

# **THE SUPREMACY ON THE GREEN TAX PALICY FOR SURMOUNTING THE ENVIRONMENTAL DETRIMENTS IN INDONESIA**

**By**

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## **ABSTRACT**

Disruptive era triggers to a complex proposes on the limited spatial zone of countries. Incorporating a harmonious nexus among economic missions and ecological requirements is a must. Policy holders are encouraged for Inventing the tools or due mechanisms of budgeting and tax system to harness a environmental degradation become supreme. This research is intended to design the theoretical and practical nexuses among the role of tax legal system, environmental legal system in tackling environmental damages. The type of research is a doctrinal based study to find out accurate principles and supported also by the approach of sociological legal study to make sure the invented principles have been examined. Thus, Mix method approach is driven accomplish the comprehensive proposes of study. The research has found out the results that strategic and interdependency nexuses among the tax legal system and environmental legal system in incorporating the workable principles and taxation governance to tackling the environmental degradation. The principles have the roles for the cores to realise the functions: the budgeting functions in term of achieving the people prosperity and the regulating functions in term for performing the sustainable development. The existing taxation governance is still placed in the wide range of gab among the hopes and the practices. The hopes illustrate that the both tax functions are targeted to formulate many efforts to overcome the environmental damages and incorporated comprehensively in the taxation legal system but in fact this principle has been considered as economic and politic burdens or it could be internalized for only the complement components. It is urgent to design an environmental principle based systemic legal taxation that supported by the visionary policy, responsive laws, well organized and coordinated institutions, effective functions of law enforcement, high empowered civil societies

Key words: supremacy, green tax, surmount, environmental detriment

## A. INTRODUCTION

Since the phenomenon of the nation state was born around the 19th century, the concept and operation of the meaning of "development, industrialization, and environmental law" experienced the challenges of paradigmatic turbulence but became intertwined that sought to find a harmonious integration. Changes for a better nation are believed to be successful only by implementing the meaning of development in a broad sense wisely<sup>1</sup>. Meanwhile, the development process will only accelerate to achieve the results by turning on the engine of the industrialization project. Industrialization often develops wildly affecting social and environmental damage because of fail as to achieve effective and efficient direction or neglecting the guidance of environmental ethics and law. The absence of one of these aspects will cause accumulative problems in all interconnected environmental, social and global sectors. To achieve harmony the three components are made the concept of sustainable development.

The most important instrument to control the development and the function of the environmental law in achieving the balance of the functions of the three pillars is that it is very important to implement a system of levies and environmental taxes. In the last few decades Indonesia has developed a majority of its economic activities in the industrial sector. In industrial activities it cannot avoid the production of residues. Residues are residual processed products from industrial activities that must be disposed of into the environment. So that industrial activities can certainly have an impact on the environment. The majority of this residue disposal is waste, processing waste is very necessary to keep the environment still beneficial for humans. The waste treatment process requires effort, costs, as well as those who are competent in their fields, procedures for systematic environmental management, and in its implementation require arrangements that are set forth in concrete law. One way in returning the environment affected by industrial activities is to be taxed, which is called environmental tax. However, in Indonesia the imposition of environmental taxes is still a pro and contra. The environment tax law is slowly being implemented, but it still is not in one complete, systematic and organized codification.

In the implementation of an organized legal regulation, a systematic and codified regulation is needed so that the understanding of these regulations can be done properly. In addition, it is also beneficial for the community in the implementation that implementation of tax collection is open. Indonesia as the state of law, in the enforcement of legal products required legal certainty. Legal certainty is the main goal of the existence of a legal codification system. Indonesia is a country that adheres to a system of legal codification. The codification regarding environmental law in some sectors actually has become positive law, so that It needs to be reviewed for implementation of existing legal certainty. Does Indonesia need the integration and harmonization on the tax into the environmental law system, what is the urgency of this codification, what codification can be accepted by all groups, especially for business people who are directly affected. This research will try to answer these questions.

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<sup>1</sup> Surna T. Djayadiningkrat, Internalisasi Pembangunan Berkelanjutan ke dalam Kebijakan Pemerintah, halaman 195-210

## **B. PROBLEM STATEMENTS**

The relations that appear to be contrasted in the turbulence complex between development, industrialization and the interests of the environmental system are very important to study and formulate the research problems as follows:

1. What is the urgent (nexus) relationship between the concept of development, the system of structuring the industrialization area and the concept of environmental insight of environmental law?
2. How does the existing relation among the environmental law and the tax law in Indonesia carry out their function in the concept of sustainable development within the context of environmental problems in the region?
3. How does the concept of future environmental tax law or the green tax play a key role as a strategic instrument in maintaining the relationship of these three aspects?

## C. RESULTS AND ANALYSIS

### 1. The Concepts and Operations of the Sustainable Development

Development both directly and indirectly will have an influence on human life and the environment. The development has an advantage for humans but can have a negative impact on human survival if the development does not consider the principle of sustainable development. To respond these impacts, Prof. Mochtar Kusumaatmadja stated the role of law as a means of renewing society. The Law must be a commander in the development, while national development goals are an environment-based development with legal regulations that favor the environmental sustainability.

A good and sustainable environment will benefit human beings today and the future. The social norms of society are incorporated within the laws that build the personality of the community as living law in society and adapted to the socio-cultural approach.

The role of the government is very much needed in controlling the spatial use so the government must issue environmental regulations that can truly protect the environment from damage. Environmental damage can lead to disasters and in the future can lead to poverty if you do not think of sustainable development. The present and future life will be enjoyed if sustainable development is implemented by the government and law enforcement as well as strict sanctions for environmental destroyers.

In the provisions of Article 1 paragraph 3 of Act Number 32 of 2009 concerning Environmental Protection and Management, it is stated that sustainable development is a conscious and planned effort that integrates environmental, social and economic aspects into development strategies to ensure the integrity of the environment and safety, capability, welfare, and quality of life of present and future generations.

The principle of sustainable development is meeting current needs without compromising the fulfillment of the needs of future generations. Development as an idea, principle, and concept related to how this is then implemented in life, not only concentrating on environmental issues also includes three environments, namely environmental, social and economic.

The Rio Declaration contains the principles of agreement. In the declaration it was stated that humans are the center of attention for sustainable development. This shows clearly the anthropocentric views of the Rio Declaration. The anthropocentric nature contains the danger of not achieving sustainable development. The declaration seeks to reduce danger by stating that humans have the right to a healthy and productive life that is in harmony with nature.

Sustainable development is outlined in 3 scope, namely:

#### **a. Environment sustainability.**

The environmental sustainability in question is the natural environment. The main concern of sustainable development is how to create an environment that is maintained until the next generation. Example:

- 1) Conserving and developing rare species
- 2) Developing biodiversity or biodiversity

- 3) Using the energy efficiently
- 4) Minimizing the use of resources that cannot be renewed
- 5) Erecting the buildings that are environmentally friendly
- 6) No polluting the environment with waste air, water and sound
- 7) Promoting ecological processes
- 8) Paying attention to and preserve existing ecosystems
- 9) Maintaining the supporting capacity of the earth

**b. Economy Sustainability or economic sustainability.**

Economic sustainability is associated with efforts to improve the economy of a country so that its people become prosperous.

Example:

- 1) Reducing unemployment
- 2) Creating jobs by increasing micro-enterprises
- 3) Cultivating a society that is active in small entrepreneurship
- 4) Industrial ecology, ecological economics and energetics
- 5) Creative industries

**c. Social Sustainability**

Balanced social resources are manifested in the balance of intrageneration. These social resources have social criterias, namely community, diversity, employee relations, human rights, product security and government structures. Sustainable community can be realized by:

- 1) Respect for the community of life
- 2) Improve the quality of human life
- 3) Conservation of earth's vitality and differences
- 4) Emphasizing the community to be more concerned about the environment
- 5) Creating global alliaice

The concept of sustainable development is long-term insightful development between generations and seeks to provide sufficient resources and a healthy environment so that it can support life. The dimensions of the space for sustainable development include:

**a. Poverty Alleviation**

Poverty is one of the causes of environmental deterioration and the negative impact of development. On the contrary the deterioration of the carrying capacity of the environment can be the cause of the emergence and development of poverty.

**b. Consumption Patterns and Production Patterns**

The consumption pattern of basic needs and lifestyle through unsustainable production patterns is one of the main causes of environmental damage. Today there has been a consumptive lifestyle that no longer consumes on the basis of use value and use value but based on symbols, images, or images.

**c. Population dynamics**

It needs to be understood the link between population, environment and sustainable development as an effort to overcome the deterioration of natural resources. One of the efforts is to reduce the birth rate so as to create a balance between the population and the environment.

**d. Health Management and Improvement.**

The level of public health is closely related to socio-economic and environmental conditions. This relationship is reciprocal, sometimes socio-economic development will affect the quality of the environment, sometimes environmental quality will affect health and health which is the basic capital in development will affect the development process itself.

**e. Housing and Settlement Development.**

The dynamics of population that continue to develop results in the domination of settlements (human settlement). Around 40% to 60% of the settlement will be dominated by residential areas. An important aspect of sustainable development is the emphasis on participatory processes. Sustainable development is not only assumed as a policy but emphasizes the important role of society and minorities in it.

According to Akhmad Fauzi there are three main reasons for economic development to be sustainable, namely:

- a. Moral reasons, the current generation enjoys goods and services produced from natural resources and the environment so it is morally necessary to pay attention to the availability of these natural resources for future generations. These moral obligations include not extracting natural resources that can damage the environment, which can eliminate the opportunity for future generations to enjoy the same services.
- b. Ecological reasons, biodiversity has a very high ecological value, therefore economic activities should not be directed at activities to use natural resources and the environment which can ultimately threaten ecological functions.
- c. Economic reasons, this reason is indeed still a debate because it is not known whether economic activities have or have not met sustainability criteria, the sustainable economic dimension is quite complex so that the economic aspects of sustainability are only limited to measurements between generations.

According to Sutamiharja, the goal of sustainable development includes efforts to realize:

- a. Equitable distribution of benefits from intergeneration equity, which means that the use of natural resources for the sake of growth needs to pay attention to reasonable limits in the control of ecosystems or environmental systems and be directed to replaceable natural resources and emphasize the lowest possible exploitation unreplaceable natural resources.
- b. Safeguarding or safeguarding the preservation of existing natural and environmental resources and preventing ecosystem disturbances in order to ensure the quality of life that remains good for future generations.
- c. The use and management of natural resources solely for the sake of pursuing economic growth for the sake of equitable distribution of sustainable use of natural resources between generations.
- d. Maintaining a sustainable community welfare both now and in the future.

- e. Maintaining the benefits of development or management of natural resources and the environment that have long-term or sustainable benefits between generations.
- f. Maintain the quality or quality of human life between generations in accordance with their habitat.

Sustainable Development Strategy according to A.H. Rahadian namely:

- a. Development that guarantees equity and social justice, development that is oriented towards equity and social income must be based on things such as the even distribution of land resources and factors of production, the equalization of women's roles and opportunities, the prevalence of the economy achieved by a balance of welfare distribution. But even distribution is not something that can be directly achieved. Equity is a concept that is relative and not directly measurable. The dimensions of the ethics of sustainable development are comprehensive, the income gap between rich and poor countries is widening, although equity in many countries has increased. Another ethical aspect that needs to be a concern for sustainable development is the prospect of future generations that cannot be compromised with the activities of the present generation. This means that the development of the present generation needs to consider future generations in meeting their needs.
- b. Development that values diversity. Maintenance of biodiversity is a prerequisite for ensuring that natural resources are always available sustainably for the present and future. Biodiversity is also the basis for ecosystem balance. Maintaining cultural diversity will encourage equitable treatment of everyone and make knowledge of the traditions of various societies more understandable.
- c. Development that uses an integrative approach. Sustainable development prioritizes the relationship between humans and nature. Humans influence nature in ways that are beneficial or destructive. Only by utilizing the notion of the complex interrelationships between natural systems and social systems. By using this understanding, the implementation of a more integrative development is a concept of implementation of development that can be made possible. This is a major challenge in the institution.
- d. Development that requires a long-term perspective. People tend to judge the present more than the future. The implications of sustainable development are the challenges that underlie this assessment. Sustainable development requires that valuations be different from the normal assumptions in discounting procedures. The long-term perspective is a sustainable development perspective. Until now, the short-term framework dominates the thinking of economic decision makers, therefore it needs to be considered.

According to Yoshiro Matsui in realizing sustainable development, the development strategy and environmental policy must be integrated, he said, namely:<sup>2</sup>  
*The concept of sustainable development provides a framework for the integration of environmental policies and development strategies on the understanding that environmental and development are not separate challenges, they are inexorably linked. Development cannot subsist upon a deteriorating environmental resource base, the*

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<sup>2</sup> Yoshiro Matsui, *The road to sustainable development: Evaluation of the concept of development in the UN*, dalam Konrad Ginther, 1994, *Sustainable Development and Good Governance*, London Penerbit Martinus Nijhoff Publishers, hlm 66

*environment cannot be protected when growth leaves out of account the costs of environmental destruction.*

The concept of sustainable development provides a framework for integrating development strategies and environmental policies to understand that environment and development are not two disputed rights, they cannot be interconnected. Development may not cause damage to environmental resources, the environment cannot be protected if development does not include the calculation of the cost of environmental damage.

## **2. Concepts and Functions of Environmental Law**

### **a. The concept of elaborative legal functions (integrative legal theory)**

In general, legal theory was developed in order to patch the lack of legal law itself in responding to the challenges of the times. The development of legal theory is generally classified in the press points of the legal substance itself and the legal output of the law, although in its development criticism of the sharp criticism of the development and application of theory often becomes its own madzab becomes a critical law. The emphasis on legal substance prioritizes the development of legal values and legal products, while the press points to the output put forward the behavior of the people that are in accordance with the law and legal productivity in the form of better changes in people's lives. The first is famous for pure legal theory while the second is the theory of development law.

The application of theory in people's lives requires the elaboration of various theories through the processes of elaboration, selection, addition and subtraction, including through the context of theory where "bridging theory" emerges through criticism of sharp and fundamental criticism. Likewise, the integrative and elaborative theories developed by some World leaders generally say:

"Law as a norm system that prioritizes" norms and logics<sup>3</sup> "(Austin and Kelsen) loses meaning and meaning in the reality of people's lives if it is not successfully realized in a system of community behavior and bureaucracy that is equally law-abiding. only norms and systems of behavior and used as "bureaucratic machines", will lose their spirit if they ignore the value system that comes from Pancasila as the peak value of esusilaan in the life of the nation and state "(Romli, 2015: 45)

Contextualization of bridging theory in the model Development of environmental tax law in the context of cases in Indonesia is carried out because it is considered important to elaborate on power while ignoring the weaknesses of environmental law and tax law.

Environmental law that reflects the idealism side of principles and balanced and sustainable environmental insights can be adopted in tax law which more reflects the aspects of efficiency and effectiveness to produce output and productivity in

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<sup>3</sup> Hans Kelsen (2001) Spirit of IAW,



community and state life through the maximization of the tax function to achieve ideal ecosystem of state and community.

### **3. The Concept of Relations between Environmental Law and Environmental Taxes**

#### **a. Concept of Environmental Law and Environmental Levies and Taxes**

The existence of environmental law is to provide an equilibrium point about the concept of development for present human well-being and human welfare for future generations. Environmental law develops its operational concepts in the dimensions of environmental management and its protection, enforcement and prevention. In the field of operational environmental law developing itself into institutional instruments that are more technical include environmental taxes.

Environmental tax is a specification in tax law to maximize the role of tax functions both regulern functions and planned fulfillment functions of the country.

In this function specification the purpose of environmental law is optimized by the tax function.

### **4. Instrumentalizing Retribution and Taxes in Environmental Law**

#### **a. Ritribution and Environmental Tax Management and Regulatory System**

The system for regulating and managing taxes and levies of the environment originally originated from the legal system of taxes and levies in general. While the general concept of taxes and levies originates from the central and regional government financial systems. In regions, the concept of regional finance is regulated in more detail in the regional financial income system.

Regional Original Income in accordance with Law Number 33 of 2004 concerning Financial Balance Between the Central Government and Regional Government in Article 6 comes from:

- a. Local tax;
- b. Regional levies;
- c. Results of management of separated regional wealth; and
- d. Other legal Local Revenues.

Descriptions of each Regional Original Revenue are as follows:

##### **a. Local tax**

Regional Tax according to Davey in Nurcholis are:

- 1) Tax collected by the regional government with arrangements from the region itself.
- 2) Tax collected based on national regulations but the tariff determination is carried out by the regional government.
- 3) Taxes determined or collected by the regional government.

The definition of regional tax according to Siagan is: "as a state tax handed over to the region and declared as regional tax by law".<sup>4</sup>

According to Rochmad Sumitro Tax is a people's contribution to the state treasury (wealth transfer from the private sector to the government sector) based on the law (can be forced) by not getting lead

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<sup>4</sup>Siagan.A, tanpa tahun penerbitan,*Pajak Daerah sebagai Sumber Keuangan Daerah, Institut Ilmu Pemerintahan*, Jakarta, hlm. 64.

services (tegen prestatie) to finance public expenses (publike uitgaven) and used as a tool deterrents or drivers to achieve goals outside the financial field.<sup>5</sup>

“From this opinion it can be said that regional tax is a state tax that is handed over to the regions to be collected based on legislation that is used to finance regional expenditure as a public legal entity”.<sup>6</sup>

## Retribusi Daerah

Article 1 number 64 of Law Number 28 of 2009, levies are regional levies as payments for services or special permits that are specifically provided and / or provided by the Regional Government for personal or agency interests. Regional Levy is Regional levies as payment for services or gifts certain special permits are provided and / or given by the Regional Government for the benefit of individuals or the Agency.

Regional levies are the most likely source of income to be developed in accordance with the creativity of their respective local governments, because they gain freedom in collecting retribution. This freedom is in the sense that because the area of regional levies is related to substitutes for services / facilities provided by the regions, levies can be collected several times as long as the mandatory retribution is still made use of the services provided.

The implementation of development and the provision of services to the community as well as increasing economic growth in the regions are needed to provide local revenue sources. Efforts to increase the provision of financing from these sources are carried out, among others, by increasing collection performance, improving and increasing types of levies and providing flexibility for regions to explore sources of revenue, especially from the regional levies sector.

Rochmad sumitro said that retribution is payments to the state made to those who use state services.<sup>7</sup> This means that regional retribution is a payment for service use or because it gets business or regional property for those who have an interest or services provided by the region, either directly or indirectly. Every levy made by the regional government is always based on the achievements and services provided to the community, so that the freedom of regional retribution lies in what can be enjoyed by the community, so retribution is closely related to the services provided by the government to those in need.

Retribution according to S. Munawir is defined as contributions to the government that can be imposed and return services can be directly appointed. Coercion here is economical because anyone who does not get a return from the government, he is not subject to that contribution.<sup>8</sup>

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<sup>5</sup>Rochmad Sumitro, 1979, *Dasar-dasar Hukum Pajak dan Pajak Pendapatan, Cetakan IX*, Eresco, Jakarta, hlm.23.

<sup>6</sup>*Ibid.*, hlm.130.

<sup>7</sup>Rochmad Sumitro, 1979, *Dasar-Dasar Hukum Pajak dan Pajak Pendapatan 1944*, Cetakan IX, Eresco, Jakarta, hlm. 17.

<sup>8</sup>Munawir.S, 1980, *Pokok-Pokok Perpajakan*, Liberty, Yogyakarta, hlm .4.

Retribution according to Marihot P. Siahaan is compulsory payment from residents to the state because of certain services provided by the state to the population individually. These services can be said to be direct, namely only those who pay retribution who enjoy remuneration from the state. Services are activities of regional governments in the form of businesses and services that cause goods, facilities or other benefits to be enjoyed by individuals or entities.<sup>9</sup>

Levies are contributions from certain communities (individuals) concerned which are determined based on Government Regulations whose achievements are reviewed in person and their implementation can be forced. In other words, simpler, retribution is a levy that is charged to someone because of services directly. Retribution as well as indirect taxes can be avoided by the community, meaning that people can not pay by refusing or taking advantage of services provided to the community.

Specifically, Wirawan B. Ilyas and Richard Burton suggest that 4 (four) elements inherent in the notion of retribution are:

- 1) Collection fees must be based on legislation.
- 2) The nature of the levies can be forced.
- 3) The levies are carried out by the state.

4) Used for expenditures for the general public and counter-performance (rewards can be directly felt by retribution payers). While other opinions suggest Regional Retribution is a payment or service provided by the Regional Government.

1) Based on some notions of retribusidaerah described above, it can be concluded that regional levies, hereinafter referred to as levies, are collection of regions as payments for services or provision of certain permits specifically provided and / or given by local governments for the benefit of private persons or entities

2) From the definition of retribution above, it can be obtained that some of the characteristics inherent in the regional levies currently collected in Indonesia are as follows:

- 1) Retribution is a levy collected under the Law and Regional Regulations which are pleasing;
- 2) The proceeds of receipt of levies enter the Regional Government cash
- 3) Parties who pay retribution receive counter-performance (remuneration) directly from the Regional Government for payments made
- 4) Levies are payable if services provided by the Regional Government are enjoyed by people or bodies; and
- 5) Sanctions imposed on levies are economically sanctioned, ie if they do not pay retribution, they do not get services provided by the Regional Government.<sup>10</sup>

Regional levies are expected to be one of the sources of financing for governance and regional development, to improve and utilize the welfare of the people in the districts / cities given the opportunity to explore the potential of their financial resources by determining the types of levies other than those stipulated, insofar as they have met the established criteria in accordance with the aspirations of the community.

The characteristics of regional retribution are:

- 1) Levies are collected by the region;

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<sup>9</sup>*Ibid.*, hlm. 6.

<sup>10</sup>*Ibid.*, hlm. 7

- 2) In collecting there is economic coercion;
- 3) In collecting retribution there are achievements directly given by the region;
- 4) Levies are imposed on anyone who uses the services provided by the region".<sup>11</sup>

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Regional Retribution Function. As with taxes, the regional levy function is as follows:

1) Acceptance, is the main function of retribution, meaning retribution on the road as a tool to close the APBD, especially concerning the smooth provision of services and services to the community paying fees.

2) Regulator, meaning retribution is used as a tool or device to organize economic and social life of the community.

The types of regional levies are as follows:<sup>13</sup>

1) Which is stipulated by Government Regulation:

a) Public Service Retribution General service levies consist of:

(1) Health Service Retribution

Health Retribution is a health service in a health center, a Medical Center and a Regional General Hospital. This Health Service Levy does not cover registration services.

(2) Waste / Cleanliness Service Retribution

Waste / cleaning service levies include taking, transporting, and disposing and providing locations for disposal, destruction of household, industrial and commercial waste, excluding cleaning services for public roads, parks and public spaces.

(3) Reimbursement of Fee for Printing of Identity Cards and Civil Registration Deed Population cards are issued for a period of 5 years. Civil registration deeds include birth certificates, marriage certificates, divorce certificates, certificate of ratification and recognition of children, name change certificates for foreign citizens and death certificates.

<sup>11</sup> The Liang Gie, 2001, *Pertumbuhan Pemerintahan Daerah di Negara Republik Indonesia*, Jilid III, Gunung Agung, Jakarta, hlm. 78.

<sup>12</sup> Tjanya Supriatna, 1993, *Sistem Administrasi Pemerintahan di Daerah*, Bumi Aksara, Jakarta, hlm. 154.

<sup>13</sup> Arenawati, 2014, *Administrasi Pemerintah Daerah; Sejarah Konsep dan Penatalaksanaan di Indonesia*, Op.Cit., hlm. 91

- (4) Funeral and Accident Service Levy Services Funeral and funeral services include burial / funeral / burning / caressing services and leasing of burial or burning / abandoning bodies owned or managed by the Regional Government.
- (5) Public Roadside Parking Retribution Public road parking services are the provision of public roadside parking services determined by the Regional Government
- (6) Market Retribution  
Market Services are traditional / simple market facilities in the form of courtyards managed by the Regional Government, and specifically provided for traders, not including those managed by the Regional Government.
- (7) Motor Vehicle Testing Retribution  
The testing service for motorized vehicles is motorized testing services in accordance with applicable laws and regulations.
- (8) Fire Extinguisher Inspection Retribution  
Fire extinguisher inspection services are services for inspection and / or testing by the Regional Government of extinguishers owned and or used by the public.
- (9) Substitute Retribution for Map Printing Tools  
Map is a map made by the Regional Government.
- (10) Provision Retribution and / or Toilet Sequestration  
Services for supplying and / or desludging latrines are services that are owned and / or managed by BUMN, BUMD, and private parties.
- (11) Liquid Waste Processing Levy  
Liquid waste processing services are services for processing wastewater that are provided, owned, and / or managed by the Government, BUMN, BUMD and the private sector as well as the disposal of wastewater directly into rivers, drainage, and / or other disposal facilities.
- (12) Retribution of Tera / Tera Repeat Services  
Services for testing measuring, measuring, weighing, and equipment as well as testing goods in the sealed condition that are required in accordance with the provisions of the legislation.
- (13) Education Service Retribution  
Services for the provision of technical education and training by the Regional Government, BUMN, BUMD, and the private sector.
- (14) Telecommunication Tower Control Retribution  
Services for the use of space for telecommunication towers by taking into account aspects of spatial planning, security and public interest.  
The object of public service levies is services provided or provided by local governments for the benefit and benefit of the public and can be enjoyed by individuals or entities. Subjects

of public service levies are individuals or entities that use / enjoy the public services concerned. Subjects of general service levies can be determined as compulsory public service levies, namely individuals or entities that are required to make payments for public service levies.

According to Erly Suandy, the implementation of general service fees must meet the following criteria:

- a. This levy is non-tax in nature and is not a contribution of business services or certain licensing contributions.
- b. The services in question are regional authorities in the dual implementation of decentralization.
- c. These services provide special benefits for individuals or entities that are required to pay retribution in addition to serving the interests and public benefits.
- d. These services are eligible for levies.
- e. Retribution does not conflict with national policies regarding its implementation.
- f. Retribution can be collected effectively and efficiently, and is a potential source of regional income.
- g. Retribution allows the provision of these services with good level and / or service quality.<sup>14</sup>

#### a) Business Service Retribution

Business Service Retribution, namely retribution for services provided by the local government by adhering to the commercial principle because basically it can also be provided by the private sector. Which includes Business service levies are as follows:

##### (1) Regional Wealth Usage Retribution

Retribution of regional wealth, among others, the use of land and buildings / use of party rooms, use of vehicles, heavy equipment belonging to the region.

##### (2) Wholesale Market Retribution and / or Shops

Markets and / or shops are wholesale markets for various types of goods contracted out, provided, organized by the Regional Government.

##### (3) Auction Place Levy

The service of providing special places for auctioning fish, livestock, agricultural products and forest products provided at the auction site.

##### (4) Terminal Levy

Terminal levies are services to provide parking spaces for passenger vehicles and public buses. The place of business activities and other facilities in the terminal environment, which are owned and or managed by the Regional Government, with this provision, the platform services are not subject to retribution.

##### (5) Special parking levies

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<sup>14</sup>Erly Suandy, *Perpajakan*, Jakarta, Salemba Empat, hlm. 269.

Special parking place services are services to provide special parking spaces provided, owned and or managed by the Regional Government, not including those provided and managed by the private sector.

(6) Retribution for Lodging / Villa / Villa

Lodging / pesanggrahan / villa services owned by the region are services to provide lodging / boarding houses / villas owned and / or managed by the Regional Government, not including those owned and managed by the private sector.

(7) Retribution of Slaughterhouses

Slaughterhouse services are services and provision of slaughterhouse facilities including pre-cut and post-veterinary health checks that are provided, owned and managed by the Regional Government.

(8) Port Service Retribution

Boat port services are port services including other port facilities in a port that is provided, owned and or managed by the Regional Government.

(9) Retribution of Recreation and Sports Places

Recreation and sports services are places of recreation, tourism and sports that are owned and / or managed by the Regional Government.

(10) Crossing Water Levy

Crossing services on water are services for crossing people or goods using vehicles on water that are owned and / or managed by the Regional Government.

(11) Regional Business Product Sales Levy

Sales of regional business products are sales of products of the business of the Regional Government, including plant seeds, livestock breeds, and fish seeds.

The object of business service levies is services provided by local governments by adhering to commercial principles because basically they can also be provided by the private sector. The subject of business service fees is an individual or entity that uses or enjoys business services concerned. This subject can be a compulsory business service levy.

a) Specific Licensing Levy

Certain licensing levies, namely levies on certain activities of the regional government in the framework of granting permits to individuals or bodies intended for guidance, regulation, control, and supervision of activities of spatial use, use of natural resources, goods, infrastructure, or certain facilities to protect public interest and maintaining environmental sustainability. Included in the Formed Licensing levies are as follows:

- (1) Building Construction Permit
- (2) License levies for the sale of alcoholic beverages
- (3) Disruption Permit Retribution
- (4) Route License Levy
- (5) Fisheries Business Permit Levy

The object of certain licensing levies is certain activities of the regional government in the framework of granting permits to individuals or entities

intended to guide, regulate, control and supervise the use of space, use of natural resources, goods, infrastructure or certain facilities to protect the public interest and preserve the environment. Subjects for certain licensing fees are individuals or entities that obtain certain permits from the local government. This subject can be mandatory for certain licensing services.

What is stipulated by Regional Regulations consist of retribution other than those stipulated by government regulations.<sup>15</sup>

Matters relating to regional income from the regional levy sector can be stated as follows:

1. Basic provisions regarding regional retribution are contained in Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions.

2. Regional levies are regional levies as payment for service use or because they obtain services, regionally owned businesses that are directly given to the state / region with interest or as counter-achievements.

3. Tariff levies cannot be set as high as possible but the expected benefits of a levy levy should only be needed to maintain and maintain the possibility of providing services directly to the community.

4. Regional levies are levies that have been legitimately become regional levies as payment, usage or obtaining employment services.

5. Regional levies give authority to regions to collect levies on these levies with regional regulations that apply after the ratification of the authorized agency and are promulgated in the relevant regional sheets.

### **5. Method of Instrumentalizing Taxes and Retributions in Environmental Law**

In order for the collection of regional levies not to cause obstacles or resistance, the levies must meet the following requirements:

a. Retribution collection must be fair (fair conditions)

a. Tax law has the same purpose as the other legal objectives, namely making justice in terms of collecting levies both fair in the legislation and in its implementation. Even though justice is relative, one of the paths that must be taken in achieving justice is to make the collection of levies must be carried out in such a way that there is equal pressure on the whole community.

c. Collection of levies must be based on the law (legal terms)

The law of retribution must be able to provide legal guarantees to express strict justice, both for the state and its citizens. Besides that, in drafting the Law, efforts must be made to achieve justice in collecting retribution.

d.. Does not disrupt the economy (economic conditions)

Collection of levies and retribution policies should not hinder the economy, both in the fields of production and trade and not to harm the public interest and hinder people's efforts in achieving prosperity.

e. Retribution collection must be efficient (financial terms)

Collection of levies should not consume large collection fees and collection of levies should prevent inflation.

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<sup>15</sup>Arenawati, 2014, *Administrasi Pemerintah Daerah; Sejarah Konsep dan Penatalaksanaan di Indonesia*, Op.Cit., hlm. 91



f. The levy collection system must be simple

To achieve efficiency, levies must be applied with a simple levy system that makes it easy for people to calculate them.

g. Results of Separate Regional Wealth Management

One of the sources of Regional Original Revenue is the result of regional wealth management handled by regional companies. The profits of these regional companies are expected to be a source of regional income. Management of regional companies must be professional and must stick to general economic principles, namely efficient.

Regional companies are a component that is expected to contribute to Regional Original Income, but the main nature of regional companies is not profit-oriented, but rather in providing services and organizing public benefits or in other words, regional companies carry out dual functions that must be guaranteed the balance is social and economic functions.

For regions that have BUMD such as Regional Drinking Water Companies (PDAMs), Regional Development Banks (BPDs), District Credit Agencies, Markets, places of entertainment / recreation, villas, guest houses and others the profits are income for the regions concerned.<sup>16</sup>

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<sup>16</sup>Nurcholis, Hanif, 2007, *Teori dan Praktik Pemerintahan dan Otonomi Daerah*, Grasindo, Jakarta, hlm. 184

### **C. Important Relationships of Manpower Systems, Environmental Law, and Arrangement of Industrialization Areas** **Urgensi Kebijakan Green Taxes**

Research with literature studies and the field produces important points related to the urgency of tax policies related to the environment as follows:

#### **a. Base on the Legislation**

The 1945 Constitution, Article 23, 33 generally emphasizes the strategic role of environmental issues to become the basis for policy making in the field of economics and social welfare, as well as in realizing community constitutional rights in the environmental field.

So many law-level regulations contain provisions regarding taxes or levies related directly or indirectly to environmental controls such as:

- 1) Spatial planning legislation
- 2) Laws and regulations on land transfer functions
- 3) Legislation making new areas or reclamation
- 4) Legislation concerning the market
- 5) Legislation for Road invitations
- 6) Tourism legislation
- 7) Waste legislation
- 8) Laws and regulations on Forest management
- 9) Broadcasting legislation
- 10) Plantation legislation
- 11) Agricultural legislation

Distribution of various types of taxes and control and protection of the environment are in the form of Government Regulations in lieu of laws, Government Regulations, Presidential Regulations, Ministerial Regulations, Regional Regulation of the province, Regulations of regency or city blood.

### **D. The Function of Environmental Tax Law in Indonesia (The Concept of Sustainable Development In The Context Of Environmental Problems In The Region)**

#### **1. General functions**

The central tax and the area are imposed on ground water; Surface water; Swift's nest; metal minerals, not metals and rocks; motor vehicle fuel; motor vehicle; and other activities that meet the criteria for environmental impact.

"The criteria for environmental impacts include depreciation of old resources, environmental pollution and environmental damage," said the draft quoted by CNN Indonesia.com, Monday (10/30).

- 1) the Impact Control on the Climate Change
- 2) Legal framework breakthrough
- 3) Institutional coordination
- 4) Strengthening financial instruments for the environment
- 5) Strengthening budget resources
- 6) Damage control function

## 2. Environmental Tax Applications in the Yogyakarta Region

### a) Basis of legal work

- a. Article 33 Paragraph 3 of the 1945 Constitution
- b. Article 43 of Law Number 32 Year 2009 concerning Environmental Protection and Management
- c. Law Number 23 of 1997 concerning Environmental Management
- d. Law Number 4 of 1982 concerning the Environment.

### a) Institutional

Institutions and authorities related to environmental taxation cannot be separated from the pattern of distribution of income from the range of the central government to regional governments in the corridors of the state law.

The authority to collect environmental tax in Indonesia implied in several laws will be submitted to the Regional Government. Therefore, environmental tax must be regulated in a regional regulation as a means to legalize the actions of the Regional Government in carrying out its authority. If later it is included in the authority of the Regency / City Government, the environmental tax stipulated in the Regional Regulation must meet the following criteria:<sup>17</sup>

- a. taxable and not Retribution;
- b. tax object is located or located in the relevant Regency / City Region and has a fairly low mobility and only serves the community in the relevant Regency / City Region;
- c. object and tax base do not conflict with general interests;
- d. tax object is not an object of provincial tax and / or tax object of the tax;
- e. its potential is adequate;
- f. does not have a negative economic impact;
- g. pay attention to aspects of justice and community capacity; and

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<sup>17</sup>Pasal 2 Ayat (4) UU Nomor 34 Tahun 2000 tentang Pajak dan Retribusi Daerah.

h. preserve the environment.

In terms of taxation, the environmental tax function is not much different from the tax function in general. There are two main functions of tax, namely the budgeter function and the regularend function. If seen from the goals and objectives to be achieved from applying the environmental tax, it can be said that the regularend function here is more prominent than the budgeter function. It's just that it needs to be studied further whether the regular function is inherent in the concept of environmental taxation that will be applied in Indonesia or even vice versa that the plan for implementing environmental taxation is based on mere fiscal policy which emphasizes the inclusion of as much money as possible in the regional treasury. This is what raises the pros and cons among the community, especially entrepreneurs, with the planned implementation of the environmental tax.

### **E. Application of environmental taxes and other environmental instruments in the area of spatial control for mining in DIY**

#### **Basics of the Law of Spatial Planning**

- a) The application of environmental taxes and levies can also be applied to spatial planning, especially the mining area. Spatial planning is a process of space planning, space utilization and space control. Spatial planning is indispensable because space basically does not increase, its nature is constant, while needs continue to increase. The consequence of increasing space needs is the emergence of conflicts, disputes, frictions, collisions between one party and other parties, the community needs certainty when they can occupy space , and often there is a gap between people who have access to space and people who have limited access to space.

In spatial planning there are basic principles contained in it such as:

a) Principles of State responsibility

Principles of State responsibility in essence there are 3, namely Responsibility is planning and spatial planning is the responsibility of the government, Accountability is responsible government, Liabilty is if he fails in carrying out his responsibilities, in other words the government is not accountable, the government must account his actions are legally.

Article 7 of the UUTR states that the state is responsible for planning, implementing, and utilizing space for the greatest prosperity of the people. The state is given the attributive authority to carry out spatial planning in:

- Asli, meaning that the authority was immediately created from the Act.
- Strong, can not be reduced or exceeded its authority (certain).
  
- Full, meaning that the authority is not divided.

If the state fails to fulfill the prosperity of the people, the one responsible is the local government. (Article 7 paragraph 2 and 3 of the Constitution). Development must be based on the principle of people's prosperity, development and benefits must be equitable at the regional level to avoid disparities. There are 5 aspects that must be considered in spatial planning:

- 1) Legislative Aspects
- 2) Aspects of Government Officials and Law Enforcement

- 3) Community Aspects
- 4) Legal Culture Aspects
- 5) Means and Infrastructure Aspects

b) Principle of economic / social benefits

The principle of economic / social benefits, meaning that space can be measured in terms of economy, means that space development must increase the value of space, because everyone has the right to increase the value of space. Usually it relates to: location, designation, certainty of rights and security.

This is related to government guarantees to investors:

- Certainty in the provision of infrastructure
- Certainty in licensing
- Certainty in the availability of HR / experts
- Certainty in regulation of taxes and levies
- Certainty in the easy access to financial and financing institutions.

c) The principle of subsidiarity, regarding:

- 1) Subsidiarity of authority, regarding how our government empowers lower government units first to organize space, if it is deemed incapable it will be left to higher government units (bottom up systems). Which are based on the needs and potential there are people who live in the government working area and also based on the needs, abilities and potential of the community in the government working area.
  - 2) Subsidiarity in supervision, supervision is basically there to ensure the level of compliance of the spatial activities. utilize supervision on line 1 first (permit issuer), then if it is unable to do it alone it will be supported by line 2 (government) function line 2 itself is to monitor line 1, in case line 1 cannot carry out its duties well.
  - 3) Subsidiarity imposes sanctions, first uses the lowest sanctions then increases to higher sanctions. to violators of the rules, but if what they have done has endangered public safety, they will be immediately subjected to more severe sanctions, including demolition, permit disbursement, and even criminal sanctions (if the use of space has claimed casualties)
- 4) In planning the RTRW must be realistic, adapted to the potential and needs of the region, also must be planned with certainty, not necessarily, long-term, and supported by economic support.

d) Sustainable Principles, which consist of the principle:

- The principle of prudence, which means that spatial planning must be planned in advance and not immediately.
- The principle of intra and inter-generational justice, which means that in spatial planning must pay attention to the environmental aspects which will be passed on to the next generation.
- Be aware that space is limited, which means that in the RTRW must pay attention to the capacity and carrying capacity of space.

- ecosystem approach
- The principle of who is damaging, he must pay.

e) Principle of Legal Diversity

It must be realized that in Indonesia there is legal pluralism, both European law, customary law and religious law. Therefore in the construction of space must have its own characteristics and uniqueness.

f) Principles of community participation

The community participates in the process of decision making, evaluation and implementation in activities that have to do with the interests of the community. That is in spatial planning. This is a manifestation of democracy.

Community participation in spatial planning has its own benefits for the community, namely increasing community insight into spatial planning where these insights are obtained from counseling from experts, increasing production and productivity, can also stabilize income distribution (emergence of employment). Involve the community in spatial planning is a government obligation in the context of public services.

Why the government must involve in building space, because the community has the right to be involved in this matter, these rights can be in the form of:

- The right to information, the public has the right to obtain information on spatial planning whether requested or not.
- The right to conduct research and study, the right to research and study what should be done in space.
- The right to express opinions, the right to express agreement or not regarding the construction of space.
- The right to influence the decision-making process, the right to guarantee that community assessment is truly taken into account in the construction of space.
- Right to supervise

D. Economic rights of the people, including the rights to welfare (articles 33-34 of the 1945 Constitution), meaning that if the government needs land owned by the community for public interest, the government must provide appropriate compensation to the people whose land is being evicted. if there is a violation of community rights, the community can file an objection.

E. The right of the community in terms of law, if the government knows that there is a violation of space / environment, but the government is negligent / ignorant of the violation, the government can be considered as participating in the crime. This means that people can claim their own justice.

F. All institutions related to environmental management actively participate in the environmental control system through a system of planning, implementation, supervision and law enforcement by developing control instruments such as levies or sanctions for environmental administrators.

a. Empowerment of Civil Society

Although the Government is the main actor, the community entities individually and in groups become inevitably involved in various planning roles until law enforcement merely provides input to thoughts and security to report all forms of environmental destruction.

**G. The Future Concept of Environmental Tax Law As a Strategic Instrument**

1. Future Green Tax Projection

a The internalization of the green tax as part of the production cost factor

b Cross-sector and cross-country green tax sharing

c Green tax diversification

d Distribution of cross-country green tax results

e Interdependence in organizing green tax

2. Massive campaign of awareness of the importance of green tax globally

## E. CONCLUSION

This study found the results:

1. that there is a strategic and interdependent nexus between tax law, environmental law and good tax governance as the basis for realizing the tax function to strengthen budgeting functions that prosper the public and regulatory functions to realize sustainable development.
2. The existence of an environmental tax system still exists between expectations and reality where idealized strategic taxation is part of the building of a tax law system that functions budget and regulation fairly and sustainably but in reality the environmental tax in the complex development of political and economic interests is perceived as a burden the more effective the policy and become a separate part and just a complementary function.
3. Initiating the ideal formulation of the environmental tax system in which the national tax system requires an integrated policy and legal basis, coordinating and dynamic institutional arrangements, effective law enforcement functions and the empowerment of active civil society functions.

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