production branches which are important for the state and which affect the livelihood of the people are controlled by the state" and Paragraph (3) which states that, "Earth and water and the natural resources contained therein are controlled by the state. by the state and used for the greatest prosperity of the people". These verses caused controversy when confronted with Law Number 22 of 2001 concerning Oil and Gas (UU Migas) which was pro-capitalist with the unbundling system adopted. Judicial Review of the Oil and Gas Law, in the Constitutional Court's decision Number 002/PUU.V/2007, the Constitutional Court partially granted the applicant's request. The Constitutional Court is trying to prevent a real reduction in the right to control the state (Sukardjo, S. (2002).

In accordance with the Oil and Gas Law with the constitution, Article 22 of the Oil and Gas Law states that the Minister shall determine a Business Entity or Permanent Establishment

which is authorized to carry out exploration and exploitation business activities in the working area as referred to in Paragraph (2) (McKay, 2012). The review applicants argue that the existence of this article will provide opportunities for foreign oil and gas companies to dominate the national oil and gas industry. In this regard, according to the Constitutional Court, we must return to the concept that the right to control the state (control over natural resources) can only be exercised by the government and cannot be delegated to anyone other than the government. The clash of capitalism on the Oil and Gas Law which is allegedly capitalist in nature and its clash with Pancasila and the 1945 Constitution which adheres to a socialist system is something that is difficult for the legal system to accept considering the principle of *lex superior derogat legi inferiori* (Schroeder, 2000). However, the Constitutional Court in its judicial review tries to restore the socialist system through the government's right to control the government and social functions with the greatest prosperity of the people. Oil and natural gas as one of the crucial things require a dominant government role as a means of control. One of the dominations of the government or the state in oil and gas is through SKK Migas as a Special Task Force for Oil and Gas, as a substitute business entity for BP Migas. SKK Migas as a business entity has the authority to regulate upstream oil and gas activities. One of the tasks of the Oil and Gas SKK as a representation of Article 33 is to "Appoint the seller of the state's share of oil/or natural gas who can provide the greatest benefit to the state".

After the 2001 Oil and Gas Law Pertamina acted as a pure operator. In the upstream sector, Pertamina has established a number of subsidiaries as business entities, which stands for the management of oil, gas and geothermal exploration and exploitation activities, oil and gas pipeline transportation management, oil and gas pipeline drilling and management services, drilling services and portfolio management in the upstream sector. This is a manifestation of the implementation of the mandate of Law Number 22 of 2001 which requires PT Pertamina to establish a subsidiary to manage its upstream business as a consequence of separating upstream and downstream businesses. Pertamina's business activities in the downstream business

sector include the processing, marketing and commercial businesses as well as the LNG business. Marketing and trading business include distribution of oil and petrochemical products produced by Pertamina's refineries as well as those imported, both for domestic and foreign markets, supported by distribution and transportation facilities by land and sea (Weiss, 1992).

Pertamina's processing business owns and operates six refineries with a total capacity of 1,046.70 thousand barrels (Yuni, 2019). Several oil refineries such as the UP-III Plaju and UP-IV Cilacap refineries are integrated with the Petrochemical refinery and produce Petrochemical products, namely Purified Terephthalic Acid (PTA) and Paravylene. The UP IV Cilacap oil refinery produces Lube Base Oil with Group I and II of the HVI-60 type, this Lube Base Oil production is distributed to the Lube Oil Blending Plant (LOBP) at the Pertamina Lubricants Production Unit located in Jakarta, Surabaya and Cilacap to be produced into Lube products and excess production of Lube Oil (excess product) are sold in the domestic and foreign markets. There are 6 Pertamina refinery capacities, UP II Dumai refinery with a capacity of 170.0, UP III Plaju with a capacity of 133.7, UP IV Cilacap with a capacity of 348.0, UP V Balikpapan with a capacity of 260.0, UP VI Balongan with a capacity of 125.0, and UP VII Kasim with a capacity of 10.0.

Production branches that are important for the state and control the livelihood of the people are controlled by the state (Article 33, Paragraph (2) and Paragraph (3) are very clearly realized through the Oil and Gas Law whose capitalist nuances with the unbundling system are still understood as state domination of oil and gas. as a vital sector that requires state control because it relates to the lives of many people. "Many people", clearly explains the position of environmental justice in the Indonesian legal system. The people as the most important life have a very strong nuance of anthropocentrism, so that environmental justice is better understood as social ecological justice with humans (the people) as the center The context of Article 28 H Paragraph (1) which states, "Everyone has the right to live in physical and spiritual prosperity, to live and to have a good and healthy living environment and to hope to

obtain health services” is still very biased and very ambivalent to Article 33.

Characteristics of social democracy Classical (old left) with the dominance of the state as a political economy system in the Indonesian legal system experienced a slight shift in perspective to become more egalitarian through Article 33 Paragraph (4) which states that, “The national economy is organized based on economic democracy with the principles of togetherness, efficiency with justice, sustainable, environmentally sound, self-reliant and by maintaining a balance of progress and national economic unity”. The words national economy, efficiency with equity, sustainable and environmentally sound indicate that globalization has caused a democratic crisis because democracy is considered not democratic enough. The development of issues between socialist and capitalist political economy, between the large and small roles of the state shifted to the recognition that the government must adapt to the new environment of the global era, and that authority, including the legitimacy of the state, must be actively renewed.

In its development, classical social democracy is assumed to have an effort to balance economic development with environmental protection. According to the new theme of ecological modernization, environmental protection is seen as a source of economic growth and not the other way around. Ecological modernization is largely a matter of national policy, but environmental-related hazards largely transcend national boundaries and some of them have global scope. Ecological justice which is a basic concept in the Indonesian legal system, which is then used to enforce environmental justice law, of course cannot be separated from the political economy system adopted in the basic ideology, namely social justice as stated in the fifth principle of Pancasila and ecological justice as stated in Article 28 H Paragraph (1) and Article 33 Paragraphs (1) to (4). Although the context of ecological justice is expected not only to be centered on humans (anthropocentrism) but to begin to lead to the environment (environmental sovereignty/ecocentrism), in fact, within the social justice safeguards, the words for the greatest prosperity of the people need important attention. If you are not careful, the country’s political economy system will be trapped in a socialist system.

## CONCLUSION

The concept adopted in the political economy system related to environmental justice after the amendment to the 1945 Constitution began to shift in the era of globalization so that it began to respond to ecological modernization. This is of course expected to have an effect on the fairness of compensation for oil pollution by tanker accidents in Indonesia. This political economy policy if not careful in its application (still characterized by anthropocentrism) can conflict with the concept of social ecology that is currently developing in Indonesia through the concept of a green economy and a blue economy. The characteristics of the socialism system in the political economy system related to environmental justice after the amendment to the 45th Constitution began to shift in the era of globalization so that it began to respond to ecological modernization. However, due to colliding with the concept of socialism which is centered on the role and domination of the state. The ecological justice system in the context of the Indonesian legal system has the nuances of social ecological justice. This of course will greatly affect the fairness of compensation for oil pollution caused by tanker accidents in Indonesia.

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