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# Protection of Environment Rights Through the Rebus Sic Stantibus Principle in Natural Resources Management Contract in Indonesia

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***Abstract*—The study aims at analyzing the protection of environmental rights through the rebus sic stantibus principle in the natural resources management contract. The data of this study are qualitative ones using normative legal research and used literature research. The rebus sic stantibus principle an agreement can be changed due to the occurrence of a fundamental change of circumstances. In the event of pollution and damage to environmental resulting from natural resources management contract, then the contract should be changed, provided that such changes should be accompanied by the restoration of the environment so that environmental rights are reserved. The natural resources management contract should provide equal footing between the parties and the environment in the contract, including in the event of a fundamental change of circumstances. The conclusion is that natural resource management contracts should make the rebus sic stantibus principle one of the main principles because this principle can make the position of nature the subject of the contract and the higher protection of nature from over-exploitation and exploration.**

***Keywords: environment rights, rebus sic stantibus principle, contract***

## I. INTRODUCTION

Natural resources management contracts are always linked between the relations of humans and nature. Humans carry on a binding agreement that makes natural resources os the object of the agreement. The contract is used as a base for humans to rule over nature. The contract makes human activity legitimate when humans make an invasion of nature. This means that when explaining natural resources management contracts are the three most important elements, namely human, natural resources, and contract.

The traditional concept to mention the contractual relationship between humans and nature is always seen as partial. Humans constantly interpret themselves to meet all their needs. Nature is also positioned as a different entity and independent. Humans to achieve their needs often think of themselves as rulers of nature. The human paradigm then results in human subjecting, exploiting, and exploring nature. This condition makes humans consider nature as an object of meeting human needs themselves.

The position of humans becomes central to nature so that humans can control nature according to their desires, or in other words called anthropocentrism. Anthropocentrism makes humans the center of the universal system. Humans and their interests determine the environment in ecosystems and take policies taken with nature, both directly and indirectly. Humans come close to understanding substantialism that is the word van Peursen “substance” itself means something that can stand alone, which has its foundation and does not need to rely on something outside it [1]. Substantialism decides as something that is truly willing to discuss loose items from one another, independent of something outside it. The relationship between one subject and the other is released or does not have a relationship that affects each other. Humans who become arrogant owners, human through the ratio can conquer everything. Humans arrive at a position as a subject that is "almighty" than others. Humans are no longer trying to dialogue with other substances, asking humans to try to understand everything without paying attention to their values and derivatives, namely the principle of law. The principle of law is also discussed as a principle that legalizes human activities. The legal principles are then collided with each other according to human desires.

The contract becomes a liaison for humans in agreeing on what they have agreed on. A contract can be a rule for those who make it. When the contract is made into written rules, the contract will not develop again. Contracts become stagnant, dead or even become standard rules for the parties. This understanding is what makes the parties return to the traditional concept, namely releasing the contract from the interpretation of the conditions of values because the contract places itself as a positive law that is free from values, principles, and ethics [2].

Understanding of contracts according to law positivism is what causes contracts to manage natural resources to be far from legal values and principles. If the contract has ruled out

 

the legal principles that surround it, then the catastrophe arising from the impact of the contract is inevitable. The impact is pollution and damage to the environment, which not only gives risks to the parties who made the contract, but the impact is also felt by many people. Some cases of pollution and environmental damage based on contracts are the cases of the Rio Tinto, Newcrest, Newmont, Freeport, PT Indo Muro, PT Meares Soputan Meaning, PT Nusa Halmahera Mineral, and other companies. These companies not only add to the worsening investment conditions in Indonesia but also have an enormous impact on natural resources in Indonesia. The Government of Indonesia as the parties cannot do anything, the people of Indonesia who receive the impact.

If the company does not recognize the pollution and damage that has been done, the country through the contract made can change the contract that was previously agreed based on the principle of rebus sic stantibus. The rebus sic stantibus principle can be used as a shield and basis for contract changes when companies do not recognize environmental pollution and damage that they have done, the government can change the contract because there are fundamental changes to the environment that result in difficulties in carrying out contracts in the future.

## II. Research Methods

The research conducted through the research method of normative legal research. Data collected by library of the research object as well as literature data. Secondary data such as documented law and regulations and other supporting data collected from various sources of concerns. This study is a qualitative study expressed in descriptive sentences that describe the scientific data collected by the researcher by library research.

## III. Results and Discussion

### *A. Natural Resource Management Contract*

Contract is a legally binding agreement and a set of promises regarding future behavior [3]. The important thing in a contract is an agreement that has legal force. Contracts are generally divided into 2 (two), namely private contracts and social contracts. Natural resource management contracts touch on private contracts and social contracts. Touching the realm of private contracts because natural resource management contracts [4] are legally bound by agreements made by the parties namely the Indonesian government (first-party) and legal entity (second party). The parties put it in written form which contains the rights and obligations of the parties and the existence of a certain matter because it involves the object of the contract.

Contracts in the private sphere are defined as private contracts between the state and investors or other parties who want to manage natural resources. On the other hand, the government must also pay attention to its social contract with the community, or what is called a contract in the public sphere, where the contract is between the government and its people. The form of a social contract is explicitly stipulated in Article 33 of the UUD 1945. Article 33 of the Constitution concerning the sentence "controlled by the state" or the right to control the state or the right to control the state must be given a suitable interpretation because if it looks textually it will lead to an ambiguous meaning. The state as a supreme organization of the nation is given the power to regulate everything and the state based on its position has the authority to rule the law. The state is the highest institution, so the state has a very important role that is regulating the natural resources contained in its territory and then given its regulations in realizing the prosperity of the people. This indicates that there is a contract between the state and its people. The contract contains that the people entrusted to the state, which is in the form of all-natural resources to be given regulations, then the state implements it but remains within the frame of the prosperity of its people.

Rousseau also mentioned that social pacts create equality between citizens so that all bind themselves under the same conditions, and all must get the same rights [5]. Based on the nature of the pact, all citizens are sovereign. The sovereign deed is not a convention between superiors and subordinates, but a convention between a corps and each of its members. The convention is valid because it is essentially a social contract; fair because it applies to all; useful because the aim is nothing but the common good, and sturdy because guaranteed by the general power and supreme power. As long as subjects obey such conventions, they are not obedient to someone, but their own will. State power as a community organization is bound by social contracts by protecting the interests of the community together without ignoring the power of individuals. State power is not a power that characterizes the relationship of subordinates and superiors but is a unity that requires balanced communication interaction [6].

### *B. Principle Rebus Sic Stantibus Provides Protection of Environment Rights in Natural Resource Management Contracts*

The principle of law is an important and essential element of the rule of law. Legal regulations are formed from laws or agreements (contracts). The legal principle becomes a bridge between the contract with social ideals and the ethical view of the community. The principle of law will never run out of strength because it has given birth to a rule or rule of law, but it still exists and will be able to continue to give birth to rules or regulations so on, believes that a principle is a broad reason, which lies at the base of a rule of law. The principle of law should not be considered as concrete legal norms, but should be seen as a general basis or instructions for applicable law. The formation of practical law needs to be oriented to these legal principles. In other words, the principle of law is the basics or directions in the formation of positive law.

The principles of law had a higher status than regulations. If there are regulations that do not meet the principles, the regulations can be said to be made arbitrarily and it is very possible that these regulations cannot be implemented. The contract is a rule for the maker so the principle also plays a role in covering the contract because of its higher position. The principle of law covers the contract both in the pre-contract, contract period and post-contract. The principle of law also has a role in the implementation of contracts, especially contracts related to natural resource management.

The rebus sic stantibus principle is the principle used in business contracts [7]. This principle has not been widely used in contracts that have developed in Indonesia. Yet this principle has historically been very often used on private business contracts. The concept of the rebus sic stantibus was first recognized in religious courts, namely Christianity (the Church) by canonical jurists in the 12th and 13th centuries, especially in the case of suspicion of usury (riba) [8].

During the Renaissance, the application of the rebus sic stantibus principle met with resistance from the bourgeoisie because of insecurity and inconvenience in carrying out the business contracts they made. The effect is that the trust in the principle begins to fade and is slowly replaced by the pacta sunt servanda principle. The inconvenience in the form of the use of everyone in the use of the rebus sic stantibus principle or as if this principle becomes a shield in changing the contract so that by switching to the principle of pacta sunt servanda will get legal certainty because all the wishes of the parties have been listed in the contract [9,10].

The rebus sic stantibus principle is a principle derived from canon law where this principle has divine values which if there is a fundamental change in contracting that makes the parties experience difficulties in making an achievement then changes to the contract can be made. To find out whether the principle of rebus sic stantibus is valid or not, there are 3 (three) sizes, namely: there are fundamental changes, something difficult happened, and, there are significant losses.

In general, the use of the principle of contract law is as a general director for realizing ethical tendencies (*ethische tendezen, Algemene richtlijnen voor positivering van het Recht door wetgever en rechter*), so that the legal principles are inherent in law and are expressions of the logic functions of human reason. The contract is a regulation for the parties that make it, so the legal principle plays a role in overseeing the contract because the principle's position is higher than the contract itself.

The rebus sic stantibus principle as a legal principle is useful as a general guide for realizing ethical tendencies and the supervisor and controller for contracts agreed upon by the parties. The role of other legal principles is to guide legislators in the process of legal formation, as well as the principle of rebus sic stantibus, has a role to guide the parties in the process of making contracts which they then agree on.

The principle of rebus sic stantibus comes from a Latin sentence that is *contractus qui habent tractum succesivum et depentiam de future rebus sic stantibus intelligentur* [11]. The point is that the contract determines the next act to carry out the contract in the future, which must be interpreted subject to the requirement that the environment and conditions in the future remain the same.

The intended contract must comply with the requirements that the environment and circumstances in the future [12,13]. When the contract is not by the environment and conditions in the future, then the consequence of the contract is inapplicable. The impact of the contract is not enforceable is the parties can withdraw or terminate the contract or can change the contract. If the parties are consistent with the use of the rebus sic stantibus principle, and then any fundamental changes to a contract including fundamental changes caused by the environment, the parties can change or terminate the contract.

The use of the rebus sic stantibus principle in natural resource management contracts can be divided into 2 (two), namely the use of the rebus sic stantibus principle in overcoming existing natural resource management contracts, and the use of the rebus sic stantibus principle in overcoming resource management contracts problematic nature. First, the use of the rebus sic stantibus principle to overcome the ongoing contract due to fundamental changes in the context of the situation. The basic concept of the principle of rebus sic stantibus is that the contract can change or no longer apply if there is a fundamental change in the contract. With regard to the use of the rebus sic stantibus principle in dealing with ongoing natural resource management contracts, contract changes are made by renegotiating contracts. This means that existing contracts of work are then repaired or adjusted to fundamental changes that occur. If a natural resource management contract causes environmental pollution and damage, then the same means that fundamental changes have taken place, so the contract must be corrected to its original condition. As a result, natural resource management contracts must be renegotiated because there are conditions that change fundamentally in the environment.

Second, the use of the rebus sic stantibus principle to overcome the problematic natural resource management contracts due to fundamental changes to the context of the situation, is the natural resource management contract should become inapplicable, when it wants to be reinstated, the contract must be changed as a whole, in the sense that the contract is remade from scratch, then adjusted to the terms and conditions of the environmental conditions when the contract is being remade. The categorization of natural resource management contracts that have problems is natural resource management contracts that undergo fundamental changes to the context of the situation so that it fundamentally results in differences in terms and conditions with the current contract conditions, but one party is not willing to change the contract. The unwillingness of one of the parties to make a change in the contract is proven that there has been a fundamental change in the contract, so with the strength of the principle as something of higher value than the rules or contract, the contract cannot be executed or it can be said that the contract is no longer valid. If in the future the same parties agree to re-do the contract, then the old contract should not be used as a reference again. But the parties are required to make the contract from the beginning again based on the terms and conditions that were appropriate when the contract was re-made.

## IV. CONCLUSION

The rebus sic stantibus principle is a means to prevent pollution and environmental damage by understanding that the rebus sic stantibus principle is that the contract can be changed or no longer valid if there is a fundamental change in the context of the situation. If the context that results in a fundamental change in the natural resource management contract is the environment, it is necessary to take measures to prevent pollution and damage to the environment, so that the

natural resource management contract is not changed or declared no longer valid, because the process of changing the contract or contract is stated no longer valid is far less profitable than prevention of environmental pollution and damage. Protection of environmental rights through the rebus sic stantibus principle in natural resource management contracts can be done in two ways, namely the use of the rebus sic stantibus principle in overcoming existing natural resource management contracts, and the use of the rebus sic stantibus principle in overcoming contracts problematic natural resource management. The use of the rebus sic stantibus principle in overcoming existing natural resource management contracts are a change of contract by renegotiating the contract. The use of the rebus sic stantibus principle to overcome problematic natural resource management contracts due to fundamental changes to the context of the situation, which is the natural resource management contract should no longer be valid.

## REFERENCES

[1] V. Peursen, Strategie van de Cultuur, Yogyakarta: Kanisius, 2013, pp. 76.

[2] Soetiksno, Philosophy of Law, Jakarta: Pradnya Paramita, 2008, pp. 60.

[3] A. Schwartz and R.E. Scott, "Contract theory and the limits of contract law," The Yale Law Journal, vol. 113, no. 54, pp. 559, 2003.

[4] J. Ballet, K. Lompo, and M.T. Randrianalijaona, "Does the principle of compensation provide a solid basis for establisihing corporate environmental responsibility: A case study of Madagascar's mining industry," EJBO, vol. 24, no 1, pp. 21, 2019.

[5] J.J. Rousseau, The Social Contract (Trans G.D.H. Cole). Virgil: Public Domain, 1762.

[6] A. Crawford, "Contractual governance of deviant behaviour," Journal of Law and Society, vol. 30, no. 4, pp. 480, 2003.

[7] D. Rubenstein, "Legal and institutional uncertainties in the domestic contract law of the peoples Republic of China," Mcgill Law Journal/Revue de Droit de McGill, vol. 42, pp. 495, 1997.

[8] A.T. Saliba, "Rebus sic stantibus: a comparative survey," E-Law Murdoch University Electronic Journal of Law, vol. 8, no. 3, 2001.

[9] O. Lando, "Salient features of the principles of European contract law: a comparison with the UCC," Pace International Law Review, vol. 13, no. 2, pp. 366, 2001.

[10] C. Tabor, "Dusting off the code: using history to find equity in Louisiana contract law," Louisiana Law Review, vol. 68, 2, pp. 550, 2008.

[11] J.M. Perillo, "Force majeure and hardship under The Unidroit Principle of International Commercial Contracts," Tulane Journal of International and Comparative Law, vol. 5, pp. 13, 1997.

[12] D.P. Flambouras, "The doctrines of impossibility of performance and clausula rebus sic stantibus in the 1980 convention on contracts for The International Sale of Goods and the principles of European contract law-a comparative analysis," Pace International Law Review, vol. 13, 2, pp. 278, 2001.

[13] E. Baranauskas, and P. Zapolskis, "The effect of change in circumstances on the performance of contract," Jurisprudence, vol. 118, 4, pp. 204, 2009.