

The Principle of Intergenerational Justice in Environmental Management and Its Relation to the Concept of Sustainable Development

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Abstract:

The principle of intergenerational justice and its relationship to the concept of sustainable development in environmental management is an endlessly discussed issue. Considering that the environment is one of the most crucial elements for the survival on Earth, this study constructs the principle of intergenerational justice as an effort towards sustainable development in environmental management, as stipulated in Law Number 32 of 2009 concerning Environmental Protection and Management. This study falls under the category of literature research, examining literature data from law books, journals, legislation, and other relevant references. The research findings indicate that the management and utilization of natural resources between generations should be carried out fairly, meaning that the present generation has an obligation to pass on the environment in a good condition to future generations. Therefore, environmental management and utilization must be based on moral and sustainability principles. The concept of sustainable development embodies the principles of intergenerational justice. In the practice of law enforcement, the principle of intergenerational justice has been implemented by the Philippine government, as exemplified by the Minor Oposa case in 1993, which involved deforestation. In Indonesia itself, the normative principles of intergenerational justice have been accommodated in various principles, as stated in Article 2 of Law Number 32 of 2009 concerning Environmental Protection and Management.

Prinsip keadilan antar generasi dan kaitannya dengan konsep pembangunan berkelanjutan dalam pengelolaan lingkungan hidup,

merupakan isu yang tidak ada hentinya untuk ditelaah. Mengingat lingkungan hidup menjadi salah satu elemen terpenting dalam kelangsungan hidup di bumi. Maka kajian ini mengkonstruksi prinsip keadilan antar generasi sebagai upaya pembangunan berkelanjutan dalam bidang pengelolaan lingkungan hidup yang terdapat dalam Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup. Kajian ini tergolong penelitian kepustakaan, yang menelaah data-data kepustakaan yang bersumber dari buku-buku hukum, jurnal, perundang-undangan dan referensi yang terkait lainnya. Hasil penelitian ini menunjukkan bahwa pengelolaan dan pemanfaatan sumber daya alam antar tiap generasi harus dilakukan secara berkeadilan, artinya suatu kewajiban generasi sekarang untuk mewariskan lingkungan dalam keadaan baik kepada generasi selanjutnya. Maka dalam pengelolaan dan pemanfaatan lingkungan harus dilakukan atas dasar prinsip-prinsip moral dan keberlanjutan. Konsep pembangunan berkelanjutan mengandung prinsip-prinsip keadilan antar generasi. Dalam praktek penegakan hukum prinsip keadilan antar generasi sebagai salah satu contoh telah diterapkan oleh pemerintah Pilipina dalam kasus penebangan hutan yang dikenal dengan kasus Minor Oposa pada tahun 1993. Di Indonesia sendiri, prinsip-prinsip keadilan antar generasi secara normatif telah terakomodasi dalam berbagai asas sebagaimana dalam Pasal 2 Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup.

Key words: *Justice; Generation; Development; Sustainability.*

Introduction

Sustainable development is based on a commitment to justice for future generations. In the Stockholm Conference of 1972, humans acknowledged the responsibility to protect and enhance the environment for both the present and future generations.¹ The conference included the view expressed by the countries that it is considered "a first step in developing international environmental law."² The Opening of the Stockholm Declaration on the Human Environment explicitly refers to the goal of protecting the well-being of future generations, "...to preserve and improve the environment for present and future generations has become an important objective of mankind, a goal to be pursued together and in harmony with the objectives of peace and economic and social development worldwide. This

¹Idris, *Perkembangan Hukum Lingkungan Internasional dan Relevansinya dengan Pembentukan Beberapa Mata Kuliah Baru* (Padjadjaran Law Review 1; December 2013), p. 6.

²St. Munadjat Danusaputro, *Hukum Lingkungan Buku I: Umum* (Penerbit Binacipta, 1985), p. 213-214

Declaration gives expression to the first principle that man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. The second principle affirms that the natural resources of the earth, including the air, water, land, flora and fauna, must be safeguarded for the benefit of present and future generations through careful planning and management."

The Stockholm Conference addressed concerns about environmental issues, which were perceived as increasingly problematic in various parts of the world. On the one hand, there are numerous people in different countries suffering from poverty and underdevelopment, which affects their living environment. This issue creates a dilemma between addressing poverty and dealing with environmental degradation, as reflected in the statement of developing countries: "Give us pollution, as you gave us poverty." On the other hand, developing nations are racing to pursue development and progress, which also results in the degradation of their environment in various dimensions.³

In 1992, we were faced with defining and implementing this commitment for future generations in the context of sustainable development. Sustainable development is described as the efforts to achieve well-being without sacrificing the ability of future generations to achieve their own well-being.⁴ Sustainable development is development that seeks to meet the needs of today without compromising the ability of future generations to meet their own needs.⁵ The paradigm of sustainable development is widely accepted as a political development agenda for all countries in the world. Unfortunately, up until now, this paradigm has not been widely implemented and is still not well understood. This is not only happening in Indonesia but also at a global level. One of the reasons for the failure to implement this paradigm is the lack of understanding that it encompasses working principles that determine and animate the entire development process.⁶

Regarding the principles of sustainable development, FX. Adji Samekto, in one of his works, proposes that there are 5 (five) main principles of sustainable development, namely:

1. The principle of intergenerational equity;
2. The principle of intra-generational equity;
3. The principle of precautionary measures;

³N.H.T. Siahian, *Hukum Lingkungan* (2nd Print; Jakarta: Pancuran Alam, 2009), p. 20.

⁴N.H.T. Siahian, *Hukum Lingkungan*, p. 10.

⁵FX. Adji Samekto, *Kapitalisme, Modernisasi, dan Kerusakan Lingkungan*, (Yogyakarta: Genta Press, 2008), p. 94.

⁶A. Sonny Keraf, *Etika Lingkungan Hidup* (Jakarta: Kompas, 2010), p. 190-191.

4. The principle of conservation of biological diversity;
5. The principle of internalizing environmental costs.⁷

The non-implementation of these five principles of sustainable development will result in implications for global environmental degradation. FX. Adji Samekto argues that the new environmental damages include: (a) Ozone Layer Depletion; (b) Global Warming; (c) Decline in Biodiversity.⁸ In order to ensure that sustainable development does not lead to environmental degradation, the understanding and implementation of sustainable development principles must be integrated into various policy instruments for environmental protection and management. Therefore, this paper will further examine the key principles of sustainable development, specifically focusing on the principle of intergenerational equity, in relation to the substance of Law Number 32 of 2009 concerning Environmental Protection and Management.

Discussion

The Concept of Sustainable Development in Relation to Intergenerational Justice

The development policies pursued by each nation or people are formulated with the objective of improving the well-being of all their inhabitants based on active, free, and meaningful participation. This value is clearly reaffirmed by the Declaration on the Right to Development.⁹ Development is a term inseparable from the realms of economics, growth, or numerical data, while relying on natural resources as the fundamental working basis (objects).¹⁰ Meanwhile, according to Fritjof Capra, the concept of sustainability was introduced in the early 1980s by Lester Brown, the founder of the Worldwatch Institute, who defined a sustainable society as one that can meet its needs without diminishing the opportunities of future generations to meet their own needs.¹¹ Furthermore, it is stated that the aforementioned definition of sustainability is an important moral counsel. It serves as a reminder of our responsibility to bequeath to our descendants a world with equal opportunities as the one we have inherited.¹²

The concept of sustainability signifies a society that can meet its needs without compromising the needs of future generations. Therefore, the essence of sustainability represents a moral admonition regarding the responsibility of a

⁷FX. Adji Samekto, *Kapitalisme, Modernisasi, Dan Kerusakan Lingkungan*, p. 101-103.

⁸FX. Adji Samekto, *Kapitalisme, Modernisasi, Dan Kerusakan Lingkungan*, p. 97.

⁹N.H.T. Siahian, *Hukum Lingkungan*, p. 8.

¹⁰N.H.T. Siahian, *Hukum Lingkungan*, p. 11-12.

¹¹Fritjof Capra, *The Hidden Connections Strategi Sistemik Melawan Kapitalisme Baru* (3rd Print; Yogyakarta: Jalasutra, 2009), p. 250.

¹²Fritjof Capra, *The Hidden Connections Strategi Sistemik Melawan Kapitalisme Baru*, p. 250

generation to pass on natural resources to future generations. The concept of sustainability then evolved into the term "sustainable development." Sustainable development, as defined by the World Commission on Environment and Development, refers to development aimed at meeting the needs of the present generation without sacrificing the interests and needs of future generations. In other words, sustainable development requires the protection and empowerment of impoverished populations, including local communities, democratization, transparency, as well as the preservation of environmental functions.¹³ Furthermore, sustainable development, according to Law Number 32 of 2009 concerning Environmental Protection and Management, is stated in Article 1, paragraph (3) as the conscious and planned effort that integrates environmental, social, and economic aspects into development strategies to ensure the integrity of the environment, as well as the safety, capacity, well-being, and quality of life of the present and future generations.

Jimly Asshiddiqie suggests that in simpler terms, environmentally conscious sustainable development can be defined as a conscious and planned effort that integrates the environment, including its resources, into the development process, guaranteeing the capacity, well-being, and quality of life of both the current and future generations.¹⁴ Furthermore, it is stated that if we adopt the formulation used in *Our Common Future*, commonly referred to as the Brundtland Report, two fundamental elements can be discerned. Firstly, the concept of needs, which encompasses the present and future generations' need for well-being, particularly the basic needs of the poor and marginalized communities that should be given top priority in development efforts. Secondly, the concept of limitations, which refers to the constraints imposed by the state, corporations, or society on the environment's capacity to meet the demands of present and future needs.¹⁵ In line with this, Mr. FX. Adji Samekto asserts that sustainable development can be achieved if it favors poverty alleviation, environmental preservation, democracy, and local wisdom.¹⁶ Therefore, sustainable development is defined as the

¹³Sudarto P. Hadi, *Dimensi Hukum Pembangunan Berkelanjutan* (Semarang: Badan Penerbit Universitas Diponegoro Semarang, 2002), p. 2.

¹⁴Jimly Asshiddiqie, *Green Constitution Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945* (Jakarta; PT. Raja Grafindo Persada, 2009), p. 135.

¹⁵Jimly Asshiddiqie, *Green Constitution Nuansa Hijau Undang-Undang Dasar Negara...* p. 140.

¹⁶FX. Adji Samekto, *Disampaikan Dalam Mata Kuliah, Hukum Lingkungan, SDA, dan Keadilan Sosial, Program Doktor Ilmu Hukum* (Universitas Diponegoro Semarang, Wednesday, April 13th, 2011).

development that fulfills present-day living needs while taking into consideration future generations.¹⁷

Meanwhile, Emil Salim, as quoted by Rachmad K. Dwi Susilo, states the fundamental assumptions and underlying principles of sustainable development as follows: Firstly, the development process must occur continuously, continuously, and continuously supported by natural resources, guaranteed with environmental quality, and sustained human development. Secondly, natural resources, particularly air, water, and land, have limits. Their continuous utilization will diminish their quality and quantity. This contraction implies a reduction in the ability of these natural resources to support sustainable development, leading to disruptions in the harmony between natural resources and human resources. Thirdly, environmental quality is directly correlated with the quality of life. The better the environmental quality, the more positive its influence on the quality of life, reflected in improved physical well-being, increased life expectancy, decreased mortality rates, and so forth. Fourthly, the current patterns of natural resource utilization should not close off the possibility of choosing other options or alternatives in the future. Since we do not fully comprehend various aspects of the future, the utilization of natural resources for future choices must remain open. Fifthly, it assumes intergenerational solidarity, where this development enables the present generation to enhance well-being without compromising the potential for future generations to improve their well-being. If we inherit a favorable environment from preceding generations, the environment we intend to pass on to future generations should also be favorable.¹⁸

The concept of sustainable development, as outlined above, encompasses the notion that sustainable development is essentially aimed at ensuring the integrity of the environment in its various dimensions, including social, economic, safety, capability, and well-being, in order to meet the needs of both the present and future generations. It is considered a legacy for future generations. Consequently, the concept of sustainable development gives rise to the principle of intergenerational justice. According to FX. Adji Samekto, the principle of intergenerational justice implies that every generation of humankind has the right to inherit and inhabit the Earth, free from the adverse consequences of the actions of preceding generations.¹⁹ Thus, both sustainable development and the principles

¹⁷Buruchaga Sakti Priyanto, Sofi Diah Andriyani, and Raditya Ahmad Rifandi. "Perlunya Implementasi Konsep Pembangunan Berkelanjutan pada Aktivitas Peternakan, Perkebunan dan Pertambangan." *Journal of Environmental Science Sustainable* 3.1 (2022), p. 102.

¹⁸Rachmad K. Dwi Susilo, *Sosiologi Lingkungan* (Jakarta: PT. Rajawali Grafindo Prsada, 2009), p. 188-189.

¹⁹FX. Adji Samekto, *Kapitalisme, Modernisasi, Dan Kerusakan Lingkungan*, p. 102.

of intergenerational justice imply that the management and utilization of natural resources between each generation must be conducted fairly, with the present generation having an obligation to pass on the environment in a good state to future generations. Therefore, the management and utilization of the environment must be based on moral and sustainability principles.

Intergenerational justice is grounded on three fundamental principles. First, (choice conservation) each generation should be required to preserve the diversity of natural resources and culture, so as not to unduly limit the options available to future generations in solving their problems and satisfying their own values, and they should also be entitled to a comparable share of what previous generations enjoyed. Choice conservation relies on the premise that diversity, like quality, contributes to resilience. This is evident in the contribution of biodiversity to ecosystem resilience. Based on this premise, the pattern of natural resource management by the present generation should at least provide options or choices for future generations. The principle of intergenerational equity states that the state must preserve and use natural resources for the benefit of both the present and future generations.²⁰

Secondly, the principle of quality states that each generation must be required to maintain the quality of the planet so that it is not passed on in a worse condition, and they should also be entitled to a quality of the planet comparable to that enjoyed by the previous generation. This principle consistently preserves sustainable environmental growth. This does not mean that the environment must remain unchanged, which would be consistent with preserving the current generation's access to the benefits of this planet. In determining whether a generation is conservation quality, trade-offs are inevitable. For example, we may deplete more natural resources and cause some level of pollution but pass on higher levels of income, capital, and sufficient knowledge to enable future generations to develop substitutes for depleted resources and methods to mitigate or eliminate pollutants. A framework should be developed where balance must be maintained. This principle demonstrates balance in environmental/natural resource management. In other words, environmental/natural resource management should be based on principles of balance.

The principle of conservation access grants members of the present generation the right, which is fair and non-discriminatory, to access our planet's natural and cultural resources. This means they have the right to access these

²⁰Karel Wowor, *Penerapan Prinsip Berkelanjutan Sebagai Upaya Pencegahan Kerusakan Lingkungan Hidup Dibidang Pertambangan Ditinjau dari UU Nomor 4 Tahun 2009.* Agri-Sosioekonomi Unsrat 13.2 (2017), p. 7.

resources to enhance their own economy and social well-being, as long as they respect the fair duty to future generations and do not unreasonably disrupt the access of other members of their generation to the same resources. This offers principles of justice between generations and among members of the same generation.

The principle of intergenerational justice holds that each generation acts as a trustee or custodian of the natural ecosystem or natural resources in order to benefit future generations, while also serving as beneficiaries or recipients of benefits from previous generations. The consequence of this principle is the responsibility to preserve or maintain the sustainability of nature as optimally as possible, so that future generations do not bear the burden of the mistakes of previous generations but always remain prosperous.²¹ The principle of intergenerational justice stems from the idea that the current generation possesses natural resources, which must be viewed as a trust that, inevitably, must be passed on to future generations in good condition. This notion entails the demand that the present generation responsibly care for and preserve the environment, just as previous generations have done before us. Consequently, the following key elements can be formulated:

- a. Within society, each generation and the succeeding generation are partners.
- b. The present generation does not impose external burdens on future generations.
- c. Each generation inherits natural resources and a habitat of approximately equal physical, ecological, social, and economic qualities.²²

One example of the application of intergenerational principles in the practice of law enforcement has been carried out by the Supreme Court of the Philippines in the case of forest logging, known as the Minor Oposa case in 1993.²³ It all started with a class action lawsuit filed by a number of minors (41 individuals) represented by Attorney Antonio Oposa. The essence of the lawsuit concerns the logging permits for the tropical forests granted by the Philippine government under the Timber's License Agreement (similar to a HPH) for a period of 25 years. In this case, the plaintiffs base their arguments on the invaluable natural resource value of tropical forests. The data presented by the plaintiffs aim to achieve a balanced state considering the health and ecological aspects. The comparison of land areas should ideally maintain a ratio of 54% for forest land and 46% for economic interests such as agriculture, settlements, industries, and others. However, deforestation of

²¹N.H.T. Siahian, *Hukum Lingkungan*, p. 72.

²²Rachmad K. Dwi Susilo, *Sosiologi Lingkungan*, p. 191-192.

²³I. Nyoman Nurjaya. "Gugatan Perwakilan Kelompok Masyarakat (Class Action) dalam Teori dan Praktek Peradilan." *Risalah Hukum* (2006), p. 120.

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alarming proportions has occurred due to logging activities, with data indicating a loss of 200,000 hectares per year or 25 hectares per hour. The evidence submitted by the plaintiffs, including satellite data, documents, expert witnesses, and others, forms the basis of the legal argument that the plaintiffs have a right to a balanced and healthy environment.

The considerations of the Supreme Court are based on both procedural (procedural law) and substantive (merits of the lawsuit) aspects. Procedurally, the lawsuit filed by minors through class actions can be justified based on the principle of Intergenerational Equity and Responsibility. Substantively, the plaintiffs' argument to invalidate the Timber's License Agreements (TLAs) is grounded in the right to a balanced and healthful environment. The Supreme Court believes that the Philippine Government and the Department of Environment and Natural Resources (DENR) should take preventive measures against environmental degradation. DENR has an obligation to protect the right to a good environment, which is also seen as a duty to safeguard the interests of future generations.²⁴ The duty to protect the right to a clean and healthy environment, for the benefit of future generations (Principle of Intergenerational Justice), necessitates the assertion that the application of the principle of intergenerational justice in the practice of law enforcement in the Philippines has demonstrated that future generations have the same rights as the present generation.

Principles of Intergenerational Justice in Environmental Management

Sustainable development is characterized by its primary feature of not causing harm to the environment, as it represents an effort to rectify environmental damage that has occurred,²⁵ which is applicable on a global and national scale.²⁶ In relation to the application of the principles of intergenerational justice, there are three fundamental aspects that are most essential in intergenerational justice, namely: balance in the management of the environment/natural resources, justice between the current and future generations, and the right not to endure a poor environment for both the present and future generations. The question is whether the environmental legal framework in Indonesia has adopted the principles found in intergenerational justice. Substantially, it can be said that the three principles underlying intergenerational justice are contained in Law Number 32 of 2009

²⁴N.H.T. Siahhan, *Hukum Lingkungan*, p. 73-74.

²⁵Siti Sundari Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional* (Surabaya: Airlangga University Press, 2000), p. 27.

²⁶Suardi, "Problematika Penerapan Perinsip Sustainable Development Dalam Pengelolaan Lingkungan Hidup Dan Implikasinya Terhadap Pemenuhan Ham." *Maleo Law Journal* 2.1 (2018), p. 96-109.

concerning Environmental Protection and Management, which can be seen in Article 2 of Law Number 32 of 2009. It states that the protection and management of the environment are carried out based on the principles of:

- a. State responsibility;
- b. Sustainability and continuity;
- c. Harmony and balance;
- d. Integration;
- e. Benefit;
- f. Prudence;
- g. Justice;
- h. Ecoregion;
- i. Biodiversity;
- j. Polluters pay;
- k. Participatory;
- l. Local wisdom;
- m. Good governance; and
- n. Regional autonomy.

To comprehend the principles, further elaboration will be provided on the following explanations found in the general provisions of Law Number 32 of 2009, namely:

- a. The concept of state responsibility entails:
 - 1) The state ensures that the utilization of natural resources maximizes the benefits for the well-being and quality of life of both the current and future generations of the population.
 - 2) The state guarantees the rights of citizens to a good and healthy environment.
 - 3) The state prevents the occurrence of activities involving the utilization of natural resources that result in pollution and/or damage to the environment.
- b. The principle of "sustainability and continuity" refers to the obligation and responsibility of every individual towards future generations and their fellow beings within the same generation, by making efforts to conserve the carrying capacity of ecosystems and improve the quality of the living environment.
- c. The principle of "harmony and balance" implies that the utilization of the environment must consider various aspects such as economic, social, cultural interests, as well as the protection and preservation of ecosystems.

- d. The principle of "integration" entails that the protection and management of the environment are carried out by integrating various elements or synergizing related components.
- e. The principle of "benefit" states that all development activities and endeavors should be adjusted to the potential of natural resources and the environment, aiming to enhance the well-being, dignity, and harmony of human society in alignment with the surrounding environment.
- f. The principle of "precaution" holds that uncertainty regarding the impacts of an enterprise or activity, due to limited knowledge and technology, should not serve as a reason to postpone measures aimed at minimizing or avoiding threats to the emergence or deterioration of the environment.
- g. The principle of "justice" emphasizes that the protection and management of the environment must reflect proportional justice for every citizen, regardless of regional, generational, or gender differences.
- h. The principle of "ecoregion" stipulates that the protection and management of the environment must consider the characteristics of natural resources, ecosystems, geographic conditions, local cultural aspects, and indigenous wisdom.
- i. The principle of "biodiversity" highlights that the protection and management of the environment must consider integrated efforts to preserve the existence, diversity, and sustainability of biological resources, encompassing both plant and animal resources, along with their non-living surroundings, collectively forming an ecosystem.
- j. The principle of "polluter pays" states that every responsible party whose business or activities cause pollution or environmental damage must bear the cost of environmental restoration.
- k. The principle of "participation" encourages every member of society to actively participate in the decision-making process and implementation of environmental protection and management, both directly and indirectly.
- l. The principle of "local wisdom" asserts that environmental protection and management should consider the noble values that govern the community's way of life.
- m. The principle of "good governance" implies that the protection and management of the environment are driven by the principles of participation, transparency, accountability, efficiency, and justice.
- n. The principle of "regional autonomy" states that the Government and Regional Administrations govern and manage their own affairs in the field of environmental protection, while considering the specificities and

diversities of each region within the framework of the Unitary State of the Republic of Indonesia.

The aforementioned principles encompass the meaning of protection, management, and utilization of the environment/natural resources, which are the responsibility of both the state and the community. The principles of environmental protection and management, as stipulated in Law Number 32 of 2009, substantially include three principles that are found in the principle of intergenerational justice. Among these principles is the idea that in the management of the environment/natural resources, the greatest possible benefits should be provided for the well-being of both the present and future generations. Furthermore, it emphasizes that everyone has an obligation and responsibility towards future generations and their fellow beings within the same generation. The rights between generations hold a greater moral force than fulfilling obligations; they have a basis for protecting the interests of all generations on a healthy and strong planet.

The three principles contained within intergenerational justice are the principle of conservation of options, the principle of conservation of quality, and the principle of conservation of access. The principles of diversity, quality, and access form the basis of a set of obligations and rights between generations, or the rights of the planet and its corresponding obligations, held by each generation. Rights and obligations arise from each generation's position as part of an intertemporal human society. Rights and obligations between generations and the planet are inherently linked, with rights always being connected to obligations. Rights and obligations coexist within each generation. All of these aspects are normatively accommodated within the protection and management of the environment in Indonesia.

Conclusion

The concept of sustainable development and the principle of intergenerational justice each contain the meaning that, in the management and utilization of natural resources between each generation, fairness must be ensured. It is the present generation's obligation to pass on the environment in a good condition to future generations. Therefore, the management and utilization of the environment must be based on moral and sustainability principles. In other words, the concept of sustainable development encompasses principles of intergenerational justice. In the practice of law enforcement, the principle of intergenerational justice has been implemented by the Philippine government, as exemplified by the *Minor Oposa* case in 1993, which pertained to deforestation. In the context of

environmental and natural resource management in Indonesia, the normative principles of intergenerational justice have been accommodated in various principles, as stated in Article 2 of Law Number 32 of 2009 concerning Environmental Protection and Management.

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