



## Environmental crime as an international crime: An overview of intergenerational justice principles and human rights

Dony Yusra Pebrianto<sup>1</sup>, Sukamto Satoto<sup>2</sup>, Helmi<sup>2</sup>, Evy Wisudariani<sup>3</sup>

<sup>1</sup> Doctoral Candidate at the Faculty of Law, University of Jambi, Indonesia

<sup>2</sup> Professor at the Faculty of Law, University of Jambi, Indonesia

<sup>3</sup> Lecturer at the Faculty of Medicine and Health Sciences, University of Jambi, Indonesia

### Abstract

The issue of environmental concerns is currently a hot topic of discussion, particularly regarding transboundary air pollution. The legal issue that arises is the urgency of addressing this problem as an international crime. Thus, the question is whether environmental crimes can be classified as international crimes.

**Keywords:** environment, environmental crime, environmental crimes

### Introduction

The human need for a good quality environment is a fundamental right that must be fulfilled. A good quality environment will directly impact the quality of human life. Therefore, with a favorable environmental condition, it will lead to a good quality of life for humans as well. The state of the environment is closely related to the level and pace of global development and progress. Development often becomes the source of environmental degradation. In this regard, a measurable concept of sustainable development is needed for the sake of future generations. According to Helmi, "Sustainable development essentially means development that can meet present needs without sacrificing the fulfillment of the rights of future generations <sup>[1]</sup>."

The conception of the rights of future generations cannot be separated from the concept of intergenerational justice. Referring to Gewirth's perspective, the realization of this depends on the existence of a society that advocates human rights in a communal manner. If the concept extends to the idea of human rights that protect the environmental rights of future generations, it inevitably leads to the conclusion that only a strong communal society can accomplish this. As de-Shalit argues, only a highly communal society can consider future generations as part of its realm of justice. Therefore, if such a society is realized, Gewirth refers to it as a human rights community <sup>[2]</sup>.

In line with the aforementioned, it is also related to the rights of future generations and their connection to the current development efforts. It is necessary to consider the aspect of sustainable development, where human development should take into account the sustainability for future livelihoods. This is referred to in the field of law, particularly in environmental law, as the conception of sustainable development, which is one of the main issues in both national and international law.

The problem lies in the fact that these state regulations are binding domestically and have not been able to cross national borders due to jurisdictional issues of a country's legal system. As a result, national laws are not able to freely reach transnational legal actions, especially when it comes to crimes that have an impact on nationality and the locus delicti of such legal actions. Therefore, a form of legal

system concept is needed to accommodate the scope of such actions. This raises the question of whether environmental crimes meet the criteria to be classified as international crimes?.

### Conceptual review of international crimes

Crime refers to actions carried out by an individual or a group of individuals that are contrary to the laws and norms prevailing in society. Crimes can take various forms, ranging from physical violence, theft, fraud, to actions that threaten the security and safety of society, such as terrorism and drug trafficking <sup>[3]</sup>. Linguistically, the term "kejahatan" in Bahasa Indonesia is commonly translated as "crime" in English. Referring to the definition in Webster New World: Law Dictionary, crime is defined as: "An act or omission that violates the law and is punishable by a sentence of incarceration <sup>[4]</sup>."

Referring to the views of Peng Wang and Jingyi Wang, who cited Martin and Romano, one of the most important issues always remains the definition of transnational crime. The concept of transnational crime, sometimes referred to as international crime or multinational systemic crime, goes beyond the mere expansion of domestic crime <sup>[5]</sup>. Furthermore, citing Fijnaut, in essence, it indicates that the adjective "transnational" implies that all types of crimes mentioned do not recognize national borders and, geographically, occur in a vacuum, as they are <sup>[6]</sup>.

However, the concept of legal violations, both within the realm of national law and transnational law, is diverse, encompassing crimes, offenses, and even disputes. One form of legal violation is international crime. In the perspective of international law, the existence of laws related to criminal matters is addressed through formal law under the International Criminal Court (ICC). The ICC was established based on the Rome Statute of the International Criminal Court (1998).

In the context of international law, the existence of laws related to criminal matters is addressed through formal law under the International Criminal Court (ICC). The ICC was established based on the Rome Statute of the International Criminal Court (1998). One of the aims of the Rome Statute of 1998 is to serve the interests of present and future

generations by establishing a permanent International Criminal Court, which has a permanent jurisdiction within the United Nations system. The court has jurisdiction over crimes that are considered extremely serious and of concern to the international community as a whole. The Statute states: "Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court in relationship with the United Nations system, with jurisdiction over the most serious crimes of concern to the international community as a whole."

From the perspective of international law, international crimes, or more commonly referred to as international criminal offenses, currently consist of four core crimes. These crimes are genocide, crimes against humanity, war crimes, and the crime of aggression.

Referring to the above explanations, there are several keywords that can provide a preliminary conclusion regarding the classification of international crimes, namely: the locus of the crime may occur in one country but have broad cross-border impacts; these crimes are regulated in the Rome Statute as the agreed-upon limitation of international crime classifications by the international community; these crimes attack the well-being, security, welfare, and future of humanity, both directly and indirectly; these crimes are deliberate acts that knowingly violate the law, but are carried out with malicious intent, both directly and indirectly.

#### **Environmental crimes as international crimes**

Corrective justice provides the principle applied in courts when contracts need to be rectified. Here, the focus is not on the individuals involved, but rather on ensuring that the benefits gained from causing harm to the other party in the contract are equalized. A judge, with impressive mathematical precision, imposes a fair amount of loss on the party who has unfairly benefited. In conclusion, Aristotle states that although this mathematical approach is used, it does not imply a simple form of strict reciprocity or retaliation. Whether this deviation from strict reciprocity should be seen as a correction or a flaw is never clearly stated<sup>[7]</sup>.

Aristotle explains justice with the expression "justice consists in treating equals equally and unequals unequally, in proportion to their inequality." Things that are the same should be treated the same, and things that are different should be treated differently, in proportion. Aristotle's understanding of justice is heavily influenced by the concept of owning certain possessions. The ideal justice in Aristotle's view is when all members of society receive an equal share of all the possessions in nature. According to Aristotle, humans are considered equal and have the same right to own property (material possessions). Aristotle's views on justice can be found in his works "Nicomachean Ethics," "Politics," and "Rhetoric." These books are entirely dedicated to justice, which, based on Aristotle's philosophy of law, must be considered the foundation of his legal philosophy, as "law can only be established in relation to justice"<sup>[8]</sup>.

In his monumental work "The Republic," Plato simplifies justice into two forms: substantive justice and procedural justice. In the first form of justice, as intended by Plato, it is a balance between rights and obligations, while the second aspect of justice, according to Plato, emphasizes the

consensus of justice. The meaning of procedural justice, as Plato understands it in the context of consensus, implies that justice itself is interpretive. Every individual, group, and ruler has the authority to define the justice they desire<sup>[9]</sup>.

Meanwhile, justice in the perspective of political philosophy is heavily influenced by Thomas Hobbes' view of the social contract theory. In this view, justice is seen as the outcome of an agreement made collectively to achieve benefits for all parties involved, and to depart from what Thomas Hobbes referred to as "the state of nature" by entrusting everything to the rule of law<sup>[10]</sup>.

The concept of justice that is also popular is John Rawls' view, known as the concept of Justice as Fairness. Rawls formulates two principles of justice as follows: First, each person should have an equal right to the most extensive basic liberties compatible with a similar liberty for all; Second, social and economic inequalities should be arranged so that (a) they are expected to benefit everyone, and (b) positions and opportunities are open to all on equal terms<sup>[11]</sup>. However, this itself is acknowledged by John Rawls as something that is still highly ambiguous. Rawls states, "I have already mentioned that since the phrases 'everyone's advantage' and 'equally open to all' are ambiguous"<sup>[12]</sup>.

The perception of Islamic law is certainly intriguing and specifically lays the foundations of justice within its legal framework. In the Islamic legal perspective, there are four views on justice: Mu'tazilah, Ash'ariyah, Maturidiyah, and Maqasid Shariah. According to Mu'tazilah, God essentially grants freedom and independence to humans to determine their will and actions. Therefore, God, for the Mu'tazilah, is no longer regarded as having an absolute will. According to them, God has created the human intellect in such a way that it can objectively discern good and evil. In this viewpoint, justice is seen as vested in the hands of human beings themselves<sup>[13]</sup>.

Referring to several provisions and developments of the ICC, one of which is the Policy Paper on Case Selection and Prioritization of September 15, 2016, it is mentioned that in this regard, the ICC will also strive to cooperate and provide assistance to States, upon request, in relation to actions that constitute serious crimes under national law, such as illegal exploitation of natural resources, arms trafficking, human trafficking, terrorism, financial crimes, land grabbing, or environmental destruction<sup>[14]</sup>.

In line with that, according to Iman Prihandono, the ICC OTP Policy Paper can essentially be seen as an initial progress for the ICC to adjudicate cases of environmental damage, resource exploitation, and illegal land grabbing. Although there is an increasing demand for the ICC to accommodate ecocide as an international crime within the Court's jurisdiction, no further progress has been announced to date. The cases handled by the ICC still primarily focus on the four main crimes against humanity as defined in the Rome Statute<sup>[15]</sup>.

Furthermore, regarding the principle of intergenerational justice, it is one of the principles that has emerged within environmental law, particularly international environmental law. According to K. Conca *et al.*, as quoted by Loubna Farchakh, the concept of sustainable development is primarily based on the focus of intergenerational equity. Sustainable development is development that meets present needs without compromising the ability of future generations to meet their own needs. Moreover,

intergenerational justice can be understood as the inherent relationship that each generation has with other generations, the past and the future, in utilizing the shared heritage of natural and cultural resources <sup>[16]</sup>. Simply put, intergenerational justice has two sides: first, intergenerational justice can be seen solely in relation to the future, and second, intragenerational justice is seen purely as an agreement with present aspects. Therefore, intergenerational justice can be understood from the relationship between the current generation and the future generation, while intragenerational justice pertains to the justice among different communities within the present generation <sup>[17]</sup>.

In historical studies, there is a well-known lawsuit called the *Minors Oposa vs. Factoran* case in 1993. The existence of the principle of intergenerational justice in law and the official recognition of environmental legal history were adopted and acknowledged through the ruling of this case <sup>[18]</sup>. In its ruling, the Supreme Court of the Philippines granted this petition based on several considerations. In this case, the children represented the children of their generation and future generations. They argued their legal standing as taxpayers who have the right to enjoy and benefit fully from the Natural Resources of the virgin tropical forest, free from destruction and "rape" of the earth <sup>[19]</sup>.

Reflecting on the aforementioned case and previous discussions, there are several important points that can be summarized. Firstly, the right to enjoy a healthy environment is a fundamental right and has become an international norm, considering that many countries recognize and respect this right in their constitutions. Secondly, concerning intergenerational justice, the right to enjoy a healthy environment is not limited by space and time. This right applies not only to present generations but also to future generations.

Regarding environmental crimes and whether they can be classified as international crimes, the author argues that they can be classified as such as long as they meet the requirements and criteria outlined earlier. Firstly, there must be an intention, whether direct or indirect, to carry out an action that leads to environmental destruction. The systemic damage caused renders the environment permanently damaged or unusable. Referring to the two principles discussed earlier, namely human rights and intergenerational justice, when linked to the conception of international law governing cross-border issues, the impacts of such actions also transcend borders, which is a key factor in classifying them as international crimes.

Secondly, individuals are held accountable, both as natural persons and individuals within their power, whether in corporations or within a state. Individuals can be held accountable under international law for their actions, whether directly (through their actions directly affecting the environment) or indirectly (through their decisions or legal actions indirectly leading to environmental damage), especially if such actions can be proven to have future cross-border impacts. The jurisdiction of the ICC lies in prosecuting individuals as legal subjects.

Thirdly, these actions have cross-border impacts, both directly and indirectly. The impacts relate to the damage caused to the environment that affects cross-border areas and also includes the impact on humans and other living beings, whether directly or indirectly. In this dimension, as

discussed earlier, the term "cross-border impact" is directly interpreted to encompass both current and future impacts, as long as they can be legally and scientifically proven.

Fourthly, to avoid overlapping jurisdiction between international law and national law, a clear separation is necessary regarding the jurisdictional systems. It is important to clearly define the boundaries of national and international legal jurisdiction, with the understanding that every country has a shared commitment to safeguard the environment, both present and future.

## Conclusion

In principle, international law has not yet classified environmental crimes as international crimes. However, when considering the principles of Human Rights (HR) and Intergenerational Justice, environmental crimes have gained urgency to be classified as international crimes, given that the right to a clean environment is recognized by many countries as a constitutional human right. Thus, the occurrence of an international crime would also constitute a violation of constitutional rights. However, it is important to establish boundaries as not all environmental crimes can be classified as international crimes. They can be classified as such as long as they meet three conditions: Firstly, there must be a malicious intent, either directly or indirectly, to engage in an action that leads to environmental destruction. Secondly, individual accountability is involved, encompassing both natural persons and individuals within their positions of power, whether in corporations or within a state. Thirdly, the actions have cross-border impacts, either directly or indirectly. Furthermore, environmental crimes are governed by the Rome Statute of 1998 as the fifth crime under the jurisdiction of the International Criminal Court, known as Ecocide. In this context, transboundary air pollution qualifies as an international crime.

## References

1. Helmi. *Hukum Perizinan Lingkungan Hidup*, Sinar Grafika, Jakarta, 2012, 29.
2. Richard P Hiskes. *The Human Right to A Green Future: Environmental Rights and Intergenerational Justice*, Cambridge University Press, 2009, 24.
3. Surianto. *Menata Sumber Daya Warga Binaan Pemasyarakatan*, SAH Media, Makassar, 2018, 3.
4. Susan Ellis Wild. *Webster's New World Law Dictionary*, Wiley, Hoboken, Nj, Canada, 2006, 113.
5. Peng Wang Dan Jingyi Wang. *Transnational Crime: Its Containment Through International Cooperation*, Asian Social Science, 2009:5(1):26.
6. Peng Wang Dan Jingyi Wang. Previous Reference.
7. Delba Winthrop. *Aristotle And Theories Of Justice*, The American Political Science Review, 1978:72(4):1204.
8. Friedrich Carl Joachim. *Filsafat Hukum: Perspektif Historis*, Nuansa Dan Busamedis, Bandung, 2004, 239.
9. Ibnu Asqori Pohan *et al.* *Eksplorasi Kontemporer Konsep Keadilan Karl Marx*, Jurnal Dialektika, 2018:3(2):21.
10. Muhammad Faris Alfadh. *Keadilan Global Dan Norma Internasional*, Jurnal Hubungan Internasional, 2013:2(2):168.
11. Muhammad Faris Alfadh. Previous Reference, 170.
12. John Rawls. *A Theory of Justice: Revised Edition*, Harvard University Press, United State of America, 1971, 57.

13. Muhammad Helmi. Konsep Keadilan Dalam Filsafat Hukum Dan Filsafat Hukum Islam, *Mazahib*, 2015:14(2):139-140.
14. International Criminal Court. Office of The Prosecutor, Policy Paper On Case Selection And Prioritisation, 2016, 5.
15. Iman Prihandono and Dewi S Yuniarti. Expanding The Jurisdiction of The International Criminal Court, *Brawijaya Law Journal: Journal Of Legalstudies*, 2022:9(2):192.
16. Iman Prihandono, Dewi S Yuniarti. Previous Reference, 22-23.
17. Iman Prihandono, Dewi S Yuniarti. Previous reference.
18. Defrio Nandi Wardhana, *et al.* Analisis Kesenjangan Kebijakan Iklim Indonesia Dalam Perspektif Keadilan Antargenerasi, Eksekutif Nasional Walhi (Wahana Lingkungan Hidup Indonesia), Jakarta Selatan, 34.
19. Republic of The Philippines Supreme Court Manila. G.R. No. 101083, 1993.