

## GREEN OPEN SPACE AS HUMAN RIGHTS FULFILLMENT STANDARD A STUDY OF SURABAYA

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### ABSTRACT

This research was conducted on the basis of the understanding that green open space has an ecological function, namely as a buffer for urban life and its existence is very important for the community because it is the right of everyone to enjoy the function of green open space. There is a need to guarantee the availability of green space according to the portion needed by each region. The Spatial Planning Law regulates the green open space of each city by 30 percent of the city area, but the green open space of the city of Surabaya has not met the regulation. This research was conducted to analyze how green open space is a standard for the fulfillment of human rights. This research is about how a healthy environment becomes part of human rights and how green open space becomes the fulfillment of the right to a healthy environment. This study uses qualitative analysis methods, the type of socio-legal research as well as the legal approach and conceptual approach. The results of this study indicate that eco-economic rights regulate the fulfillment of a healthy environment, the fulfillment of which is the responsibility of the government. Fulfillment of RTH is also the fulfillment of eco-economic rights where the benefits of RTH guarantee the sustainability of a healthy environment, so RTH is the standard for fulfillment human rights. Fulfillment of 30% of RTH from the total area of the city is done in stages (progressive realization), namely the government guarantees social welfare through a long-term process that is gradual with continuous improvement and also guarantees that there is no setback in its fulfillment.

**Keywords:** Open green space, environment, fulfillment human rights.

### INTRODUCTION

The increasing development in the city of Surabaya carries the risk of pollution and environmental damage. Based on Republic of Indonesia Law Number 26 of 2007 concerning Spatial Planning, spatial planning is needed to harmonize the natural environment and development with the aim of providing protection for spatial functions and preventing negative impacts on the environment due to spatial use as well as realizing the principle of sustainability. Green open spaces are of a more open nature where plants grow, both naturally grown and deliberately planted and also provide space for social functions (Arendt, 2012).

Based on Minister of Public Works Regulation Number: 05 / PTR / M / 2008 concerning Guidelines for the Provision and Use of Green Open Space in Urban Areas, the ecological function of RTH is as a city lung, micro climate regulator so that air and water circulation systems naturally take place smoothly, as shade, producer of oxygen, absorbing rainwater, provider of wildlife habitat, absorbing pollutants and windbreaks. The ecological function of green open space makes green space as a buffer for urban life. Thus, green space maintenance meets the principles of spatial sustainability. A good and healthy environment is the basic right of every Indonesian citizen as mandated in Article 28H of the 1945 Constitution of the

Republic of Indonesia. For this reason, the government is responsible for the rights of the people to protect the environment.

## **METHODOLOGY**

This type of research uses a form of interdisciplinary, socio-legal research. 'Legal' in socio-legal is about legal science developed in legal education, such as reviewing existing norms, both in legislation and judicial decisions, including studies of principles, principles, doctrines and interpretations related to cases or rules. "Socio" is a non-legal science approach, whether related to legal sociology, legal culture, legal politics, or a number of approaches that make law an object of study. Thus socio-legal is a combination of both (Wiratraman, 2016).

This study uses a legislative approach and a conceptual approach. The Legislative Approach (Approach Statue) is carried out by examining laws relating to the problem being studied. The Conceptual Approach is carried out by examining legal concepts sourced from journals, reading lists, etc. which relate to the problem under study.

## **RESULTS AND DISCUSSION**

### **Economic, Social, Cultural and Healthy Environment Rights**

Indonesia ratified the International Economic, Social and Cultural Rights through Law No. 11 of 2005 concerning Ratification of the International Economic, Social and Cultural Rights. The third paragraph of the preambular says: "recognizing that in accordance with the Universal Declaration of Human Rights, the ideal state of man who is free from the enjoyment of freedom from fear and poverty, can only be achieved if conditions are created where all people can enjoy economic, social and cultural rights, also its civil and political rights. "

The obligation of the State under the Ecoscopic Rights Covenant is reviewed based on Article 2 which explains the nature of general legal obligations and is the responsibility of the Covenant Participant State. Obligations of States Parties include Obligation of Conduct, namely the State must take specific steps, especially related to actions or prevention and Obligation of Results, namely the obligation to achieve certain results through active implementation of policies and programs. This concept shows that the realization of economic rights is a dynamic process both short and long term. The standard for the fulfillment of eco-rights is explained in Article 2 Paragraph 1 where the realization is gradual (progressive realization), namely to ensure that social welfare is a gradual long-term process, not only continuous improvement, but also guaranteeing that there is no setback.

The right to a healthy environment was first officially discussed at the Stockholm Conference in 1972 and then in 1992 a United Nations Conference on Environment and Development was held in Rio de Janeiro which re-discussed the relationship between human rights and environmental protection. And the Paris Agreement adopted in December 2015 in its opening states: "Partly should, when taking action to address the climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities , migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity "human rights bodies have identified how environmental damage interferes with the full enjoyment of human rights and they have concluded that based on human rights law the state is obliged to protect human rights from environmental damage. Because based on the last 40 years it can be concluded that

unsustainable development carries a danger to humans, for it is time to recognize that human rights to a healthy environment have the same level of urgency with other rights.

Initially there was no clear connection between human rights and environmental protection. However, in the last two decades it has become increasingly clear that human rights and environmental protection have an attachment, namely a healthy environment is needed for full enjoyment of human rights and on the contrary the implementation of human rights is very important for environmental protection (Knox, 2018). Based on article 11 of the ICESCR regarding the right to adequate food and adequate housing. Regarding adequate food is interpreted that the state must implement food security and other protective measures to prevent contamination through "poor environmental hygiene". Regarding the right to adequate housing it is stated that housing may not be built in polluted locations or near sources of pollution that threaten public health rights (Shelton, 2007).

In Article 12 of the Republic of Indonesia Law Number 11 of 2005 concerning the International Ratification of the Covenant on Economic, Social and Cultural Right which addresses the right to enjoy the highest standards of physical and mental health can be achieved, stating: (1) The States Parties to the Covenant recognize the right of everyone to enjoy the highest standards that can be achieved for physical and mental health. (2) Steps to be taken by the States Parties to this Covenant in order to achieve the realization of this right fully, must include the things needed to strive for: Provisions to reduce the rate of birth and death of infants and healthy child development, Improvement all aspects of environmental and industrial health, prevention, treatment and control of all infectious, endemic diseases, diseases that arise in the work environment and other diseases, and the creation of conditions that will guarantee all medical services and attention in the event of someone's illness (Humphrey, 1975).

Environmental and industrial health aspects are the right of every person to meet the highest standards in achieving physical and mental health (Bakker, et al., 2008). So that to fulfill these rights, the government must take steps to create a healthy environment in order to achieve the realization of human rights. The matter of fulfillment a good environment is also written in Article 28H Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states: Every person has the right to live physically and spiritually, live and get a good and healthy environment and has the right to receive health services. Therefore, it can be concluded that the fulfillment of a healthy environment is categorized as Ekosob rights, because fulfillment the right to a healthy environment will have a good impact on the physical and mental quality of the community. The quality of good human resources will maximize the productivity of the community which will then have a good impact on improving the country's economy.

### **Healthy Environment as Human Rights**

The following are given conventions and treaties that show the relationship between environment and human rights:

1. Declaration of the United Nations Conference on the Human Environment (UNCHE) or known as the Stockholm Declaration (1972)

The matter of the environment has become the world's attention where the fulfillment of the environment is also the fulfillment of human rights. The Stockholm Conference is considered as an important starting point in developing environmental law at the global level. The first part of the Stockholm Declaration links environmental protection with human rights norms (Atapattu, 2002). This shows that a healthy environment influences the welfare of the

community and also increases the world economy, thus fulfillment the protection and improvement of the environment is the responsibility of the government as the fulfillment of human rights to the community.

#### 1. Rio Declaration on Environment and Development (1992) & Agenda 21

In June 1992 the UN Conference on Environment and Development was held in Brazil. The aim is to outline strategies and steps to stop and reverse the impacts of environmental degradation and to strengthen national and international efforts to promote sustainable and environmentally sound development in all countries. UNCEP adopted 3 instruments, one of which was the Rio Declaration which was later implemented as Agenda 21, a program on sustainable development. Principle 1 of the Rio Declaration states: humans are the central point of sustainable development and have the right to a healthy and productive life in harmony with nature.

#### 2. The Charter of Economic Rights and Duties of States

Article 30 states that "The protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all States. All States shall endeavor to establish their own environment and development policies in conformity with such responsibility. The National Policy of All States should enhance and affect the present and future development potential of developing countries. All States have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment or beyond the limits of national jurisdiction. All States should operate in an international evolving norms and regulations in the field of the environment. "Or in other words article 30 states that protection, preservation and environmental management for present and future generations is the responsibility of every country.

#### 3. The 1985 Vienna Convention, which aims to establish a framework in which countries can work together to overcome the problem of ozone depletion

The signatory countries agreed to take appropriate measures to protect human health and the environment against the adverse effects that are generated or possibly resulting from human activities that modify or might modify the ozone layer.

#### 4. Kyoto Protocol on the UN framework convention on Climate Change (Law of the Republic of Indonesia Number 17 of 2004)

The Kyoto Protocol is a convention carried out by countries in the world that care about the environment. Where the purpose of this convention was formed was to reduce chemical gases supporting the formation of greenhouse gases. In the General Section of Republic of Indonesia Law No. 17 of 2004 states that land-use and forestry activities are one of the activities which are the main sources of Greenhouse Gases (GHG), especially carbon dioxide (CO<sub>2</sub>) which has the ability to absorb heat from solar radiation. retransmitted by the earth. If this convention succeeds in fulfillment its implementation, it will contribute 60% of success in reducing the average global warming range from 0.02 degrees to 0.28 degrees Celsius. For this reason, Indonesia as a developing country needs to increase the capacity of land and forests to absorb GHG.

#### 5. Sustainable Development Goals (SDGs)

SDGs are a global action plan agreed upon by world leaders including Indonesia to end poverty, reduce inequality and protect the environment. The SDGs have 17 goals, one of which is the goal of sustainable cities and communities, where the goal is to build cities and settlements that are inclusive, safe, resilient and sustainable.

### **Green open space**

Green Open Space (hereinafter referred to as RTH) is an elongated / lane and / or clustered area, whose use is more open, where plants grow, both those that grow naturally and deliberately planted. Thus open space that is not overgrown with plants cannot be called open

green space. In the Minister of Home Affairs Instruction Number 4 of 1988 and Procedures for Urban Housing Planning, the National Standardization Agency of 2004 stated that green open space whose population is dominated by reforestation either naturally or plant cultivation, in its utilization and function is as an area of ecological function and life support. urban area. In Law No. 26 of 2007 concerning Spatial Planning, urban area spatial planning must contain plans for the provision and utilization of open green space which is at least 30% of the total area of the city.

The purpose of implementing green open space according to Minister of Public Works Regulation Number: 05 / PTR / M / 2008 concerning Guidelines for the Provision and Use of Green Open Space in Urban Areas is: maintaining the availability of land as a water catchment area, creating urban planological aspects through a balance between the natural environment and environment fostered that is useful for the benefit of the community and increases the harmony of the urban environment as a safe, comfortable, fresh, beautiful and clean urban environmental safeguard.

Green space has the main function of ecological functions, namely: guaranteeing the procurement of open green space as part of the air circulation system or also called the city lungs, microclimate regulators so that the air and water circulation systems naturally can run smoothly, as shade, as oxygen producers, absorbing rainwater, providing habitat for animals, absorbing pollutants in air, water and soil media, as well as windbreaks. Green open space also has an additional function, namely extrinsic function, which is divided into social and cultural functions, namely describing the expression of local culture, is a citizen communication media, four recreation, a place and object of education, research and training in learning nature. rest area, sports facilities and or play area. Currently RTH still requires optimization in spatial utilization in Urban Areas in Indonesia (Sugiyanto & Sitohang, 2017).

Furthermore, the economic function, namely the source of products that can be sold, such as flowers, fruit, leaves, vegetable major, can be part of the business of agriculture, plantation, forestry and others. The aesthetic function of RTH is: enhancing comfort, beautifying the city environment both from the micro scale, namely the home page, residential environment, and macro, namely the overall landscape of the city, stimulating creativity and productivity of the city, forming architectural beauty factors, creating a harmonious and balanced atmosphere between areas awakened and not awakened (Cho, et al., 2008).

Based on its function, green open space is divided into: direct benefits in a quick sense that is forming beauty and comfort where green open space creates a fresh and cool environment, benefits as a very effective air purifier, maintenance of continuity of ground water supplies, preservation of environmental functions and all flora and fauna contents existing or also called biodiversity (Sidauruk, 2012).

For this reason, RTH empowerment is an effort to maintain environmental quality optimally. In addition to ecological functions, green open space also has functions of additional functions such as the socio-cultural functions, economic functions and aesthetic functions which are the long-term inheritance of an area / city.

### **RTH regulation**

#### **1. 1945 Constitution**

Article 28H Paragraph (1) of the 1945 Constitution concerning Human Rights states that: everyone has the right to live in physical and spiritual prosperity, to live in, and to have a

good and healthy environment and the right to receive health services. Article 28 concerning Human Rights comes from the formulation of MPR TAP Number XVII / MPR / 1998 concerning Human Rights, which then becomes the material of Law Number 39 of 1999 concerning Human Rights.

## 2. Law of the Republic of Indonesia Number 26 of 2007 concerning Spatial Planning

Spatial planning is a system of spatial planning processes, space utilization, and control of spatial use. The implementation of spatial planning is an activity that includes regulating, fostering, implementing, and supervising spatial planning with the aim of realizing a safe, comfortable, productive and sustainable national territory space based on Nusantara Insight and National Resilience, with: the realization of harmony between the natural environment and the artificial environment, the realization of integration in the use of natural resources and artificial resources by paying attention to human resources, and the realization of protection of space functions and prevention of negative impacts on the environment due to the use of space.

Law Number 26 of 2007 concerning Spatial Planning states that Green Open Space is an elongated / lane and / or clustered area, whose use is more open, where plants are grown, both naturally grown and deliberately planted. Article 29 paragraph (2) Law number 26 of 2007 concerning Spatial Planning stipulates that the proportion of green open space in urban areas is at least 30 (thirty) percent of the total city area consisting of 20% public green open space and 10% space private green open. This is also mentioned in Minister of Public Works Regulation Number: 05 / PTR / M / 2008 concerning Guidelines for the Provision and Use of RTH in Urban Areas with additional information that the proportion of 30% is a minimum measure to ensure the balance of urban ecosystems, both the hydrological system balance and microclimate balance and other ecological systems that can increase the availability of clean air needed by the community, and once can increase the aesthetic value of the city.

## 3. Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management

Environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent pollution and / or environmental damage which includes planning, utilization, control, maintenance, supervision, and law enforcement. The principle of environmental protection and management is the responsibility of the state, sustainability and sustainability, harmony and balance, integration, benefit, prudence, justice, ecoregion, biodiversity, paying polluters, participatory, local wisdom, good governance; and regional autonomy.

## 4. Minister of Home Affairs Regulation Number 1 of 2007 concerning Green Spatial Planning of Urban Areas

Urban Green Open Space (hereinafter abbreviated as RTHKP) is a part of open space of an urban area filled with plants and plants to support ecological, social, cultural, economic and aesthetic benefits. RTHKP planning according to Article 9 of Permendagri Number 1 of 2007 Tentang RTHKP Arrangement is as follows: (1) The ideal area of RTHKP is at least 20% of the total urban area. (2) The area of RTHKP as referred to in paragraph 1 includes public and private RTHKP. (3) The area of public RTHKP as referred to in paragraph 2 is the responsibility of the district / city government which is carried out in stages in accordance with the capabilities of each region. (4) Private RTHKP as referred to in paragraph 2, the provision is the responsibility of private parties / institutions, individuals and communities controlled through the use of permits by the Regency / City Government, except the DKI Jakarta Province by the Provincial Government.

## 5. Minister of Public Works Regulation Number: 05 / PRT / M / 2008 concerning Guidelines for the Provision and Use of Hijai Open Space in Urban Areas

The provision and utilization of green open space in the City / City RDTR RTRW / City Strategic Area RTR / Urban Area RTR, is intended to ensure adequate space is available for: (1) Conservation areas for hydrological conservation; (2) Runaway water control areas by providing retention ponds; (3) Biodiversity development area; (4) The area of creation of microclimates and reducing pollutants in urban areas; (5) Community recreation and sports venues; (6) Public cemetery places; (7) Limiting the unexpected development of the city; (8) Safeguarding natural, artificial and historical resources; (9) Provision of RTH that is private in nature, through restrictions on density and its utilization criteria; (10) Disaster mitigation / evacuation area, and (11) Signing placement space (signage) in accordance with laws and regulations and does not interfere with the main function of the open green space.

The provision of green open space based on the area in urban areas is as follows: (1) Green open space in urban areas consists of public green open space and private green open space; (2) The proportion of RTH in urban areas is at least 30%, which consists of 20% public green open space and 10% private green open space. The 30% proportion is a minimum measure to ensure the balance of the city's ecosystem, both the balance of the hydrological system and the balance of the microclimate, and other ecological systems that can increase the availability of clean air needed by the community, and can increase the aesthetic value of the city. (3) If the area of RTH, both public and private in the city concerned, already has a total area greater than the applicable regulations or legislation, then the proportion must be maintained.

#### 6. Regional Regulation of Surabaya City Number 12 of 2014 concerning Surabaya City Spatial Planning for 2014-2034

Surabaya City Regulation number 12 of 2014 concerning Surabaya City RTRW 2014-2034 defines Green Open Space as a land or area designated as open space for plants / vegetation to function as micro climate regulators, water catchment areas and city aesthetics. In Article 14 paragraph 4 of Surabaya City Regulation Number 12 Year Regarding RTRW states: The strategy for establishing and preserving the green open space area as referred to in Article 13 letter d is carried out by: (1) Establishing and optimizing the function of public green open space by 20 (twenty) percent of the area of Surabaya City whose distribution is adjusted to the needs of the city's green open space; (2) Regulate the utilization of private green open space by 10 (ten) percent, through controlling the intensity of space and buildings with the construction of buildings in the flying area of the city; and (3) Preserve green open spaces for protected functions, the creation of micro climates, reducing pollutants, and controlling environmental preservation of the city.

#### 7. Surabaya City Regional Regulation Number 19 of 2014 concerning Tree Protection

Tree protection is a systematic and integrated effort carried out to preserve and maintain the function of trees. With trees defined as plants with woody stems and can reach a size of 10 (ten) centimeters or more in diameter measured at an altitude of 1.50 meters above ground level. This regulation on tree protection aims to preserve Surabaya's green open space as outlined in Article 2 of the Surabaya City Regulation Number 19 of 2014 concerning Tree Protection: The purpose of organizing tree protection in the regions is: (1) Preventing and limiting tree damage caused by human actions, power nature, pests and diseases and other causes that can cause damage or death of trees; (2) Maintaining the existence and sustainability of trees in the area; and (3) Creating safety for the public interest.

## CONCLUSION

Social and cultural economic rights regulate the fulfillment of a healthy environment, whose fulfillment is the responsibility of the government both the Central Government and the

Regional Government. Fulfillment of RTH is also the fulfillment of eco-economic rights where the benefits of RTH guarantee the sustainability of a healthy environment so that RTH is the standard for fulfillment human rights. Fulfillment of 30% of RTH from the total area of the city is done in stages (progressive realization), namely the government guarantees social welfare through a long-term process that is gradual with continuous improvement and also guarantees that there is no setback in its fulfillment. Surabaya Mayor Tri Rismaharini said that a few years ago the area of open green space in Surabaya was only 9 percent, then rose 12 percent and rose 26 percent in 2015 and the next target was 35 percent.

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