

CHAPTER IV

RESULTS AND DISCUSSION

A. The Description of Marine Pollution Condition and Environmental Degradation in the Coastal Area

Based on the factor causes, the types of damage in the coastal environment and marine systems may come from outside the zone, also could happened cause of the coastal and marine as well as those taking place in the coastal areas, beaches and the ocean itself. The contamination occurred in the mainland which is mostly caused by human activity will be carried away by the river current into estuaries and eventually spread throughout the surrounding beaches and coast. Pollution can come from waste disposed by a variety of activities (such as farms, hotels, tourist, and residence, industry, and marine transport). They exist in coastal areas and also manifested in the form of submissions from the various impacts of development activities on the upstream side.

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Sedimentation or siltation occurred in the coastal waters largely comes from material on the upstream side sediment (due to deforestation and agricultural practices that ignore the principles of land and environment

conservation), which is transported by the flow of river water or water runoff and deposited in the coastal waters. Agricultural and forestry activities (up land) is bad not only carries damage to the ecosystem of the river (through flooding and erosion), but will also have a negative impact on coastal waters and beaches. Meanwhile, the environmental damage that comes from coastal areas, beaches and the sea can be a physical degradation of coastal habitats (mangroves, coral reefs, sand and sea grass beds), abrasion of losing the protected areas caused by excessive exploitation of natural resources (over exploitation) and natural disasters. The indicator of pollution and damage to coastal and marine are based on Government Regulation No. 19 of 1999 on Control of Marine Pollution and or Destruction.

Bantul District is 506.85 km² and located at the coordinates 07 ° 44'04 "- 08 ° 00'27" south latitude and 110 ° 12'34 "- 110 ° 31'08" east longitude (BPS Bantul, 2001), most of the area (78.66%), is a lowland area with a height of less than 100 m above sea level. Bantul district is administratively divided into 17 districts, three of which are coastal districts namely Srandakan District, Sanden District and Kretek District. Economic activity in this area relies on agriculture. For most areas of Bantul are fertile agricultural region and flanked by two rivers, namely the Progo on the west and River Opak on the east. The income for most people in Bantul comes from coastal areas which are marine tourism sector. especially tourism. Marine fisheries are complementary to the main

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activity, besides agriculture and tourism. Sea fishing is an activity started in 1995 with the pioneering efforts in the areas of fishing, such as Depok Beach and Pandansimo beach driven by the technology transfer from the migrant fisherman. This activity then makes shifting in the economic activity from farmer becoming fisherman and traders and tourist service. Those three activities are mutually supportive and contributive for the incomes and coastal areas.

Bantul of coastal areas that is facing the Indian Ocean region is characterized by a stretch of sand. It becomes one of the development assets in Bantul regency which is expected to be able to be major source for the Bruto Regional Domestic Product (PDRB) region. This is due to the region which is very rich and diverse in natural resources, in addition, this region also has excellent accessibility to a variety of economic activities, such as transportation, industrial, settlement and tourism.

Richness and diversity of natural resources which exist in Bantul Regency has an important role in increasing the income of coastal communities and outside the region. Availability of coastal resources can be used as a potential development so that it can encourage regional economic growth. The potential of natural resources, although it is not evenly distributed in all regions,

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its existence is still required as the basis for the growth of regional development.

After conducting direct observation and interviews towards several speakers including Mr Sukardi (TIM SAR), Mr Parmanto (The cleaner Officer) and Darmaji (Residents around) on April 11, 2012, they said that the causes, solution and preventive action of marine pollution in the area of south coast (Parangtritis, Parangkususo and Depok) are elaborated as follows:

The causes of marine environment pollution in southern coastal areas among other are:

- a. Traders around the coast, some of them throw garbage out of place, or out of the bins provided.
- b. Public transport around the coast, horse manure waste is not managed well; then these cause pollution to environment around the coast
- c. The tourist who comes is not from similar backgrounds; therefore, to the tourists' level of awareness in protecting the environment are not the same.
- d. The flooding of Opak River. The effect of the flooding is huge.

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water that will eventually drift into the sea water and it possible to lead marine environment pollution in coastal areas.

In mitigation process, the beach cleaners and TIM SAR are helped by several community elements work together to create program for beach cleaning.

Then for the prevention of marine environment pollution in coastal, government and society work together to provide trashes in front of their homes, and make TPS (Waste Disposal). However, there is an obstacle faced when the condition of beach is not good (beach Rub), so that it causes TPS which have been provided are damaged and even lost.

Based on the observations and direct interviews, it can be said that the level of awareness in protecting the environment is not maximum, especially the tourists, then in this case the Department of Tourism has given socialization towards people surrounding the beach to keep marine environment from pollution or restrict them not to break the regulation, because there are punishments for those who violate.

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B. The Environmental Law of Marine Responses in Pollution and Damage in Coastal Areas

Environmental law, basically, has two dimensions, namely the provisions on public behavior. These provisions are made to meet the aims at to solve environmental problems, and to face them. The second dimension is regarding provisions which give rights, duties and authority to the government in managing the environment. Environmental law contains public law such as: (criminal, administrative, governance and taxation) and private law.

The Definition of environmental law enforcement is related to the ability of citizens and the officer to obey the regulations, which includes three areas of law, namely administrative, civil, and criminal. Thus, enforcement of environmental law is an effort to obey the regulations and requirements of the applicable law either public or private.²⁰

The enforcement of environmental law has a broad meaning (preventive and repressive). It's matched with conditions of Indonesia where the governments are actively in developing awareness of society.²¹ Furthermore, enforcement of environmental law is carried by preventive and repressive suitable with the nature and its effectiveness. The preventive law enforcement

²⁰ Suparni, Ninik. 1992, *Pelestarian Pengelolaan dan Penegakan Hukum Lingkungan*. Jakarta: Sinar Grafika

²¹ Hamzah, Andi. 2005. *Penegakan Hukum Lingkungan*. Cet. I Jakarta: Sinar Grafika

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means the active supervision which is conducted for the obeying to the regulations without any concrete events.

Instrument for preventive law enforcement is counseling, monitoring, and implementation of oversight authority. Thus, the main law enforcement officials and the local government authorities who have are responsible to prevent environmental pollution. While the repressive law enforcement, is made in terms of actions that violate the rules. Criminal prosecution is generally always followed by the violation of rules and usually can not negate the result of the violation. To avoid the repetitive criminal prosecution, the offender or polluter himself who must stop that condition.²²

Enforcement of environmental law is very complicated since it has many areas of law. The offender is diverse, from the lightest such as kitchen garbage disposal and nuclear. The environment implemented by some instrument, there are administrative, civil, criminal law instrument that can be enforced simultanesly at once. ²³ there for, in order to enforce the environmental law, the officer must master a variety of law such as law administrative, civil law and criminal law, even the tax law, land law, constitutional law, international law etc.

²² *ibid*

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²² ibid
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Environmental law is functional law that aimed to tackle pollution and environmental destruction, which will support health, beautiful, and comfortable environment for all the people. For the functions, the law possesses instruments of criminal law, administration, and civil which can be used selectively or simultaneously, if necessary.

There are three legal issues which regard to various environment cases, namely pollution, contaminants, and the victims of pollution. The legal issue of pollution is related to the action and therefore its solution is based on administrative law (administrative penalties).

The issue of polluter is related to the liability of perpetrators which is used criminal law instrument. Main while the legal remedies for the victim of pollution will be provided by the instrument of civil law (tort).

C. The Use of Administrative Law Instruments (Pollution)

The administrative law enforcement in the environmental cases consists of:

1. Legal remedy aimed at preventing and combating pollution and the destruction of the environment through the efficient use of the administrative authority in accordance with the mandate which is given to the law.

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2. Court review towards the administrative decisions of administrative court (PTUN).²⁴ The used of administrative law in the environmental field has some benefit compared to other law instruments (civil and criminal), inter alia:
 - a. Administrative law enforcement in the environmental field can be optimized as preventive measures
 - b. Administrative law enforcement (preventive) may be more efficient in terms of financial cost than criminal and civil law enforcement.²⁵
 - c. Administrative law enforcement has more ability to invite public participant.²⁶

Administrative Law enforcement whitens a legal and government at least has to fulfill five require, a. i.:

- a. Permit which is utilize as supervision and control instrument;
- b. Requirements in permit reveres to environmental impact assessment (AMDAL), environmental quality standards, and legislation in force;
- c. Mechanisms of monitoring;

²⁴ Mas Ahmad Santosa, *Good Governance & Hukum Lingkungan*. Jakarta: ICEL, 2001, p. 28

²⁵ Funding the cost of administrative law enforcement includes field supervision. This is done regularly and laboratory testing, it is cheaper in comparison with evidence collection, field investigations, hiring expert witnesses to prove the causality aspects of the criminal and civil cases.

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- d. The existence of an adequate regulatory authorities, both in quality and quantity;
- e. Administrative sanctions²⁷

There are some forms of administrative penalties related to environmental law, namely: a) government compulsion or involuntary actions, b) money coercion, c) closure of business premises, d) cessation of companies engine, and e) revocation of license by the reprimand, government coercion, closures, and money coercion.²⁸

In the Law No. 23 of 1997 on Environmental Management (UUPLH), the administrative sanction for the offender is government coercion (Article 25 [1]), payment of several amount of money (Article 25 [5]), and revocation of licenses (Article 27). The interesting thing in UUPLH is giving authority to the third party who applies to the competent authority for conducting government coercion.

Although there is no explanation of the third party, but it can be interpreted that the third party is the society who got disadvantage (affected people) or community with potentially getting disadvantage (potentially affected) because of the activity. In this context, environmental NGOs, on

²⁷ Mas Ahmad Santosa, *op.cit.*, p. 248

²⁸ Siti Sundari Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional* (Surabaya:

Αντιθέτως (υποχρεωτική Πράξη Νο 3000) ή 311
32 2η Σύμβαση Κωνσταντίνου: Πράξη Νομοθετικού Περιεχομένου Διατάξεων (Συμβολή:
33 Μετα-Υποχρεωτική Πράξη Νο 342

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behalf of the environment also can be a third party as the consequence of recognition of the environmental organizations role in UUPLH.²⁹

D. The Use of Private Law Instruments (Victims of Pollution)

In relation to environmental issues, civil law provides possibility to propose lawsuit for damages against the environmental polluter who create the pollution, which is usually done through a tort lawsuit.³⁰ Thus, the purpose of environmental law enforcement through the application of the civil law rules is particularly to give more legal protection for the natural environment as well as victims who suffered losses as a result of pollution or environmental destruction.

One point of linkage between civil law and the environmental law in term of enforcement is the responsibility issue in a dispute related to environmental problems, which is the responsibility due to an unlawful action (*onrechtmatige overheidsdaad*) as stated in Article 1365 Civil Code.³¹

²⁹ Mas Ahmad Santosa, *op.cit.*, p. 240

³⁰ Bocken, H, *Penegakan Hukum Lingkungan oleh Hakim Perdata* (Bandung: Citra Aditya Bakti: 1993) p. 1 - 3

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Accountability for environmental damage according to de Plaque is the provisions governing private person or agency which has obligation to indemnify as a result of environmental pollution.³²

E. The Use of Criminal Instrument (Polluter)

In the environmental crime, there are two categories of victims, namely the concrete and abstract victims. The categories are closely related to the concept of environmental damage and losses, which may have significant damage and loss (actual harm) and threatened damage. According to Muladi, everything is protected by environmental criminal law, including nature, plant, and animal, and also the future of human being from environmental degradation.

In UUPLH, besides individual, corporation is also considered as legal person. This development is primarily a paradigm change in criminal law as a consequence of the development of economic activities in the world. Indicator of crime is a continuation of the activity and economic growth in which the corporation has played role in supporting or facilitating the crime. Since the reason that corporate growth and development may bring negative effects, the position of the corporation begins to move away from the subject of civil law to

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³² Paulus Eend: *Lehrbuch*, op. cit., p. 17

According to the General Explanation UUPH Number 7, as a supporting device of administrative law, criminal law provisions concern about the principle of subsidiary. The principle of criminal law should be used if:

1. Other legal sanctions, such as Administrative and civil sanctions, as well as alternative resolution of environment dispute are not effective;
2. The fault rate of the perpetrator is relatively severe;
3. The impact of the perpetrator's crime is relatively severe, and
4. The perpetrator of crime makes a fear for the society.

Observing the formulation of the article which is classified pollution as a crime, so the crime may call as *rechtdelichten* (law offenses) then the *zurvoordigheid* factor or accuracy that become a society assumption needs to be concerned. This is important, since several cases of contamination; the offender does not pay attention to elements of accuracy in his work.

In relation to the cases handling of contamination that occurred in the territorial waters, the law enforcement is not only focused on the use of instruments of crime, but also maximizes the use of the instrument of administrative law and civil law, because criminal sanctions are only related to the perpetrator. While other legal issues, such as pollution and the victims of pollution are difficult to be solved if only rely on the instrument of the criminal

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law.

Therefore, the efforts to deal with the pollution should also be supported by the use of instruments of administrative law, the imposition of Administrative sanctions and civil law, such as by filing a tort, either it is carried out by using the usual mechanisms of action, class action or *ius standi*.

F. The Relevant Regulation in the Marine Environmental Pollution

Pollution of the marine environment may bring great impact for human survival. It is necessary to understand the rules of law governing pollution of the marine environment after seeing a variety of marine environmental pollution problem that occurs on the coast at some beach in Indonesia. Furthermore, the management of coastal resources requires implementation sustainable use principle. As the area which is utilize for various development sectors, the coastal zone has a complexity of issues, problems, opportunities and challenges. There are some relevant regulations concerning to the environment pollution:

- a. Law No. 32 of 2009 on the Environment Protection and Management. Chapter V Section 13-20 of this legislation mentions the control on pollution and environmental degradation covers prevention, mitigation and recovery

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a. Law No. 32 of 2009 on the Environment Protection and Management Chapter V Section 13-20 of this legislation mentions the control on pollution and environmental degradation covers prevention, mitigation and recovery.

b. Law Number 27 of 2007 on the Management of Coastal Areas and Small Islands. Chapter III sections 5 and 6 that the activity management of coastal areas includes planning, utilization, supervision and control which are conducted by integrated activities between the central and local government, multi sectors, world businesses, and communities, terrestrial ecosystems and marine ecosystem sciences and principles of management. Chapter XII (article 63) of this legislation high light that the central and local governments work together in creating, growing and increasing community awareness and responsibility. While, chapter XIII (article 64-67) state that the dispute can be pursued through the courts or out of court. Chapter XVI (article 71) regulate on administrative sanction and chapter XVII (article 73-75) provide criminal provision. The letters clarify that if there is violation it will be punished in accordance with applicable regulations.

c. Law No. 23 of 1997 on Environmental Management.

In chapter III on the rights, obligations and role of society, regulate that everyone has the same rights and obligations in managing the environment. The societies also have equal opportunity and great role play in managing environment. Then the authority, in this case the government has authority in environmental management based on Chapter IV (article 8-12) provide provision on government

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authority in managing environment. Chapter IX (Article 41-48), meanwhile mention any violation will be punish accurse with existing regulations.

- d. Government Regulation. No 69 of 1996 on the Implementation of the Rights and Obligations, Forms and Procedures and Public Participation in Spatial Planning. It is mentioned in this Government Regulation the implementation of the rights and obligations of society, forms, procedures, promotion of community participation have been explained very clear.
- e. Government Regulation. No. 19 of 1999 on Control and destruction Pollution of the Sea. Chapter III, IV and V of this Government Regulation mentioned that every person is responsible for preventing marine pollution and is prohibited from conducting activities that may cause marine pollution.

G. National Legal Provision

Indonesia already has the Law on the sea, namely the Law 6 of 1996; that govern the territorial waters of Indonesia in accordance with the provisions of the UN Convention on the Law of the Sea 1982. This Act repeals the Act 4 of 1960, while the implementation of the regulations as long as suitable with the new Act remains in force. In the Act, it is written about the basic rules of the use, management, protection and preservation of aquatic environments

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d. Government Regulation No 69 of 1996 on the implementation of the Rights and Obligations, Forms and Procedures and Public Participation in Spatial Planning. It is mentioned in this Government Regulation the implementation of the rights and obligations of society, forms, procedures, promotion of community participation have been explained very clear.

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Indonesia also has to have the legislation on strategic areas such as fisheries, mining, marine transport and others. As mentioned in Law No. 23 of 1997, on Environmental Management, Law No. 9 of 1985 on Fisheries, Law No.11 of 1967 on Basic Provisions Law No. 24 of 1992, on Spatial Planning. The problem is how far the law and implementation of regulations has met the needs and conditions of people with justice and prosperity sense. In addition, there is also an issue about the implementation of international law concerning to it.

Areas of agriculture, mining, transportation (shipping and aviation) tourism and maritime are the potential areas which can generate foreign exchange. The absence of an integral formulation of policy and its implementation in coordinative manner will make all the areas are not optimally explored. A concerted approach and effort are needed to be taken to assess the condition of the law in these areas. The Slump of national shipping is partly due to the absence of integral and coordinated policies. If the criterion of interest is according to the public condition, a sense of fairness and obedience towards international law are more concerned to the national interest. Hence, the reference to law provisions becomes the rule which must pay attention more in order to closer with uniformity and preventing international conflicts.

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This matter is not only been implemented to the provisions of public law which concern on public needs or in the wider community, but also applies in the case of civil law which is related to the legal relation between the parties, for example in the field maritime or admiralty law. It is important to be note here that the provisions on Indonesia maritime in Book II *kitab Undang-Undang Hukum Dagang* are not relevant anymore.

H. The Provisions of International Law

The development of national marine environmental law cannot be separated from the legal history of the International law of Sea. The theory on the protection of the marine environment within the framework of international law is an accumulation of the Principle of National Sovereignty and The Freedom of the High Sea. Generally, the experts of International Law argue that:

*"a right on the part of a state threatened with environmental injury from sources beyond its territorial jurisdiction, at least where those sources are located on the high seas, to take reasonable action to prevent or abate that injury."*³³

The protection of the ocean itself at the beginning has been existed since the Roman Empire era, although the protection of the sea in the past, only

³³ Suhaidi, *Perlindungan Lingkungan Laut* : (Pidato Pengukuhan Guru Besar dalam Bidang Ilmu Hukum Internasional Pada Fakultas Hukum IISU 1 April 2006) p. 2

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covers the procurement of the sea as belonging to a State. The goal of the controlling the territory are still in the simple context which is to save from the danger of the threat of pirates who disrupt the security of shipping in the sea. It is very important that for the development of trade and welfare of the people who live in areas that are under the authority of Rome at that time.³⁴

Since the end of World War II, Law of the Sea which is a branch of international law has been undergone in term of changes. In fact, it can be said as a revolution in accordance with development of world and time. Nowadays, the significance of maritime law is not only 70% or 140 million square miles of ocean surface consisting of ocean, not only because the sea is a highway which links a nation with other nations throughout the corners of the world for all sorts of activities, not only because of his wealth with all kinds of fish which are vital for human life, but it is also because its rich minerals on the seabed itself.³⁵ The importance of the sea in a matter of relationship between nations makes the international sea law becomes very important too. The purpose of this law is to set the dual function of the sea, which is as a highway and as a source of wealth as well as a source of energy.³⁶

The issue of marine environmental protection is one of the major problems which are paid attention from most of the international society since it

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deals with the continuity of human life in the future. The use of chemicals on a large scale for industrial purposes, development of marine exploitation and use of giant tanks bring the damage to the environment due to the pollution. The international community encourages, since the issue of environmental protection to make provisions for the protection and preservation of land, air or sea.³⁷

The protection of marine areas is not only about water but also broader to the coastal and small islands, since for some coastal countries and island nations, the impact of marine pollution and degradation will make significant impact on coastal ecosystems and surroundings small islands.

The discussion of International law, begins with describing the soft law, the purpose is the international community can be easier to understand about the principles of international law which becomes the background for establishing conventions which protect coast and surrounding seas. Afterwards, the law which is discussed is hard law as a source of law that will govern the protection globally.³⁸

I. The Islamic view on the Marine Environment Pollution

Islam as a plenary religion has universal and absolute truth, because it comes from the absolute almighty substance (*Allah Rabb al-Jalil*). Since 14th

³⁷ *Ibid.*, p. 334.

³⁸ Sukanda Husin, "Pengaturan Perlindungan Keanekaragaman Hayati dalam Lingkungan Internasional". *Jurnal Hukum Yustisia*, Edisi XVI. No. 2, July 2006, p. 38.

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century, Islam has had special attention towards environmental issues, through warning due to environmental degradation. Furthermore, it is also expressed in Quran, Ar-Rum: 41 which states: Mischief has appeared on land and sea because of (the meed) that the hands of men have earned, that (Allah) may give them a taste of some of their deeds: in order that they may turn back (from Evil). This verse explain that the environmental damage is because of imperfect human action (destroyers/destroyer is inflicted upon the man himself (whether those who cause damaged or those who are not involved). Hence, they may back to the right way (*la'allahum yarji'un*).

Unfortunately, people do not want to take a lesson behind natural disasters. They are deaf dumb and blind to the signs that are presented by their nature as a form of resistance against greedy human behavior in exploring the nature.

Allah said "*Do no mischief on the earth, after it hath been set in order, but call on Him with fear and longing (in your hearts): for the Mercy of Allah is (always) near to those who do good*" (Surah al-A'raf: 56). Furthermore there are many verses of the Qur'an (example: surah 2, verse 60 and 205; surah 5, verse 64; surah 7, verse 85; and some other letters) which also emphasized the human role in environmental degradation, forbids a man to destroy the environment, and also invite people to look after the environment.

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there is and will be destruction occurred in environment both on land and sea as a result of declining of the quality of the environment in supporting human livelihoods. Secondly, Islam sees human as the main actor of damage and also becoming preventers of damages itself. Therefore, Islam is expressly invites people to make the world becomes prosperous and at the same time strictly forbids people to make mischief in the earth. Yet unfortunately, these verses are less considered by scholars and public society. It is likely most people have not been realized about the impact of environmental degradation, even when they are obviously experiencing the disaster.

Disasters seem not have been able to change the nature and behavior of the society in managing the environment. Society seems to have "adapted" to the damage of the environment and seems to be "apathetic". Even when they look at some of the consequences of their action towards the environmental destruction which resulted poor condition of environment, they are still less aware of it. It needs an integrated approach and management to overcome these environmental issues.

The environmental problems are talking about the survival of human and nature. Preserving the environment has the same meaning to ensure the survival of human and all creatures exist in nature and surroundings. Vice versa, environmental damage regardless of the format is a serious threat to the survival of nature and everything inside, including human being. Keeping the environment can be done by preventive approach, which covers comprehensive

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and integrative understanding of religious teaching. In the context of environment, it is often called the term "*Fiqh* of Environmental ". The term is found in the teachings of Islam (the content and spirit) based on holy texts (Quran and Hadith).

Fiqh in the context of the environment is the result of reading and understanding of human impacts on the *naqli* proposition, both *maktubah* (written) and the *kauniyyah* (unwritten) spread in the natural universe. So, "*Fiqh*" of Environment means that human understanding of the environment through approaches of Holy Scriptures (sacred texts) and natural signs (signs of nature) that will ultimately produce a concept and their attitude towards the universe, especially regarding to the preservation. Therefore the understanding of Islamic teachings needs to be developed and deepened so that Islam can be viewed comprehensively.

Islam teaches us to live with the nature in harmony. Many verses of the Quran and the Hadith talk about the environment. Holy book of *Fiqh* which is the translation of both environmental problems is entered in the field of *Jinayat* (criminal law). "*That is, if there is someone who intentionally danger the environment in any way, they must be punished. Besides, they have to be prevented to do the forbidden action*"

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cannot be separated by the human factor that is less friendly to nature and the environment itself.

This disaster is happened because of environmental degradation and destruction of natural ecosystems, the ecological crisis, human greed such as wild exploitation.

In human ecology lesson, there is a theory of man's relationship with nature namely Ecology. Ecology describes about the relationship of man and nature and which man becomes the center of nature. It means that all nature is for human being.

Allah SWT also explained in the Qur'an, that everything in nature is already created for the benefit of man. *It is He who hath created for you all things that are on earth; moreover His design comprehended the heavens, for He gave order and perfection to the seven firmaments; and of all things He hath perfect knowledge.* (Al-Baqarah: 29). It sees human as a ruler who has unlimited rights to nature, then Islam takes man as a mercy to nature. *"And we sent thee not, but for (a) Mercy for all creatures."* (Al Anbiyaa ': 107).

Excessive use of nature had carried huge negative impact for humans and nature itself. Allah forbids us to explore nature brutally. *"... And do not exaggerate. Allah loves those who are not exaggerated."* (Al-An` am: 141).

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