
Balancing Development and Forest Environmental Management through Legal Mechanism Based on Naqli and Aqli

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ABSTRACT:

This paper seeks to examine possible legal mechanism and environmental law principles that based on the integration of naqli and aqli. Current legal approach especially towards forest environment is seen to be ineffective when the forested areas in Peninsular Malaysia drastically reduce over the years and continues to decline even now. As in 2012, there were 5.79 million ha or 43.9% of forested land in Peninsular Malaysia. Out of this, 37.1% or 4.89 million ha were gazetted as Permanent Reserve Forest (PRF) or Permanent Forest Estate (PFE) and under the management of the Department of Forestry. The PRF or PFE can be easily excised from the gazette under the provisions of the National Forestry Act 1984 (NFA). Degazettement or excision of forest reserve areas is done mainly for the purpose of boosting economy as well as generating revenue for the state i.e. forest clearing for agriculture, the development of new town areas, a luxury residential area and also the industrial area. Therefore, a legal mechanism and environmental law principles that based on the integration of naqli and aqli is seen as a holistic approach in anticipating balance in economic development and forest environment.

KEYWORDS: *(forest environment, Peninsular Malaysia, naqli and aqli, environmental law principles, legal mechanism, holistic approach, global warming)*

INTRODUCTION

Forest in Malaysia is governed by several numbers of related laws. Nevertheless, the percentage of forest kept reducing every year. Holistic approach such as sustainable management of forest is seen as prioritizing the production over protection of forest. For instance, forest in Peninsular Malaysia experienced declination of 30% of its forest cover from the late 1950s to 2012. The portion of the current percentage of Permanent Forest Reserve should be sustained and preserved. It could not be easily sacrificed in the name of development. In order to preserve and protect forest environment, sustainable development should be understood and strictly enforced. The current development trends depict a total clearing of mass forest land and nothing left to be sustained. This is clearly mentioned in Surah Rum, 30:41, that mankind is responsible for the deterioration and destruction on earth.

'Mischief has appeared on land and sea because of (the meed) that the hands of men have earned, that (Allah) may give them a taste of some of their deeds: in order that they may turn back (from Evil).'

Moreover, the worldly recognized environmental law principles such as sustainable forest management, precautionary approach, polluter pays, and inter-generational equity are hardly seen employed (Yaakob, 2014).

The objective of the paper is to anticipate discussion on legal mechanism and environmental law principles that based on the integration of naqli and aqli. Thus, it is the intention of the paper to harmonise the existing gap in related principles of Environmental Law (aqli) with *maqasid syariah* (naqli). *Maqasid syariah* or objectives of Syariah promote well-being of the society to the fullest perfection living on earth that is to achieve *taqwa* as mentioned in the Holy Quran.

'Verily, the noblest of you in the sight of Allah is the one who is most deeply conscious (i.e. fearful) of Him.' (Surah al-Hujurat 49:13).

Thus, as underlined by the *maqasid syariah* it is essential to protect the five fundamental elements (*dhoruriyyah*) that is to protect life, intellect, faith, lineage and property. The failure to protect the enumerated five fundamental elements would create disorder and the destruction of a society (Kamali, 2000).

MAQASID SYARIAH IN BALANCING DEVELOPMENT AND FOREST ENVIRONMENTAL MANAGEMENT

There are about 500 verses in the Holy Quran reveal the sign on the environmental management (M. Khalid, 1997). Among others, M. Khalid (1997) highlighted that mankind shares the earth with the other millions of living species. Hence, the duty and responsibility is on mankind to protect and preserve the earth heritage. The relationship between man and nature could not be denied (Marsuki & Ghazali, 2002). As Allah mentions in surah al-An'am, 6:165;

"It is He who has appointed you vicegerent on the earth and exalted some of you in rank above others, so that He may test you by means of what he has given you."

In another verse, mankind has been chosen to preserve and protect the earth because of the mankind unique attributes from other Allah's creation (Surah al-Baqarah, 2:33).

He said: "O Adam! Tell them their natures." When he had told them, God said: "Did I not tell you that I know the secrets of heaven and earth, and I know what ye reveal and what ye conceal?"

Protection of life, intellect, faith, lineage and property underlined by *maqasid syariah* are fundamental to create a harmonized order of society. In balancing development and forest environmental management, every single elements of *dhoruriyyah* in *maqasid syariah* is crucial to be reflected. In forest environment, all these fundamental elements are interconnected. To protect life means protection of the life of every species living within forest environment. Bakar (2007) underlined the protection extends to not only mankind but other living species such as varies of flora and fauna. Intellect needs to be protected from being ruined by negative influences such as illegal logging, damaging forest environment for the sole purpose of monetary profits and extravagant. Allah prohibits this in Surah al-A'raf, 7:31.

'O children of Adam! Wear your beautiful apparel at every time and place of prayer: eat and drink: but waste not by excess, for Allah loveth not the wasters.'

In preserving the environment, it is indeed protects person belief. By preserving belief, environment would be taken care of.

In Surah Ta-ha, 20:53, it is apparent that Allah has created plants in pairs to breed and varies.

'He who has made for you the earth like a carpet spread out; has enabled you to go about therein by roads (and channels); and has sent down water from the sky. With it have we produced divers pairs of plants each separate from the others.'

It is crucial for mankind to protect and sustain forest environment as it consists of variety of plants and animal species. The protection also extends to forest dependent community such as Orang Asli. This is regarded as protecting the lineage and property underlined by *maqasid syariah*.

At the moment of attainment of *taqwa*, there will be Allah's redha and barakah thus, reaching *baldatun toyyibatun warabbun ghafur*. As Allah mentions to the effect in Surah Saba, 34:15;

'Indeed there was for Saba' (Sheba) a sign in their dwelling place, - two gardens on the right hand and on the left (and it was said to them) "Eat of the provision of your Lord, and be grateful to Him, a fair land and an Off-Forgiving Lord.'

THE ENVIRONMENTAL PRINCIPLES RELATING TO FOREST CONSERVATION

The evolution of the Environmental Law principles can be seen in the Rio Declaration (Sheridan & Lavrysen 2002) (the Declaration) when it was proclaimed in June 1992 (Sands & Paolo, 2004). The Declaration had guided the national legislators to instill Environmental Principles into their own laws and policies. In this remarkable year, 176 states had adopted an action plan in "Agenda 21", the Convention on Biological Diversity, the Convention on Climate Change and the non-binding Statement of Consensus on Forest Principle.¹ The first universal codification of Environmental Principles was decreed in Stockholm in June 1972 where the United Nations Conference on the Human Environment was held with the participation of 113 states. The Stockholm Declaration and an Action Plan were adopted by those states and 26 principles were embedded in this Declaration.

Sources of Environmental Principles are stated under Article 38(1) of the Statute of the International Court of Justice (ICJ); the sources are international treaties, international custom and the general principles of law recognized by civilized nations (Jewa, 1996). Other subsidiary sources include judicial decisions and the teachings of the most highly qualified experts of numerous nations.

These are general instruments for safeguarding the environment against any destruction on earth. It is clear that there are two principles of the Stockholm Declaration which can be associated with the discussion in this chapter; they both relate to forest conservation, namely principles 2² and 4³. These principles suggested the importance of safeguarding flora and fauna, air, water and land for future generations, and nature conservation must be managed and safeguarded, especially in the process of planning for economic development.

The expansion of Environmental Principles in the Rio Declaration engendered several principles which reflect the notions of forest conservation, for instance principles 2⁴, 4⁵, 7⁶, 10⁷, 13⁸, 15⁹, 16¹⁰,

¹ It is known as the Forest Principle (informal name for the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests). This is a non-legally binding document which includes recommendations for the forestry sector.

² Principle 2: The natural resources of the earth, including the air, water, land, flora and fauna, especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

³ Principle 4: Man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperilled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.

⁴ Principle 2: States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their

and 22¹¹. These principles highlighted that the focal points of environmental protection should be integrated in sustainable development, cooperation between states in conserving and protecting the earth's ecosystem, the importance of enacting law on liability and compensation for environmental damage, the adoption of 'precautionary approach' and 'polluter pays' principles, and public participation in decision-making processes which involve the environment in which people live, including recognition of indigenous people's right to participate, in order to uphold the principle of sustainable development. Thus it can be clearly seen in the Declaration that the Environmental Principles have been expanded to include every aspect of life.

There are several environmental principles that relate to forest conservation that are sustainable development, precautionary principle, polluter pays and also intergenerational equity. These

own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national

⁵ Principle 4: In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.

⁶ Principle 7: States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit to sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.

⁷ Principle 10: Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities

in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.

⁸ Principle 13: States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.

⁹ Principle 15: In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

¹⁰ Principle 16: National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

¹¹ Principle 22: Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.

internationally recognized environmental principles are significant in term of its anticipated effective outcome for forests survival.

The first principle is on sustainable development; this principle has its origin in the Stockholm Declaration in its Principle 2 which states that

The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.

This principle of sustainable development is also highlighted in Principle 2 of the Rio Declaration:

States have, in accordance with the Charter of the United Nations and the principles of International law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

The term 'sustainable development' was reiterated in the Rio Declaration, thus showing the significance of harmonizing development with environment. The principle deals with vital issues of environmental degradation as the main concern of the principle is about sustaining natural resources which have been excessively used by the proprietor. The resources need to be sustained for the benefit of current and future generations (McEldowney, & Sharron, 2001). Thus, the principle states that, in order to preserve natural resources for future generations, it is important to foresee the feasibility of the remainder of the natural resources.

Thus, based on the principle, there is a need to foresee the trends of forest biodiversity in Peninsular Malaysia on the ground that Peninsular Malaysia's forest resources are being depleted because of the strong consideration given to economic and business development. The urgent action needed to sustain forest biodiversity in Peninsular Malaysia is highly significant due to its multiple functions. It seems that the government of Malaysia is cognisant with the aim of the sustainability principle but the extent to which it has been implemented is another matter, as the forest is apparently being cleared in the name of economic growth.

The second principle which the author would like to discuss is the 'precautionary principle'. This relates to preventive action to avoid environmental risk or threat (Sharma, 2008). This principle has been derived from the 1987 North Sea Declaration and also indirectly from a number of Conventions and resolutions preceding it. This idea is clearly stated under Principle 15 of the Rio Declaration as follows:

In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

Therefore, for this particular study, the principle can be used to assess a proprietor's need to cut down trees in a forest area. Whether a large area of forest can be protected by applying and implementing the principle is debatable. The application of this principle, which is significant for forest conservation, can also be seen in Principle 17 of the Rio Declaration which states the following:

Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.

This principle is seen to be implemented in the Environmental Impact Assessment Guidelines for Forestry (MOSTE, Malaysia, 1998). According to these guidelines, interaction between the project proponent, the project managers, forestry consultants and the EIA consultants' team is necessary to ensure the smooth running of the preparation of the EIA documents. This assessment process must be conducted with great integrity as it affects the quality of the environment and also reflects the related agencies' accountability. Thus, the EIA process can be regarded as putting the precautionary approach into practice in order to predict the detrimental effects on forest environment caused by development projects.

Another environmental principle that is strongly related to forest conservation is the 'polluter pays' principle which originated in the Organisation for Economic Co-operation and Development in a Recommendation of 1972. Principle 16 of the Rio Declaration has underlined the principle as follows:

National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

The 'polluter pays' principle can be seen to have been applied in the NFA in terms of punishments for forest offenders. The NFA, among other legislation, was amended in 1993 to increase the size of the fine for the offence of trespassing and violating forest environment, for instance illegal logging. The penalty has been increased from RM2, 000 to RM50, 000 or RM500, 000 according to the degree of the offence (Forestry Department, Peninsular Malaysia, 2007).

Intergenerational equity is another environmental principle which could relate to public rights in the forest. The right of the public to participate is highlighted in chapter six of the thesis. Intergenerational equity refers to the rights of future generations to receive natural wealth as it has been passed to the present generation from the previous generation (Beder, 2012).

The intergenerational equity principle can be seen in two different ways: from the perspective of 'weak sustainability' and from that of 'strong sustainability'. Weak sustainability refers to the ability of future generations to create wealth as experienced by the present generation. This also means that future generations would be adequately compensated for any environmental deterioration to enable them to create wealth by alternative means. Strong sustainability, however, means seeing the environment as an irreplaceable substance that not even man-made wealth can restore and suggests that a degraded environment cannot be inherited by future generations even if they are supplied with extra means of wealth generation.

Nevertheless, it is difficult to ensure and measure the implementation of actions by the present generation required to meet their responsibilities to future generations (Edith, 2012). Therefore, any problems occurring should be seen as long-term issues rather than short-term issues. Thus, there should be several adjustments to institutions, economic incentives and legal instruments, as well as public awareness and a strong political will, all of which should be in line with the implementation of responsibilities to future generations from a long-term perspective.

CONCLUSION

From the above discussion, it is apparent that there is interconnection in the context of the objective of preserving and sustaining the earth heritage for the benefits of existing and future society. It is also found that the responsibility to preserve this priceless nature is upon mankind. By inculcating *maqasid syariah* in the context of sustaining and preserving the forest is seen as a conclusive holistic approach to the current situation of forest trends. Therefore, Al Quran (naqli) should be an ultimate guidance to formulate a balance in development and preserving forest environment as Allah mentioned to the effect;

'O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result.' (Surah an Nisa, 4:59).

Thus, further in-depth research on the integration of naqli and aqli is not only needed but to the utmost reference and guidance in an effort of harmonizing the existing gap in related principles of Environmental Law (aqli).

ACKNOWLEDGEMENT

In the name of Allah the Most Merciful, Most Compassionate. I extend my gratitude to USIM for providing research grant (incentive grant) for me to embark with this topic.

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