CHAPTER I
INTRODUCTION

A. Introduction

The Rome Statute stands as a monumental covenant between nations, a cornerstone for the creation of the International Criminal Court (ICC). This esteemed institution was born from the noble aspiration to hold individuals accountable for heinous acts that transgress the bounds of humanity, thus striving to dismantle the insidious cycle of impunity that has plagued history. Within the framework of this statute lies the legal foundation essential for prosecuting grave international transgressions, including the harrowing crimes of genocide, crimes against humanity, war crimes, and acts of aggression. Such a framework aims to ensure that justice prevails, safeguarding the dignity of humankind against the atrocities of the past.[1] The Rome Statute, a seminal global accord, heralded the official birth of the ICC. This momentous event transpired during a diplomatic gathering in the illustrious city of Rome on the seventeenth day of July in1998, marking a significant chapter in the annals of international law and the pursuit of justice for humanity. It required the endorsement of sixty countries for it to take effect, a threshold that was met on July 1, 2002, bringing the statute into force.[2] The Rome Statute comprises 128 articles, and over 120 nations are signatories to the treaty. The jurisdiction of the ICC is constrained to

[1] Joko Setiyono, 2020, Peradilan Internasional Atas Kejahatan HAM Berat, Penerbit Pustaka Magister, Semarang, p. 38

[2] Shaw, Malcom, 2008, International law, Cambridge University Press, Cambridge, p. 422.

transgressions that have taken place after the Statute's ascension into force, applying exclusively to those nations that have duly ratified or acceded to this venerable treaty as member states.[3] Within the framework of the Rome Statute, the authority to ascertain the presence of unwillingness or inability rests ultimately with the pretrial or trial chamber of the court. However, this power is bound by numerous qualifications and is ultimately subject to interlocutory appeal to the esteemed five-judge appellate chamber. Thus, the path to justice is carefully navigated, ensuring that such determinations are made with the utmost consideration and oversight within the court's hierarchical structure.[4]

Under the auspices of Article 6 of the 1998 Rome Statute, genocide is delineated as a methodical and heinous crime aimed at the eradication of all or a portion of an ethnic, racial, tribal, or religious group. This grave definition encompasses several acts, including: (a). Killing a group; (b). Causing serious injury or mental damage to a group; (c). Intentionally threatening the life of a group causing partial or total physical harm; (d). Taking measures intended to prevent births within the group; (e). Forcibly transferring children from one group to another. Each of these acts highlights the deliberate nature of genocide, reflecting a profound violation of human rights and dignity.

[3] Ibid.

[4] Charney, Jonathan, 2017, The United States and the Statute of Rome, The American Journal of International Law Vol. 95 No. 124, p. 125.

Along with the passage of time there is an action that is considered to have the same effect as the violations regulated in the Rome Statute, namely ecocide, ecocide is the destruction of resources and ecosystems needed in human life by exploiting the environment and natural resources massively. Ecocide is Damage, destruction and extinction of ecosystems caused by human actions certainly cannot be justified and allowed.[5]

Human activities towards environmental ecosystems that have an impact on damage, destruction, and significant losses to the environment.[6] Environment Communities affected by ecocides may experience an economic crisis due to loss of economic resources and jobs. Ecocide an also cause deadly diseases in the human body and change culture and reduce the closeness of social interaction between residents. The term ecocide was first introduced by an American biologist and botanist named Arthur W. Galston.[7]

Ecocide was introduced during the Accountability to War Conference held in Washington. In this sense, ecocide is a trap of global capitalism due to the failure of development which then gives rise to ecocide actions. At first, ecocide was interpreted as a form of brutality by the United States troops in attacking the National Front for the Liberation of South Vietnam in

[5] M. Aida, *et al*, Ecocide in the International Law: Integration Between Environmental Rights and International Crime and Its Implementation in Indonesia, p.574

[6] Triantono, Ani Purwanti, Nur Rochaety, 2022, Ekosida: Studi Atas Pendekatan Loss of Ecological Service Dan Environmental Crime Serta Prospek Pengaturan Di Indonesia. 470-484, Jurnal Hukum dan Pembangunan Vol:52, No:2, p. 472

[7] Giovanni Chiarinni, 2022, Ecocide: From the Vietnam War to International Jurisdiction? Procedural Issues In-Between Environmental Science, Climate Change, and Law, 1-34, Cork Online Law Review Edition 21, p. 1

the Vietnam War. In the jungles of hideout, the United States troops spread 19,000 tons of hazardous chemicals.[8]

The genes of humans, flora and fauna around it undergo changes and experience death. After the term was introduced, ecocide became a popular term among environmental activists. These activists use the term ecocide to refer to mass environmental destruction.[9] Ecocide actions can be carried out by many parties, especially by the public and politicians.[10] Ecocide do not occur naturally because the act of destroying natural resources cannot occur without a certain structure or systematic method. The most common type of ecocide is uncontrolled forest conversion. This transfer of function is primarily intended for mining, tourism and plantation activities. Meanwhile, other types of ecocides include destruction of animal habitats, depletion of fish populations, destruction of the sea, as well as clean water treatment and poor waste management.[11]

Ecocide according to Polly Higgins is durable as lasting for many months, widespread covering at least an area of hundreds of square kilometres, and severe involving major or serious disturbance or trauma to human life, nature, and economic resources.[12] One example of an ecocide

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[8] *Ibid.*

[9] Journal Forest Digiest, 2019, Ekosida: Kejahatan Lingkungan yang Belum Diakui, available at https://www.forestdigest.com/detail/241/ekosida-kejahatan-lingkungan-yang-belum-diakui accessed on July 31st 2023 on 01:12 AM

[10] Regus dan Den, 2020, Lakukanlah Semua Dengan Kasih, Jakarta: Penerbit Obor, p. 267-268

[11] *Ibid.*

[12] Sitti Khairunisa, Fajar Khaify Rizky, Siti Nurahmi Nasution, Boy Laksamana, 2022, Penegakan Hukum Luar Biasa Atas Kejahatan Ekosida Sebagai Extraordinary Crime Dalam Konsep Hukum Lingkungan Internasional, Riau Law Journal: Vol. 6, No. 2, p. 158

crime that has occurred is the Chernobyl case. The construction of the Chernobyl Nuclear Power Plant commenced in the early 1970s, a significant endeavor within the Soviet Union's grand vision for advancing its nuclear energy development program. The project included four reactors of the type RBMK 1000 (Reactor Bolshoi Moshnosti Kanalye) or high-power boiling water reactors, also known as High Power Pressure Tube Reactors designed to produce electricity and plutonium for military purposes.[13]

The catastrophic event that unfolded on April 26, 1986, at Unit 4 of the Chernobyl nuclear power plant, situated within the former Union of Soviet Socialist Republics (USSR) near the borders of Belarus, the Russian Federation, and Ukraine, was deemed, at that time, "the most catastrophic accident in the annals of nuclear power." This calamitous incident, along with the ensuing blaze, expelled significant quantities of radioactive substances into the surrounding environment, leaving an indelible mark on history and raising profound concerns about nuclear safety and its far-reaching consequences.[14] In the aftermath of the calamity, officials instituted a closure of the region extending 30 kilometers (18 miles) from the power plant, permitting entry only to individuals with official duties at the site and those tasked with assessing and mitigating the aftermath of the disaster, as well as those managing the remaining operational reactors. In 1986, the Russian government orchestrated the evacuation of

[13] Sky History, https://www.history.co.uk/articles/the-story-of-chernobyl-the-worst-nuclear-disaster-inhistory, accessed on September 4th, 2023 on 10:10 AM

[14] *Ibid.*

approximately 115,000 souls from the most severely contaminated zones, followed by an additional exodus of around 220,000 individuals in the ensuing years, reflecting a desperate effort to safeguard the populace from the lingering dangers of radiation.[15]

Indonesia has experienced on ecocides, the Lapindo mudflow in Sidoarjo, East Java, destroying agricultural land, markets, residents' villages, schools, houses of worship, roads and other infrastructure. In the case of the Lapindo mudflow, the United Nations through the United Nations Disaster Assessment and Coordination since July 2006 has recommended regular research and monitoring of environmental problems in the Lapindo mudflow case. [16]

However, it seems that the Indonesian government is not paying much attention to matters relating to public health in the short and long term due to the mudflow. As a comparison, Decree of the Minister of Environment No. 51 of 2004 stipulates the quality standard for Polycyclic aromatic hydrocarbon (PAH) in seawater for marine tourism at 0.003 mg/liter. While the permitted quality standard for Hydrocarbons in air based on Government Regulation No. 41 of 1999 is 160 ug/Nm3. However, according to Walhi's

[15] CNN Indonesia, “Bahaya Radioaktif Chernobyl Bagi Manusia: Kanker Hingga Kematian”, 2022, https://www.cnnindonesia.com/teknologi/20220411203021-199-783454/bahaya-radioaktif-chernobyl-bagimanusia-kanker-hinggakematian, Accessed on September 4th, 2023 on 10:55 AM

[16] Subagyo, 2008, Skandal Ekosida Lumpur Lapindo, available at: https://korbanlumpur.id/2008/08/skandal-ekosida-lumpur-lapindo/, accessed on September 4th, 2023 on 15:40 PM

findings regarding Lapindo mudflow, they found that there are some violations on the standard of PAH seawater for marine tourism and also violation on the standard hydrocarbon in the air in the area of Lapindo Mud.[17]

In the short term, the result is only visible gas poisoning of residents and even death. However, in the long run, the Lapindo mudflow will not only be the bad luck for the future of the direct victims, but also for the people who pass through the Lapindo mudflow every day, who are threatened by cancer due to carcinogenic PAH compounds.[18]

This is because toxic substances which include PAHs are free of space, can mix with air, water, soil and all existing media. But in 2012, National Commission of Human Rights issued a decision that the Lapindo Mud disaster was not a gross human rights violation. Even though Lapindo mudflow violated article 25 (1) of universal declaration of human rights (UDHR) that stated “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability,

[17] *Ibid.*

[18] A. Asnawi, 2021, 15 Tahun Lumpur Lapindo: Darat, Air dan Udara Sekitar Tercemar, available at: https://www.mongabay.co.id/2021/06/01/15-tahun-lumpur-lapindo-darat-air-dan-udara-sekitar-tercemar/, on September 4th, 2023 on 16:20 PM

widowhood, old age or other lack of livelihood in circumstances beyond his control."[19]

The National Commission of Human Rights has categorized the Lapindo Mudflow case under the serious indictment of environmental destruction, or ecocide, a transgression recognized for its grave implications and far-reaching effects on human existence. However, this case does not fall within the jurisdiction of gross human rights violations, as delineated in Law No. 26 of 2000 concerning the Human Rights Court, which restricts such violations to two specific classifications: crimes against humanity and genocide. Moreover, jurisprudential norms suggest that gross human rights offenses are primarily committed by the state, rather than by private entities or corporations. The Commission has advocated for the inclusion of an ecocide provision in the anticipated amendments to Law No. 26 of 2000 regarding Human Rights Courts, a strategic initiative aimed at confronting these profound and destructive acts.[20]

From the Lapindo mudflow incident which resulted in human rights violations, therefore the author wants to examine whether human rights violations that occur due to ecocide such as what happened in Lapindo mudflow can be categorized into gross human rights violations written in the

[19] Universal declaration of human rights, article 25 (1)

[20] Taufik Wijaya, 2021, Ecocide, Kejahatan Lingkungan Sebagaimana Pelanggaran Berat HAM, available at: https://www.mongabay.co.id/2021/03/06/ecocide-kejahatan-lingkungan-sebagaimana-pelanggaran-berat-ham/, accessed on September 4th, 2023 on 15:46 PM

Rome Statute, therefore the author raises the title "HUMAN RIGHT VIOLATION ON ECOCIDE IN ROME STATUTE".

B. Problem Formulation

There are also problems formulation of the research, namely:

1. How the ecocide violated of human rights is regulated under Rome Statute?
2. How Lapindo Mudflow case could be expressed as an ecocide referring to gross violation of human rights in Indonesia?

C. Research Objectives

There are also purposes in this research based on the problem formulation, namely:

1. To find out whether the issue of ecocide is positioned in the Rome Statute.
2. To find out whether Lapindo mudflow case on ecocide as a gross violation of human rights in Indonesia.

D. Research Benefits

There are also some benefits for this research based on the problem formulation, namely:

1. The findings of this study to find out ecocide violation are regulated in the Rome Statute.

2. The findings of this study to find out the Lapindo mudflow case on ecocide as a gross violation of human rights in Indonesia.

E. Research Originality

1. David Runold Antonius Pattileuw student at Hasanuddin University that have a tittle of “Tinjauan Hukum International Terhadap Ekosida Sebagai Salah Satu Bentuk Pelanggaran Hak Asasi Manusia”, the thesis was made in 2022. In his thesis he has a problem formulation of 1) How the Concept of Ecocide in International Law, 2) How the Settlement of Ecocide case in International Human Right Law. The difference between this research with the previous research is this research is emphasizing on the case of Lapindo Mudflow Case in Siduarjo and how Indonesia settle the Human Right Violation caused by the Lapindo Mudflow.
2. Teresa Yokia Novantia student at Sebelas Maret University that have a tittle of “The Urgency of Including Ecocide as an International Crime in the 1998 Rome Statute of the International Criminal Court", the thesis was made in 2023. In her thesis she has a problem formulation of 1) can ecocide be categorized as an international crime based on the concept of international law? 2) why is ecocide important to be the fifth international crime in the Rome Statute? 3) What are the challenges in amending the Rome Statute with regard to the crime of ecocide? The difference

between this research and the previous research is that in the previous research by Teresa Yokia Novantia, she did not discuss cases that occurred in Indonesia, therefore it cannot be seen that law enforcement in Indonesia, and did not compare cases like in this research. Although there are similarities between previous research, there are also differences in this research.

CHAPTER II
LITERATURE REVIEW

A. Human Rights

1. The Definition of Human Rights

Human rights have emerged as a prevalent topic of discourse, engaging not only the government and military but also the general populace. To fully comprehend the discussions surrounding the concept of human rights, it is crucial to first establish a clear definition of the notion of rights. Rights represent fundamental principles that govern conduct, protecting individual freedoms and immunities while ensuring that opportunities exist for people to maintain their dignity. It is well understood that rights are inherently tied to obligations, as the two exist in tandem. Obligation is an obligatory role towards something certain required by law or legislation.[21]

In alignment with the proclamation of the United Nations, human rights are the inherent entitlements granted to every individual, surpassing differences in race, gender, nationality, ethnicity, language, religion, or any other status. These venerable rights include the fundamental right to life and liberty, protection against slavery and torture, as well as the freedom to hold and express one's opinions, as well as the rights to engage in labor and pursue education, among a multitude of others. It is a fundamental truth that

[21] Yumna Sabila, Kamaruzaman Bustamam, Badri, 2008, "Landasan Teori Hak Asasi Manusia Dan Pelanggaran Hak Asasi Manusia", Jurnal Justisia vol. 3 no 2, p. 205-206

every individual is entitled to these rights, free from the blight of discrimination.[22]

In the view of John Locke, human rights are distinct entitlements bestowed upon individuals directly by the divine. He posited that these rights are not granted by governments or institutions but are inherent to humanity, derived from a higher moral order established by God. Where every human being has a nature that is a right that cannot be separated from everyone, because human rights are sacred. Leah Kevin's opinion divides human rights into two basic meanings. The first is as human beings who have a nature that cannot be denied, and cannot be eliminated. The second basic meaning is human rights that are explained legally, which apply nationally and internationally.[23]

International human rights law delineates binding obligations that sovereign states are duty-bound to uphold. By ratifying international treaties, these nations willingly accept responsibilities under the auspices of international law to respect, protect, and fulfill the human rights of their citizens. The obligation to respect requires states to refrain from interfering with or impeding the enjoyment of these essential rights. In contrast, the obligation to protect compels states to shield individuals and communities from violations of their

[22] United Nation, Peace, Dignity and Equality on a Healty Planet, https://www.un.org/en/global-issues/human-rights, accessed on: January 18th 2024 on 22:38

[23] Yusuf Abdhul Azis, 2022, Pengertian HAM Menurut Para Ahli, available at: https://deepublishstore.com/blog/pengertian-ham-menurut-para-ahli/, accessed on January 22th, 2024 on 21:35 PM

human rights. Lastly, the obligation to fulfill necessitates that states undertake proactive endeavors to ensure the realization of fundamental human rights for all, thereby weaving a tapestry of dignity and justice that binds humanity together.[24]

Human rights are a topic of considerable discussion both globally and within Indonesia, where their significance is heightened by the nation's historical experiences. As enshrined in the Indonesian constitution, human rights are perceived as a fundamental set of entitlements that arise from the very essence and existence of individuals, recognized as creations of the Almighty. This viewpoint emphasizes the sacredness of human rights, reinforcing their status as essential principles that protect the dignity and value of every person. These rights are viewed as sacred gifts that demand respect, protection, and promotion by the state, legal frameworks, government entities, and all individuals, with the ultimate aim of preserving and honoring the dignity of humanity.[25]

Human rights are fundamental entitlements intrinsic to all individuals, acting as moral assurances that underpin claims for the basic enjoyment of a dignified life at the minimum standard.[26] Human rights are divine entitlements bestowed by the Almighty upon every individual inhabiting the

[24] United Nation, Peace, Dignity and Equality on a Healty Planet, https://www.un.org/en/global-issues/human-rights, accessed on: January 22th 2024 on 22:38

[25] Undang-Undang No.39 Tahun 1999 Tentang Hak Asasi Manusia, article 1

[26]Marianus Kleden, Hak Asasi Manusia Dalam Masyarakat Komunal, LAMAMERA, Yogyakarta, 2008, p.69

earth. It is the duty of all to safeguard, uphold, and honor the rights of others.[27]

2. Type of Human Rights Violations

1. Human Rights Violations

Human rights violations can be gracefully delineated into two distinct categories: standard human rights violations and gross human rights violations. The former, commonly acknowledged as human rights violations, serves as a broad term encompassing various abuses, while the latter is distinguished by its grave designation as gross human rights violations, reflecting its profound and unsettling nature. The initial category typically captures acts of injustice known as human rights abuses, whereas the latter is marked by its flagrant transgressions against the fundamental tenets of human dignity, emphasizing the urgent need for accountability and redress in the face of such egregious offenses. The term "gross" is employed to underscore that these violations transcend ordinary infractions, qualifying them as some of the most egregious crimes against humanity.[28]

Human rights violations represent a profound danger to the peace, security, and stability of a nation. As articulated in Article 1, point 6 of the Human Rights Law, these violations are characterized as actions performed by individuals or groups, which may include state officials, either with intent

[27] Fai, *Apa Yang Dimaksud Dengan Hak Asasi Manusia (HAM)*, available at: https://umsu.ac.id/hak-asasi-manusia/, accessed on September 6th, 2023 on 21:44 PM

[28] Munafrizal Manan, 2021, *Dua Jenis Pelanggaran Hak Asasi Manusia,* available at: https://www.hukumonline.com/berita/a/dua-jenis-pelanggaran-hak-asasi-manusia, accessed on September 7th, 2023 on 02:20 AM

or by accident. Additionally, they encompass unlawful omissions that lead to the reduction, obstruction, limitation, or revocation of the rights afforded to individuals or groups under legal protection. This definition underscores the gravity of such infringements and highlights the responsibility of all, particularly those in positions of power, to uphold and protect the rights guaranteed by law.[29]

2. Gross Human Rights Violations

The second category, referred to as gross human rights violations, is defined within Article 5 of the Rome Statute of the International Criminal Court (ICC). This classification encompasses four distinct offenses: genocide, crimes against humanity, war crimes, and the crime of aggression. Such grave transgressions fall squarely within the jurisdiction of the ICC. Professor William A. Schabas elucidates that these four crimes are deemed gross human rights violations due to their intrinsic nature, as the Rome Statute characterizes them as "unimaginable atrocities that profoundly shock the conscience of humanity." These acts are thus labeled "international crimes" and acknowledged as "the most serious crimes of international concern," underscoring their urgency and the imperative for justice on a global scale. This classification emphasizes the gravity and moral outrage associated with such acts on a global scale.[30]

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[29]Tim Hukumonline, 2022*, Pelanggaran HAM: Pengertian, Jenis, dan Contohnya*, available at: https://www.hukumonline.com/berita/a/pelanggaran-ham, accessed on September 7th, 2023 on 02:35 AM

[30] Munafrizal Manan, 2021, *Dua Jenis Pelanggaran Hak Asasi Manusia,* available at: https://www.hukumonline.com/berita/a/dua-jenis-pelanggaran-hak-asasi-manusia, accessed on September 7th, 2023 on 02:20 AM

Gross human rights violations have not yet received a generally accepted agreement. Usually the word "serious" is followed by the word "violation" which indicates how serious the violation is. Nevertheless, there exists a consensus among scholars regarding the definition of human rights violations, which is framed as "breaches of state obligations stemming from international human rights instruments".[31]

A state may transgress its obligations either through direct actions, known as acts of commission, or through negligence, referred to as acts of omission. Alternatively, human rights violations can be described as "acts or omissions by the state that contravene norms not addressed by national criminal law but are nonetheless recognized as international human rights standards." This definition highlights that violations can occur even when domestic laws do not explicitly penalize certain actions, emphasizing the importance of adhering to universally accepted human rights norms.[32]

This differentiation elevates human rights violations beyond mere legal infractions. The state is entrusted not only with the obligation to honor internationally recognized human rights but also with the duty to guarantee their enforcement within its realm. This commitment requires the state to adopt proactive measures to avert potential violations, thereby affirming its

[31] Ifdal Kashim. Prinsip-prinsip Van Boven, Mengenai Korban Pelanggaran HAM Berat, Elsam, Jakarta, 2002, p.23

[32] Rhona K.M. Smith *et. al.*, 2008, Hukum Hak Asasi Manusia, PUSHAM UII, Yogyakarta, p. 65

dedication to safeguarding the rights and dignity of all individuals within its dominion.[33]

3. The right of environment as human right

Human rights are intrinsic to every individual, transcending the boundaries of nationality, ethnicity, gender, or any other distinguishing trait. These rights are not bestowed upon humanity by societal constructs or positive law; instead, they stem from the very essence of human dignity itself.[34] The evolution of human rights is often delineated into three distinct phases, as articulated by the esteemed French jurist Karel Vasak. The inaugural generation comprises civil and political rights, designed to protect individual liberties and facilitate active participation in the political arena. The second generation embraces economic, social, and cultural rights, emphasizing the welfare and dignity of individuals within the social fabric. Finally, the third generation is characterized by group or solidarity rights, often referred to as people's rights, which emphasize the collective interests and welfare of communities, particularly in the context of global challenges.[35]

The notion of 'freedom,' often referred to as 'first-generation rights,' is closely tied to civil and political rights, collectively recognized as 'classical'

[33] *Ibid.* p. 25

[34] Jack Donnely, Universal Human Rights in Theory and Practice, Cornell University Press, Ithaca and London, 2003. Too Maurice Cranston, What are Human Rights? Taplinger, New York, 1973, p 70.

[35] Ruppel OC, 2008, Third Generation Human Rights and the Protection of the Environment in Namibia, Macmillan Publishers, Namibia, p 102.

human rights. These rights arose as a countermeasure to the struggle for emancipation from the authoritarian grip of the state and various societal institutions. This dynamic is poignantly exemplified by the rights revolutions that transpired in the United States and France during the 17th and 18th centuries. Thus, this inaugural generation of rights is aptly labeled "classical" rights, fundamentally aimed at safeguarding individual autonomy and the sanctity of private life. Included within the realm of these inaugural rights are the fundamental entitlements to life and physical integrity, the liberty to traverse freely, and the refuge from persecution. Furthermore, they encompass the safeguarding of property rights, the freedom to hold thoughts, practice religion, and embrace beliefs. Also included are the rights to assemble and express oneself openly. This generation of rights further ensures protection against unwarranted detention and arrest, prohibits torture, guards against retroactive legislation, and upholds the right to a just trial. [36]

The notion of "equality," often referred to as "second generation rights," is epitomized by the protection of economic, social, and cultural rights. These entitlements stem from the state's duty to ensure that basic necessities, such as food and healthcare, are accessible to all individuals within society. Consequently, it is imperative for the state to adopt a proactive stance aimed at realizing and facilitating these rights. This second

[36] Rhona K.M. Smith *et. al.*, 2008, Hukum Hak Asasi Manusia, PUSHAM UII, Yogyakarta, p.15.

generation of rights encompasses a wide spectrum of economic, social, and cultural entitlements essential for nurturing human dignity and promoting overall well-being. They include the right to gainful employment and equitable remuneration, the right to social security, and the right to education. Additionally, this framework encompasses the right to health, adequate nutrition, secure housing, and land ownership. Moreover, this generation underscores the significance of a healthy environment and the protection of scientific, literary, and artistic endeavors.[37]

The idea of "fraternity," often referred to as "third generation rights," is illustrated by the pursuit of "solidarity rights" or "common rights." These rights arise from the persistent appeals made by developing nations and those in the Global South for a fair and equitable international framework. The advocacy for solidarity rights from these countries is fueled by a commitment to forge an international economic and legal system that supports the realization of various rights, including the right to development, the right to peace, the right to control one's natural resources, the right to a healthy environment, and the right to preserve one's cultural heritage.[38]

Human rights and the environment are woven together in a delicate tapestry; the fulfillment of human rights remains elusive in the absence of a safe, pristine, and healthful environment. Likewise, the essence of

[37] *Ibid.*
[38] *Ibid,* p 16.

sustainable environmental stewardship cannot flourish without the recognition and reverence for the rights inherent to humanity.[39]

Human existence and the environment are intimately connected, much like the dual facets of a coin, each reflecting the other. A thriving and healthy environment fosters well-being for humanity. However, the state of the world's environment, including that of Indonesia, has suffered degradation, resulting in a decline in ecological quality. This deterioration is largely attributable to human actions that involve the destruction and pollution of natural resources, which in turn adversely affects fellow human beings. Such environmental damage and pollution directly jeopardize the right to a clean and healthy environment. When the state of the environment is compromised, it inevitably disrupts the very fabric of social order. [40]

The deterioration of environmental quality that occurs requires an integrated and comprehensive approach. An integrated or comprehensive approach must be applied by law to be able to regulate the human environment appropriately and well. Environmental law is a juridical instrument for environmental management. Considering that environmental

[39] United Nations Environment Programme, "What We Do: Advancing Environmental Rights.", available at: https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/advancing-environmental-rights/what, accessed on April 5th 2024.

[40] Waas, Richard. 2014. "Perlindungan hukum terhadap hak atas lingkungan hidup ditinjau dari perspektif hukum internasional dan hukum nasional indonesia." Jurnal Sasi, Vol:20, No:1, p. 81.

protection is the responsibility of the government through applicable laws and regulations on the environment and in its management.[41]

The passage of the resolution by the General Assembly (GA), the foremost policy-making entity of the United Nations, recognizing the human right to a clean, healthy, and sustainable environment, signifies a pivotal milestone that reverberates with profound significance across the globe. This resolution conveys a compelling message of widespread recognition. Environmental rights encompass any declaration asserting a human right to conditions of a specified environmental quality. Thus, these rights are not mere abstract ideals, distant or insignificant; rather, they represent measurable, salient, and practical dimensions of society and its ecological framework.[42]

In the 1972, the United Nations Conference on the Environment convened in Stockholm, marking a historic juncture that cast environmental concerns into the global spotlight. This gathering heralded the commencement of a vital dialogue between industrialized and developing nations, exploring the profound connections between economic advancement, the degradation of air, water, and seas, and the welfare of humanity. During this momentous occasion, member states proclaimed the fundamental right of all individuals to "an environment of a quality that

[41] *Ibid*

[42] Geneva Environment Network, 2024, Human Rights and the Environment., available at: https://www.genevaenvironmentnetwork.org/resources/updates/human-rights-and-the-environment, accessed on April 8th 2024.

permits a life of dignity and well-being," urging immediate action and recognition of this vital entitlement.[43]

The declaration articulates the imperative that natural resources be utilized sustainably and emphasizes the necessity of integrating environmental protection with development. In relation to the first principle, Principle 3 asserts that "the capacity of the earth to produce vital renewable resources must be maintained and, whenever feasible, restored or enhanced." Meanwhile, Principle 5 cautions that “the non-renewable resources of the earth must be employed in such a way as to guard against the danger of their future exhaustion.” And then principle 13 stipulates “In order to achieve a more rational management of resources and thus to improve the environment, States should adopt an integrated and coordinated approach to their development planning so as to ensure that development is compatible with the need to protect and improve environment for the benefit of their population.” Furthermore, principle 14 adds “Rational planning constitutes an essential tool for reconciling any conflict between the needs of development and the need to protect and improve the environment.” [44]

The concept of intergenerational equity also finds prominent expression in the Stockholm Declaration. According to proclamation 6, “to

[43]United Nations, "Stockholm Conference 1972.", available at: https://news.un.org/en/story, accessed on April 8th 2024.

[44] Brunnée Jutta, 2009, The Stockholm Declaration and the Structure and Processes of International Environmental Law, p 10

defend and improve the human environment for present and future generations has become an imperative goal for mankind." Further, Principle 1 underlines the "solemn responsibility to protect and improve the environment for present and future generations," while Principle 2 stresses that "the natural resources of the earth . . . must be safeguarded for the benefit of present and future generations." Ultimately, the principles of caution resonate within the Stockholm Declaration as well. Proclamation 6 articulates with striking clarity that "we must conduct our endeavors globally with a heightened sense of prudence regarding their environmental repercussions." Through ignorance or indifference, we can do massive and irreversible harm to the earthly environment on which our life and well-being depend." In a similar spirit, Principle 6 addresses the dangers posed by toxic substances and various pollutants, highlighting the necessity to cease their release in "quantities or concentrations that surpass the environment's ability to neutralize them." This measure is essential to prevent causing serious or irreversible harm to ecosystems.[45]

The UN General Assembly (UNGA) has enacted a resolution that recognizes the right to a clean, healthy, and sustainable environment as an intrinsic human right. This resolution calls upon states, international organizations, businesses, and other key players to "amplify their efforts" in safeguarding such an environment for all. Designated as resolution (A/76/L.75), it highlights the interconnectedness of this right with other rights

[45] *Ibid,* p 11.

and existing international law. Moreover, it asserts that the promotion of this right demands the thorough implementation of multilateral environmental agreements (MEAs) "aligned with the principles of international environmental law."[46]

Several delegations lamented the absence of a shared, internationally recognized comprehension regarding the essence and breadth of the right to a clean, healthy, and sustainable environment. The envoy of the Russian Federation articulated that states “can only talk about a legally recognized right after such right is recognized exclusively within international treaties.” Meanwhile, Pakistan deemed the resolution as “a political document, rather than a legal affirmation from the Assembly.” In his remarks, UN Secretary-General António Guterres lauded the resolution as a “landmark advancement,” asserting that it would aid in alleviating environmental injustices, bridging protection gaps, and empowering individuals, particularly those in precarious situations, such as environmental human rights defenders, children, youth, women, and Indigenous Peoples. He further noted its capacity to hasten the realization of Member States’ environmental and human rights obligations and commitments.[47]

[46] International Institute for Environment and Development, 2022, UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment, available at: https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/, accessed on May 28th 2024.

[47] *Ibid.*

Environmental changes are largely determined by human actions. The natural conditions that exist physically can be utilized for the benefit of humans in seeking a better and healthier life, become bad and unhealthy, if the utilization is not used in accordance with the ability and see the situation.[48] In Indonesia according to Article 1 paragraph (1) of Law Number 32 of 2009 concerning environmental protection and management:

> "The environment is the unity of space with all objects, forces, conditions, and living things, including humans and their behavior, which affect nature itself, the continuity of life and the welfare of humans and other living things."

The entitlement to a harmonious environment stands as a fundamental, inborn right of every individual, rooted in the essence of human existence, extending universally across time and place. Indeed, the right to a sound environment is inseparable from human rights themselves. Nature serves as the wellspring from which all human necessities flow, sustaining life and fostering well-being. Thus, the vitality of human life hinges profoundly on the presence of plentiful, sustainable resources. Yet, should nature fall into ruin or face the tragedy of ecological devastation, humanity, in turn, forfeits its intrinsic right to life itself.[49]

Life, woven through rhythms of continual interaction and mutual reliance, forms an ecosystemic harmony embodying the vital essence of the environment. This interconnected unity cannot be fragmented or viewed in

[48] Moh.Kusnardi dan Harmaily Ibrahim, 1981, *Pengantar Hukum Tata Negara Indonesia*, cetakan ke-4, Pusat Studi HTN FH-UI, Jakarta. P.1

[49] Waas Richard, *Op. Cit,* P.91

isolation, for its true significance lies within the wholeness that each element contributes to the larger ecological order. The environment as a system is certainly subject to a system of natural laws that are destined. The system can take place in a balanced manner if the quality of the components in it remains stable.[50]

As a living system, the environment is a life consisting of past life, present life, and future life, which is the essence of living resources. Because the essence of the environment is a life that encompasses the rules and values of life that exist in it, as well as the rules and values that maintain environmental sustainability and social justice for human life today and future generations.[51]

In Indonesia, the directive for managing natural resources as a foundation for providing food for the entire population is established in the 1945 Constitution of the Republic of Indonesia, which asserts that:

“a good and healthy environment is a human right and constitutional right for every citizen of Indonesia. Therefore, the state, government, and all stakeholders in the relationship between the environment and food interests are obliged to protect and manage the environment in the

[50] M. Ridha Saleh, 2005, Lingkungan Hidup Untuk Kehidupan Tidak Untuk Pembangunaan, dalam Hak Atas Lingkungan Hidup (Sebuah Kajian Prinsip-Prinsip HAM Dalam Intrumen Naional), KOMNAS HAM, Jakarta. P. 114

[51] Longgena Ginting, 2005, Lingkungan Hidup untuk Pengidupan dan Keberlanjutan Masyarakat, dalam Hak Atas Lingkungan Hidup (Sebuah Kajian Prinsip-Prinsip HAM Dalam Intrumen Naional), HAM, Jakarta. P.14

implementation of sustainable development so that the Indonesian environment can remain a source and support for the life of the Indonesian people and other living creatures." Environmental resources are finite, yet development activities demand an ever-growing supply of natural resources.[52]

The environment should be regarded and respected as an active participant, managed for the sustainability of life rather than merely for developmental expansion. Global awareness of human rights has reached a consensus that all rights are interconnected and indivisible.[53]

This view is summarized in the doctrines of 'indivisibility' and 'interdependence'. This view has developed in human rights discourse that no longer prioritizes one category of rights; whether the fulfilment of civil and political rights or economic, social, and cultural rights is impossible.[54]

A profound link exists between the right to a healthy environment and other human rights within the framework of human rights discourse. Within the environment lies the essence of fundamental human rights, embodying principles of environmental justice and ensuring equitable access to life's essential resources. Although there is no specific declaration or convention on environmental rights as human rights, the dimensions of basic rights and

[52] Iin Karita Sakharina, *et al*, 2022, The Environmental Law Enforcement of Access to Food as A Fundamental Rights, Vol:10, No:2, p.31-32
[53] Waas Richard, *Loc. Cit*
[54] *Ibid.*

the environment are already included in article 28 of the Universal Declaration of Human Rights (UDHR) and article 12 (b) of the International Covenant on Economic-Social-Cultural Rights, the Declaration on the Right to Development, Agenda 21, the Charter on the Rights and Economic Obligations of States, and the Charter on the Rights and Obligations of States.[55]

4. International Legal Instrument on Human Rights

1. Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights acknowledges the fundamental rights inherent to all individuals, asserting that the recognition of these rights forms the foundation of liberty, justice, and global peace. It further emphasizes the necessity for states to safeguard human rights through legal measures, fostering freedoms of expression, religion, freedom from fear, and protection against life's deprivations on a universal scale. This declaration is extensively integrated into the national legislation of United Nations member states, serving as a benchmark for evaluating each nation's commitment to upholding human rights for its people. The principles enshrined within the Universal Declaration are widely regarded as possessing the status of customary international law.[56]

[55] Ignas Tri, Roni Giandono, 2017, Jadikan Bumi Bersih Dan Hijau, Komisi Nasional Hak Asasi Manusia, vol 3 p 1

[56] Fardhan Wijaya, 2020, Deklarasi Universal Human Right dan Pemenuhan Hak Asasi Bagi Narapidana, JUSTITIA: Jurnal Ilmu Hukum dan Humaniora, 798-810, Fakultas Hukum Universitas Muhamadiyah Tapanuli Selatan, p.801

Many basic rights are declared in the UDHR, that is:

1. Right to Life;
2. Right to be free from slavery;
3. The right to be free from torture and cruelty;
4. The right to equality and legal aid;
5. The right to a fair trial;
6. The right to protection of personal and family affairs;
7. The right to enter and leave a country;
8. The right to asylum;
9. The right to citizenship;
10. The right to form a family;
11. The right to own property;
12. The right to freedom of religion;
13. The right to freedom of opinion, association and assembly
14. The right to participate in government
15. The right to social security, employment, wages, decent and welfare; and
16. The right to education and culture.

The UDHR as one of the international treaties that declares human rights has a non-binding nature, for the reason that the UDHR does not require signing and ratification, which makes it non-binding for countries that want to follow it. The UDHR was also not prepared as a treaty as stipulated in the 1969 Laws of Treaties. Other than that, as a consequence of not being a treaty and not including the provisions on the form of consent above, the 1948 UDHR formally has no juridically binding force. However, the 1948 UDHR is a minimum standard of human rights and has moral force.[57]

2. International Convention on Economic, Social, and Cultural Rights (1976)

[57] Rukmana Amanwinata, 2000, Kekuatan Mengikat UDHR 1948 terhadap Negara Anggota PBB, Khususnya Indonesia, JURNAL HUKUM. NO. 14 VOL. 7., 31-45, p. 42

The International Covenant on Economic, Social, and Cultural Rights delineates the essential duties of its member states, including Indonesia, which became a signatory through Law No. 11 of 2005 (Article 2, Paragraph 1 of the Covenant; Fifth Session, 1990). As highlighted in the Compilation of General Comments and General Recommendations by the Human Rights Treaty Institution (UN Doc HRI/GEN/1/Rev.1 at 45, 1994), Article 2 is pivotal for a comprehensive understanding of the Covenant, interlinking dynamically with its other provisions. This article clarifies the foundational legal obligations that member states are bound to fulfill under the Covenant.[58]

The International Covenant on Economic, Social and Cultural Rights (ICESCR) serves as an important piece of international law that acknowledges human rights. Aligned with the Universal Declaration of Human Rights (UDHR) as a standard, the ICESCR specifically emphasizes the recognition of rights within the economic, social, and cultural spheres. The Covenant delineates various rights that are explicitly addressed within its provisions:[59]

1. Right to Work
2. Right to earn a decent living
3. Right to health
4. Right to education; and
5. The right to culture

[58] Iin Karita Sakharina, *et al*, 2020, Urban Poor Living: Accessing Their Ecosob Rights in Indonesia, p.4

[59] International Covenant on Economic, Social, and Cultural Rights (ICESCR)

The nature of the ICESCR for countries that have become members and ratified the ICESCR is binding, therefore all countries that have ratified are obliged to implement the provisions contained in the ICESCR in good faith, especially in carrying out three main obligations, namely the obligation to achieve results, the obligation to implement the will in the Convention and the obligation to implement these obligations in a transparent manner.[60]

B. Ecocide

1. Ecocide

Ecocide can be defined as a crime that has an impact on the environment that has a massive and widespread impact arising from the systemic destruction of ecosystems, from loss of life, exposure to air pollution that is inhaled every day, to being forced to become refugees who are deprived of living space, cultural ties and spirituality.[61] The term ecocide, rooted in the Greek word 'oikos,' signifying home or environment, and the Latin 'caedere,' which means to destroy or to slay, first emerged within the annals of warfare. It encapsulates the profound tragedy of annihilating one's own habitat, reflecting a sorrowful tale of destruction amidst the turmoil of conflict.[62]

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[60] Endah Rantau Itasari, 2021, Kewajiban Negara Indonesia Setelah Meratfika Interansional Covenant on Economic Social and Cultural Rights (ICESCR), JURNAL KOMUNIKASI HUKUM Vol:7, No:1, p. 4

[61] Abdul Ghoffar, Khalisah Khalid, Yuyun Harmono, 2020, KEJAHATAN EKOSIDA DAN KORPORASI, available at: https://www.walhi.or.id, accessed on November 11th 2023, on 00:51

[62] Rumah Indonesia Berkelanjutan, 2021, Pengakuan Ekosida Sebagai Kejahatan Berat, available at: https://rumahberkelanjutan.id/pengakuan-ekosida-sebagai-kejahatan-berat/, accessed on November 11th 2023, on 00:54

Ecocide or ecosystem destruction is final, in the sense that the damaged environment cannot be restored and renewed. Undoubtedly, this will cast a shadow over the sustainability of human existence for both present and future generations. Hence, to avert the calamity of ecocide, it is imperative to cultivate an ethic that promotes environmental justice and acknowledges the intricate bond between humanity and its surroundings. Regrettably, the right to a healthy environment, a crucial aspect of environmental ethics aimed at achieving justice, remains only partially recognized and implemented as a fundamental right deserving of political and legal acknowledgment.[63]

The term "ecocide" was first introduced by Professor Arthur W. Galston during the Conference on War and National Responsibility held in Washington, where he advocated for a new international accord to prohibit ecocide. In 1970, Galston was the pioneer in defining the extensive damage and destruction of ecosystems as ecocide. Meanwhile, Professor Richard Falk, an expert in international law, sought to draw parallels between the devastation caused by ecocide and the horrors of genocide. He likened the effects of Agent Orange during the Vietnam War to the atrocities of Auschwitz under the Nazi regime, highlighting their environmental ramifications. Ultimately, Falk integrated this perspective into a Draft Convention in 1973. However, this draft primarily characterized ecocide as

[63] Iskandar, 2011, Konsepsi dan Pengaturan Hak Atas Lingkungan Hidup Yang Baik dan Sehat (Kajian Perspektif Hak Asasi Manusia Dalam Pengelolaan Lingkungan Hidup), p. 7-8.

a war crime committed with intent, neglecting to include provisions for peacetime and the natural environment.[64]

Following the proposal to incorporate ecocide into the Genocide Convention in 1978 by the UN Special Rapporteur on genocide, the suggestion was ultimately rejected and did not receive further attention from the UN. Subsequently, the International Law Commission (ILC) made an effort to include the term ecocide in the Rome Statute; however, this attempt was ultimately dismissed. The term ecocide was deemed to constitute a distinct provision, apart from instances of ecocide that arose specifically as a consequence of war crimes.

In the context of environmental degradation, the damage caused can be classified into four distinct categories. These categories are as follows:

1) Environmental pollution emerges as a consequence of unwelcome transformations in the natural world, inflicting harm upon flora, fauna, and humankind alike. The entities responsible for this degradation are known as pollutants, which may present themselves as liquids, solids, or gases. A substance ascends to the status of a pollutant when its concentration eclipses the harmony of its natural abundance, a disruption brought forth by the hand of human

[64] Ecocide Law, History, available at: https://ecocidelaw.com/history/, accessed on November 5th 2023, on 01:18

endeavor or by the caprices of nature itself.[65] Example, air pollution, caused by motor vehicle emissions and industrial activities.

2) Environmental damage or degradation signifies the decline of the natural world through the exhaustion of vital resources such as air, water, and soil, the obliteration of ecosystems, and the extinction of various species. It is characterized as any alteration or disruption to the environment that is deemed harmful or unwelcome.[66] Environmental damage can be an advanced form of environmental pollution, for example when pollutants such as industrial waste, hazardous chemicals, or pesticides enter water bodies such as rivers, lakes, or seas, they can change the chemical and physical composition of the water, these pollutants can cause a decline in water quality that can affect living things.
3) Irreversible damage refers to harm that cannot be undone. This type of damage often pertains to environmental resources that, while not entirely irreplaceable, require extensive time or significant expense to restore.[67] As an example of soil contamination by heavy metals,

[65]Satsita Khasanova, Elina Alieva, and Aishat Shemilkhanova, 2023, Environmental Pollution: Types, Causes and Consequences, BIO Web of Conferences, Vol:63, p 1

[66]Infomea, Environmental Damage, available at: https://www.informea.org/en/terms/environmental-damage, accessed on July 6th 2024, on 17:40 PM

[67] Emmy Latifah, 2016, Precautionary Principle Sebagai Landasan Dalam Merumuskan Kebijakan Publik, Yustisia, Vol:5, No:2, p 282

heavy metals can settle in the soil and are difficult to remove or neutralise.[68]

4) Ecocide means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.[69] Ecocide is the loss, damage, or destruction of large numbers of ecosystems in a region to such an extent that the peaceful enjoyment of life of its inhabitants has been or will be greatly diminished.[70] The Chernobyl accident is an example of ecocide because it caused extensive and long-term environmental damage. The radioactive contamination resulting from the nuclear reactor explosion has altered the ecosystem, affecting the health of humans and other living things. The Vietnam War is also an example of ecocide as the use of chemicals caused massive damage to farmlands, plantations and the environment.[71]

The development of the term ecocide can be seen in Polly Higgins as an ecocide activist from the UK. For the past ten years, Polly Higgins dedicated herself to raising global awareness of the term "ecocide" through

[68] Luo, N. 2024. Methods for controlling heavy metals in environmental soils based on artificial neural networks. *Sci Rep* 14, 2563, available at: https://doi.org/10.1038/s41598-024-52869-9, accessed on July 29th, 2024 on 01:08 AM

[69] Adam Crhák, 2023, Ecocide: The Fifth International Crime, available at: https://www.humanrightscentre.org/blog/ecocide-fifth-international-crime, accessed on July 6th 2024, on 16:32 PM

[70] Stop Ecocide International, available at: https://www.stopecocide.earth/polly-higgins, accessed on July 29th 2024 on 01:50

[71] Orsolya Johanna Sziebig, 2024, The Crime of Ecocide through Human Rights Approach, Acta Humana, Vol :2, p 79-80

speeches, documentaries, and consultations with governments. In 2010, she presented a definition of ecocide to the UN Law Commission, articulating it as the loss, damage, or destruction of large numbers of ecosystems in a given area to such a degree that the peaceful enjoyment of life for its inhabitants is significantly impaired or threatened.[72]

In addition to individuals and the state, corporations as legal entities have begun to be considered as legal subjects that can be subject to criminal sanctions when they become perpetrators of ecocide, but this is difficult to realize because international criminal law, especially the International Criminal Court, does not have a criminal liability mechanism for corporations, in contrast to national criminal law which has a corporate criminal liability system. Efforts to impose criminal sanctions on corporations that commit ecocide are certainly easier to realize in the national criminal law system.[73]

Ecocide can be classified as an international crime based on a deliberate or negligent infringement of human rights, meeting the following criteria:[74]

1. **Serious Extensive and Lasting/ Irreversible Ecological Damage.** The gravity of ecocide is underscored by the extensive

[72] Stop Ecocide International, *Loc. Cit*

[73] Muhammad Ali Ausath, 2022, Upaya Penerapan Ekosida Sebagai Kejahatan Luar Biasa Di Indonesia, Jurnal Hukum Lingkungan Tata Ruang dan Agraria Departemen Hukum Lingkungan Tata Ruang dan Agraria: Vol 2: No 1, p. 119

[74] Mark Allan Gray, 1996, The International Crime of Ecocide, California Western International Law Journal: Vol. 26: No. 2, p 234–242.

and systematic nature of the damage inflicted, ultimately impacting both humans and other living beings. This is exemplified by the pervasive destruction of global rainforests, the catastrophic Chernobyl nuclear disaster, and the devastation of unique natural treasures, as witnessed in Prince William Sound after the Exxon Valdez oil spill. The critical importance of such damage resides in its geographical scope and magnitude, rendering it so irreversible that restoration may take an exceedingly long time, or in some cases, may never be possible.

2. **International Consequences.** The environmental calamities previously alluded to serve as poignant examples that affirm the fulfillment of international criteria for ecocide. This grave transgression endangers the very interests and values cherished by the global community, imperiling their survival, health, and vital natural resources. The pursuit of solutions to these multifaceted challenges, whether they be of a political, social, economic, or technological nature, will bear greater fruit if endeavors to halt, reverse, or avert their reoccurrence are forged through the strength of international cooperation.
3. **Waste.** An additional facet that renders ecocide morally objectionable and elevates it to the realm of international crime is the notion of waste. This is poignantly illustrated by the actions taken in Iraq, where the conflagration of Kuwaiti oil wells during

the Gulf War, coupled with the ravaging of rainforests and the reckless disposal of toxic refuse, manifests the intricate interplay of political, economic, and social influences.

2. Ecocide as an Extraordinary Crime

Extraordinary crimes represent the gravest offenses that evoke profound concern from the international community. As delineated in the 1998 Rome Statute, the term "serious crimes" encompasses those that imperil security, peace, welfare, and human existence, including war crimes, acts of aggression, genocide, and crimes against humanity. The hallmarks of extraordinary crimes include their execution in a deliberate, organized, and systematic manner, resulting in a substantial number of victims and motivated by discriminatory intentions.[75]

It should be noted that in the conception of modern international environmental law ecocide is seen as the most serious crime. Polly Higgins stated that ecocide as the fifth most serious crime is equivalent to genocide, crimes against humanity, war crimes and aggression, so in this conception the level of criminal responsibility of the perpetrators of ecocide is seen as more severe than ordinary crimes.[76]

Ecocide meets the criteria of an extraordinary crime, embodying a heinous and cruel act that profoundly shocks the collective conscience of

[75] Muhammad Hatta, 2019, KEJAHATAN LUAR BIASA (EXTRA ORDINARY CRIME), Aceh: UNIMAL PRESS, p. 6

[76] Muhammad Ali Ausath, *Op. Cit.*

humanity and poses a threat to international peace and security. Such acts of environmental destruction, capable of extinguishing vast numbers of living beings, are considered egregious not only for their immediate consequences but also because their repercussions transcend borders, endangering global harmony and stability. Apart from that, ecocide kills a lot of humans. There is already a lot of data that shows environmental damage can kill many people such as what happened in Siduarjo in case of Lapindo Mud.[77]

3. Rome Statute on Ecocide

The Rome Statute of the International Criminal Court is the foundational treaty that established the International Criminal Court (ICC). This significant legal framework was adopted by the United Nations Diplomatic Conference on July 17, 1998, with the intent to tackle the most grave offenses known to humanity. It came into effect on July 1, 2002, marking a pivotal moment in international law.[78] By November 2023, 124 states were party to the law.[79]

The Rome Statute states that the purpose of the court is to end impunity against "the most serious crimes of concern to the international community as a whole".[80] The Rome Statute establishes four core

[77] *Ibid.*

[78] United Nations Treaty Database entry regarding the Rome Statute of the International Criminal Court". United Nations Treaty Collection.

[79] *Ibid,.*

[80] Margaret M. deGuzman, “Gravity And The Legitimacy of The International Criminal Court”, Fordham International Law Journal, Vol. 32, 1400, June 2009, p. 1401.

international crimes: (I) Genocide, (II) Crimes against humanity, (III) War crimes, and (IV) Crimes of aggression.

Firstly, genocide, as delineated in Chapter 6 of the Rome Statute, encompasses acts committed with the intent to annihilate, either wholly or partially, a national, ethnic, racial, or religious group. Such acts include the killing of group members, inflicting grave physical or mental harm upon them, deliberately establishing conditions likely to lead to the physical destruction of the group in whole or in part, imposing measures aimed at preventing births within the group, and forcibly transferring children from one group to another.[81]

Secondly, crimes against humanity, as outlined in Chapter 7 of the 1998 Rome Statute, pertain to any of the following acts committed as part of a widespread or systematic assault against a civilian population with full knowledge of their implications: murder; destruction of property; expulsion or forcible transfer of populations; arbitrary deprivation of liberty or other forms of physical confinement; forced pregnancy, sterilization, or other forms of sexual violence; persecution of specific groups based on political beliefs, race, nationality, ethnicity, culture, religion, sex, or other grounds universally recognized as impermissible under international law; forcible transfer of individuals; the crime of apartheid; and other inhumane acts

[81] Chapter 6 of Rome Statute, and Chapter 8 Law No. 26 Year 2000 on Human Rights Court, see also I Gede Widhiana Suarda's book, 2012, Hukum Pidana Internasional, Citra Aditya Bakti, Bandung, p. 166-167

characterized by the intentional infliction of severe suffering or significant injury to physical or mental health.[82]

Thirdly, war crimes are defined as offenses that manifest during both international and non-international armed conflicts, as articulated in Chapter 8 of the 1998 Rome Statute. Such crimes consist of egregious violations of the Geneva Conventions, established on August 12, 1949, and include actions against individuals or properties entitled to protection under these laws. These acts encompass: (i) the deliberate killing of those safeguarded by the conventions; (ii) cruel treatment, including torture and inhumane experiments; (iii) the intentional infliction of severe suffering or significant harm to physical health; (iv) widespread devastation and unlawful appropriation of property for military purposes, executed without justification; (v) coercing prisoners of war or other protected individuals to join the armed forces of an opposing party; (vi) willfully depriving prisoners of war of their rights to a fair trial; (vii) illegal deportation or transportation and detention; and (viii) taking hostages. Moreover, this category encompasses other grave infractions of the laws and conventions applicable to both international and non-international armed conflicts, as recognized under customary international law.[83]

[82] Chapter 7 verse (1) of Rome Statute, see also Chapter 9 Law No. 26 Year 2000 on Human Rights Court.

[83] I Wayan Parthiana, 2015, Hukum PIdana International, CV. Yrama Widya Bandung p. 131

Fourth, the crime of aggression stands as an international offense crafted to encompass individual criminal accountability, specifically targeting those in positions of leadership. This particular crime is directed at state leaders or individuals possessing significant authority. Consequently, the intention behind criminalizing aggression is to hold accountable those at the helm of power, emphasizing the importance of leadership responsibility in matters of international peace and security. Crime of aggression means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations. Act of aggression means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.[84]

To implement this, the ICC has four types of jurisdictions. The first is judicial jurisdiction, which is the power or authority to take judicial action in a particular case involving a natural person, property, or event brought before the Court.[85] These four jurisdictions are as follows:

1. Territorial Jurisdiction (rationae loci): Jurisdiction is confined to the territory of a state party, encompassing vessels or aircraft registered

[84] Chapter 8 bis of Rome Statute

[85] Peter Ma lanczuk, 2002, Akehurst's, Modern Introudction to International Law, Routledge Taylor & Francis Group, London and New York, p. 75.

under that state. It also applies within the territories of non-state parties that acknowledge the jurisdiction of the International Criminal Court (ICC) through an ad hoc declaration. This framework aligns with Article 12 of the Rome Statute.

2. Material Jurisdiction (rationae materiae): The ICC's jurisdiction encompasses crimes categorized as crimes against humanity, genocide, war crimes, and crimes of aggression. This classification is detailed in Articles 5 through 8 of the Rome Statute.
3. Temporal Jurisdiction (rationae temporis): The ICC can only exercise its jurisdiction over crimes defined in the Statute that occurred after the Rome Statute came into effect on July 1, 2002. This stipulation is articulated in Article 11 of the Rome Statute.
4. Personal Jurisdiction (rationae personae): The ICC holds jurisdiction over natural persons, mandating that individuals responsible for crimes within its purview are held accountable. This includes government officials, military leaders, and civilian commanders. Such provisions are outlined in Article 25 of the Rome Statute.

In its development, an idea emerged for the UN to re-enter ecocide into the Rome Statute as the fifth crime. The introduction of the concept of ecocide in international environmental law began at the 1972 Stockholm Conference on Human Environment which was the beginning of the formation of the Stockholm Declaration then in 1978, the International Law

Commission (ILC) in the Draft articles on State Responsibility and International Crime included environmental destruction (damage to the environment) as one type of international crime, supported by the Holy See of the Vatican, Romania, Austria, Rwanda, Congo and Oman.

In 1987 the ILC in the Draft Code of Offences Against Security and Mankind, in the draft which was the forerunner of the Rome Statute, although it did not use the term ecocide explicitly the ILC stated the importance of preserving the environment for human survival and considered crimes against the environment as one type of serious international crime, equivalent to aggression, colonialism, apartheid and the use of weapons of mass destruction.[86]

Then in 1991, in the continued discussion of the Draft Code of Crimes Against the Peace and Security of Mankind, the ILC categorized 12 types of crimes, one of which was wilful and severe damage to the environment as a crime against the security and peace of mankind.[87] This concept of environmental crimes has the same conceptual building blocks as ecocide, but in both ILC drafts the responsibility for environmental damage is still delegated to the state and individuals.

Despite being considered a type of international crime by the ILC, in 1998 when the Rome Statute of the International Criminal Court (the first international court with jurisdiction to try international crimes and aimed at

[86] Yearbook of International Law Comission 1987 vol. I, para. 38
[87] *Ibid.,* para. 32

ending impunity) was drafted, ecocide was not included as a type of human rights violation that could be tried by the International Criminal Court. To date, there is no international treaty that specifically defines ecocide and the mechanisms of accountability for perpetrators. Until now, efforts to categorize ecocide as a human rights violation and become part of universal jurisdiction continue, for example by seeking to integrate ecocide into the Rome Statute and recognize it as the fifth type of crime that the International Criminal Court has jurisdiction to prosecute.[88]

4. International Legal Instrument on Ecocide

1. Stockholm Declaration

The global policy of environmental management was first established at the United Nations Conference on the Human Environment held in Stockholm from June 5-16, 1972, attended by 113 countries and several dozen observers. The Soviet Union and Eastern European countries had boycotted the conference in reaction to provisions that left some countries uninvited on an equal footing with other participants, including the German Democratic Republic.[89]

[88] Muhammad Ali Ausath, 2022, "Upaya Penerapan Ekosida sebagai Kejahatan Luar Biasa di Indonesia", Jurnal Hukum Lingkungan Tata Ruang dan agrarian, Vol. 2(1), p.123

[89] Husin, Sukanda. (2009). Penegakan Hukum Lingkungan Indonesia. Jakarta. Sinar Grafika. p 59

At the end of the session, on June 16, 1972, the Conference endorsed the following outcomes: [90]

a. Declaration on the Human Environment, consisting of a Preamble and 26 principles commonly referred to as the Stockholm Declaration;
b. the Action Plan on the Human Environment, consisting of 109 recommendations including 18 recommendations on the Planning and Management of Human Settlements;
c. recommendations on institutional and financial support for the implementation of the Action Plan, consisting of the Governing Council of the UN Environment Programme (UNEP); the Secretariat, headed by an Executive Director; the Environment Fund; and the Environment Coordinating Body.

At the UN General Assembly in 1972, all decisions of the Conference were ratified by UN General Assembly resolution No. 2997 (XXVII) on December 15, 1972. With this Stockholm Declaration, the development of Environmental Law has gained a strong impetus, both at the national, regional and international levels.

Not the least advantage is the growing unity of understanding and language among legal experts by using the Stockholm Declaration as a

[90] Rahmadi, Takdir. (2018). Hukum Lingkungan Hidup di Indonesia. Depok. PT RajaGrafindo Persada, p 19

common reference. Although the outcome of the Stockholm Declaration is not directly binding because it is soft law (different from the Convention whose outcome is directly binding because it is hard law), the influence of the Stockholm Declaration is as many as 26 principles.

2. Rio Declaration

In 1983, the UNGA (United Nations General Assembly) voted to create an independent body concerned with environment and development but outside the UN system, this body became known as the Brundtland Commission. The Commission's mandate was to examine critical environment and development issues, formulate realistic proposals to address them, and propose new forms of international cooperation to deal with these issues that could ultimately influence policy leading to needed changes.

The Commission bore the noble responsibility of cultivating awareness and galvanizing action among individuals, organizations, enterprises, and governments alike. The insights gleaned from the Brundtland Report accentuated the imperative for a cohesive approach to environmentally sustainable development policies and initiatives, which ought to pave the way for enduring economic growth in both the affluent and developing realms. In the wake of this, the Brundtland Report, in concert with the United Nations Conference on Environment and Development (UNCED),

orchestrated the second grand global gathering on environmental matters in the year 1992, gracing the vibrant city of Rio de Janeiro, Brazil.

There are nine issues of primary concern:

a) protection of the atmosphere;

b) protection of fresh water sources

c) protection of the marine environment

d) protection of land resources;

e) conservation of biodiversity;

f) environmentally sound biotechnology management;

g) environmentally friendly waste management

h) improvement of living and working environment; and

i) protection of human health and improvement of quality of life.

The conference saw the participation of delegates from 172 nations, including 116 heads of state and government officials. Its primary aim was to unveil the Earth Charter, a document that extended the principles established in the Stockholm Declaration. Rather than merely codifying existing norms, it sought to establish benchmarks rooted in exemplary practices that would later shape environmental law and policy. The outcome of the conference was a declaration of principles, representing a delicate balance between developing countries, which sought mere political commitments, and industrialized nations, particularly the member states of

the Organization for Economic Cooperation and Development (OECD), which prioritized the establishment of legal standards.[91]

3. Kyoto Protocol

The Kyoto Protocol was officially ratified in the historic city of Kyoto, Japan, on December 11, 1997, and took effect on February 16, 2005. In 2001, during COP 7 in Marrakesh, detailed regulations for its execution were established, known as the "Marrakesh Agreement." This Agreement obliges nations to pursue their emissions targets primarily through domestic strategies. However, the Kyoto Protocol also presents additional pathways for achieving these goals via three market-oriented mechanisms.

Under the Protocol's framework, nations are required to closely monitor their emissions and meticulously maintain records of any trading activities conducted. A registry system is in place to track and document these transactions among Parties participating in the mechanism. The UN Climate Change Secretariat, headquartered in Bonn, Germany, oversees an international log to verify that all transactions adhere to the established rules of the Protocol. Parties are obliged to report their progress by submitting annual inventories of emissions along with national reports at regular intervals. Furthermore, a compliance system is instituted to ensure

[91] G. Palmer „The Earth Summit: What Went Wrong at Rio? " (1992) 70 Washington University Law Quarterly 1005–28.

that Parties meet their obligations and to provide assistance if they encounter difficulties in fulfilling their commitments.

C. Lapindo Mudflow Case

1. History

Lapindo Brantas Inc. was first established in 1996 after its shareholding was taken over from the US-based Huffington Corporation (Huffco). In that era, Lapindo Brantas entered into a Production Sharing Contract (PSC) for the Brantas Block located in East Java, binding themselves for a duration of 30 years. This company, Lapindo Brantas Inc., is a notable entity in the realm of gas and oil exploration, formed through a joint venture comprising PT Energi Mega Persada Tbk. holding a 50 percent stake, PT Medco Energi Tbk. with 32 percent, and Santos Australia possessing the remaining 18 percent. The Bakrie family, through their investment, exercises control over PT Energi Mega Persada Tbk. Thus began Lapindo Brantas' foray into the oil and gas management sector within the Brantas Block, encompassing areas in Sidoarjo. When a hot mudflow occurred in May 2006 at the Banjarpanji well drilling site, Lapindo Brantas was deemed responsible. This assumption is inseparable from the debate about the cause of the mudflow itself.[92]

[92] Anis Farida, 2013, Jalan Panjang Penyelesaian Konflik Kasus Lumpur Lapindo, Jurnal Ilmu Sosial dan Ilmu Politik, Universitas Gadjah Mada, Vol 17, No 2, p 151.

The Lapindo Mud Tragedy began on May 29, 2006 when the flood of hot mud began to inundate rice fields, residential areas and industrial areas. This situation was quite understandable, considering that the estimated volume of mud gushing forth ranged from 5,000 to 50,000 cubic meters daily, an amount equivalent to the entire cargo capacity of 690 large container trucks. As a result, the mudflow has had a tremendous impact on the surrounding communities as well as on economic activity in East Java:[93]

1) *Inundation up to 6 meters high in residential areas*
2) *The total number of evacuated residents is more than 8,200.*
3) *Damaged houses/residences totaling 1,683 units.*
4) *Agricultural and plantation areas damaged to more than 200 ha*
5) *More than 15 flooded factories stopped production activities and laid off more than 1,873 people*
6) *Non-functioning of educational facilities*
7) *Environmental damage to inundated areas*
8) *Damage to infrastructure facilities and infrastructure (electricity and telephone networks)*
9) *The obstruction of the Malang Surabaya toll road, which also affected production activities in the Ngoro (Mojokerto) and Pasuruan areas, which have been one of the main industrial areas in East Java.*

Besides the environmental damage and health problems, the social impact of the mud floods cannot be underestimated. After more than 100 days of no improvement in conditions, including government concern, disruption to education and income sources, uncertainty of settlement, and psychological distress, a social crisis began to emerge. Societal conflict began to emerge over the cost of compensation, conspiracy theories of

[93]Elmaghfira Putri Elika , Risna Resnawaty, Arie Surya Gutama, 2017*, Bencana Sosial Kasus Lumpur Pt. Lapindo Brantas Sidoarjo Jawa Timur,* Jurnal Penelitian & PKM, Vol 4, No: 2, p. 129-389.

bribery by Lapindo, fighting over trucks carrying the soil, and rejection of the mud disposal site after the failure of the first (snubbing unit) and second (relief well). As a result, there are vertical and horizontal conflicts within the community.[94]

2. Case Settlement

Until today, the controversy over the cause of the mudflow still continues. East Java Police even named 13 suspects related to the mudflow, namely from PT Energi Mega Persada Tbk, PT Medici Citra Nusa, PT Tiga Musim Mas Jaya, and Lapindo Brantas. However, the investigation of the case was stopped because the civil case sued by the Indonesian Legal Aid Foundation (YLBHI) and Wahana Lingkungan Hidup (Walhi) failed. In the controversy, two arguments were raised as the cause of the mudflow. First, the mudflow was a natural disaster affected by the 5.9 Richter Scale earthquake that occurred in Yogyakarta on May 26, 2006. Second, the mudflow was caused by Lapindo Brantas exploration of gas drilling in the Sidoarjo district. This opinion was most prominent at an international conference held in South Africa, October 26-29, 2008. The conference, attended by geologists from around the world, produced four conclusions: three geologists supported the Yogyakarta earthquake as the cause of the mudflow; 42 experts stated that Lapindo's drilling was the cause of the mudflow; 13 experts cited a combination of the Yogyakarta

[94] *Ibid,.*

earthquake and drilling; 16 other experts said they could not have an opinion.[95]

The Lapindo Brantas mudflow disaster in Porong Sidoarjo is a picture of poorly controlled exploitation of natural resources with widespread impacts. Lapindo Brantas' parent company has paid 20% of the compensation, but the company still owes 80% of the compensation or four times the amount paid to residents. The government's involvement in the settlement of the Lapindo Mudflow is in the form of policies consisting of presidential decrees. The government issued Presidential Decree No. 13 of 2006 and Presidential Decree No. 14 of 2007 concerning the National Team for Mudflow Management in Sidoarjo.

In other words, the government has been involved in taking some legal responsibility, without reducing the responsibility of PT Lapindo Brantas in providing compensation. In this case PT Lapindo provides a solution method such as "buying and selling" the land of Lapindo victims, which is of the "property right" type, but this is contrary to Article 21 of Law No. 5 of 1960 on basic agrarian law (UUPA). Corporations such as PT Lapindo Brantas are not listed as legal subjects of ownership rights to land, so the "sale and purchase" of the victim's land with PT Lapindo Brantas would violate the UUPA, and as contained in Article 33 of Law No. 22 of 2001 concerning Oil and Gas that oil and gas business activities cannot be

[95] Nilma Suryani, 2016, Penegakan Hukum Pidana Lumpur Lapindo Masih Jauh Dari Harapan, Bina Hukum Lingkungan,Vol 1, No: 1, p 79

carried out in areas near homes (residences), factory areas, near public buildings. Meanwhile, the location of the Banjar Panji 1 well is 500 meters from residential areas. based on Article 116 of Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) that criminal sanctions can be imposed on business entities.

In the realm of criminal law pertaining to business entities, sanctions may manifest as fines or administrative measures, including the potential for partial or complete closure of the company. However, imprisonment is not applicable, as management constitutes a collective of individuals. The enforcement of criminal law against environmental offenders seeks to fulfill its punitive purpose: to deter the perpetrator from repeating their misconduct and to prevent others from emulating such behavior.[96]

3. National Commission of Human Rights Verdict on the Case

In August 2012, the National Commission on Human Rights concluded that the Lapindo Mudflow disaster did not constitute a gross violation of human rights. This decision stemmed from a vote among the commission's 11 members, where 5 deemed the incident a gross violation while 6 disagreed. The commission categorized the Lapindo Mudflow as an act of environmental destruction or ecocide, recognizing its significant and far-reaching effects on human life. However, they refrained from labeling it

[96] Dhesta, Ulfah, Dyah, 2021, Strategi Dalam Penanganan Kasus Lumpur Lapindo Pada Masyarakat Terdampak Lumpur Lapindo Porong-Sidoarjo Jawa Timur, Universitas Gadjah Mada, Jurnal MODERAT, Vol 7, No: 3, p 578-579.

as a gross human rights violation due to the stipulations of Law No. 26 of 2000 regarding Human Rights Courts, which restricts gross violations to crimes against humanity and genocide. Consequently, despite the numerous human rights infringements present in this case, the commission asserted that it could not be classified under these terms. Moreover, they acknowledged that the incident should not be regarded as a natural disaster. As part of their recommendations, the commission proposed the inclusion of an ecocide clause in the draft amendment of Law No. 26 of 2000. They also recognized the challenges in categorizing the Lapindo mud case as a gross human rights violation, emphasizing that the jurisprudence surrounding such violations traditionally pertains to state actions rather than corporate conduct.[97]

D. Chernobyl Case

1. History

Nuclear energy was seen as a very important second military power weapon for the Soviet government, especially during the cold war. Construction of the Chernobyl Nuclear Power Plant began in the early 1970s as part of the Soviet Union's ambitious nuclear energy development plan. The project included four reactors of the type RBMK 1000 (Reactor Bolshoi Moshnosti Kanalye) or high-power boiling water reactors, also

[97] Bosman Batubara, 2013, Pelanggaran HAM Berat Kasus Lumpur Lapindo, avalaible at:https://indoprogress.com/2013/03/pelanggaran-ham-berat-kasus-lumpur-lapindo/, accessed on November 16th 2023, on 01:42

known as High Power Pressure Tube Reactors designed to produce electricity and plutonium for military purposes.

The catastrophic incident that unfolded on April 26, 1986, at Unit 4 of the Chernobyl nuclear power plant, situated within the bounds of the former Union of Soviet Socialist Republics (USSR) near the borders of Belarus, the Russian Federation, and Ukraine, was deemed, at that time, "the most catastrophic accident in the annals of nuclear power." This calamitous event, coupled with the ensuing conflagration, unleashed vast quantities of radioactive substances into the surrounding environment, leaving a profound and lasting impact on the region and beyond.

In the fateful hours leading up to the disaster, Chernobyl workers deliberately reduced the power at Reactor No. 4 in anticipation of a safety test slated for that very night. This ill-fated test aimed to ascertain whether the reactor’s turbines could sustain the emergency water cooling pumps during a power outage. Ironically, what was intended as a precautionary measure proved to be perilously unsafe, as a confluence of human error and inadequate reactor design culminated in a partial meltdown of the reactor core. The ill-fated experiment was both poorly conceived and executed. An inexperienced night shift crew undertook the safety test, lamenting that they had not received comprehensive instructions from their day shift predecessors on how to execute it properly. Compounding the crisis, the emergency core cooling system for Reactor 4 was deactivated, along with the emergency shutdown mechanism. The reactor's power level

descended to a dangerously unstable state, prompting engineers to remove most of the control rods and contravene established safety protocols. Although power began to surge once more, the situation remained perilously out of control.[98]

In the aftermath of the catastrophic accident, authorities promptly sealed off a 30-kilometre (18-mile) radius around the power plant, granting access solely to individuals with official duties related to the facility, as well as those tasked with assessing and managing the disaster's repercussions and operating the unaffected reactors. In 1986, the Russian government undertook the massive evacuation of approximately 115,000 individuals from the most heavily contaminated regions, followed by an additional 220,000 evacuations in the subsequent years.

In a short period of time, exposure to very high levels of radiation can cause symptoms such as nausea and vomiting within hours and sometimes lead to death over the next few days or weeks. Acute radiation syndrome, or "radiation sickness," is the name given to this condition.[99] Another impact of the Chernobyl event was that radioactive dust was felt in the countries of Belarus, Russia and Ukraine, eventually reaching western Italy and France due to wind gusts. Despite the evacuation of thousands of people, hundreds

[98]Sky History, https://www.history.co.uk/articles/the-story-of-chernobyl-the-worst-nuclear-disaster-inhistory, accessed on November 20th, 2023 on 13:05

[99] CNN Indonesia, “Bahaya Radioaktif Chernobyl Bagi Manusia: Kanker Hingga Kematian”, 2022, https://www.cnnindonesia.com/teknologi/20220411203021-199-783454/bahaya-radioaktif-chernobyl-bagimanusia-kanker-hinggakematian, Accessed on November 20th 2023 on 13:05

of thousands of hectares of farmland and millions of acres of forest remained in the contaminated area but many farm animals were born deformed in the following years.[100]

2. Environment Consequences of Chernobyl

In this case, the Chernobyl accident is an example of a Nuclear Meltdown, and not only Ukraine experienced the adverse effects of nuclear radiation, but also other countries that are geographically close to Ukraine, including Belarus and Russia. The three categories of population exposed to radiation due to the Chernobyl accident are:[101]

a. The valiant emergency workers and liquidators, those noble souls engaged in the arduous recovery operations at the Chernobyl reactor, toiled within the exclusion zone in the wake of the calamitous event;
b. The displaced inhabitants, compelled to forsake their homes, were evacuated from the tainted lands, their lives irrevocably altered by the encroaching shadows of contamination; and
c. Those unfortunate individuals who continued to dwell within the besmirched precincts, their fates entwined with the lingering specters of peril, yet remained untouched by the harrowing call of evacuation.

The Soviet Union acknowledged its moral culpability for the catastrophic incident at Chernobyl; however, it steadfastly denied any legal liability for the disaster. Meanwhile, foreign nations did not exert sufficient pressure on the Soviet government to secure reparations. Despite the conclusions of an internal inquiry stating that "the primary cause of the

[100] Kompas.com, “Bencana Nuklir Chernobyl: Sejarah, Dampak dan Korbannya”, https://internasional.kompas.com/read/2021/10/19/165326670/bencana-nuklir-chernobyl-sejarah-dampakdan-korbannya., accessed at November 20th 2023 on 16:25

[101] Zubaidah Alatas, 2006, Konsekuensi Kecelakaan Reaktor Chernobyl Terhadap Kesehatan Dan Lingkungan, Buletin Alara, Vol: 7 No: 3, p 80

accident stemmed from an exceedingly unlikely confluence of operational breaches and infractions perpetrated by the personnel of the reactor unit," the USSR refrained from dispensing any form of compensation to the afflicted nations.[102]

Following the disbandment of the Soviet Union, Ukraine found itself burdened with the Chernobyl enigma. Rather than shuttering the ominous facility, the government opted to maintain its operations, endeavoring to prop up the languishing state-owned enterprises. However, in a moment of reluctant resolve, December of 1995 witnessed Ukraine's commitment to the eventual closure of Chernobyl by the turn of the millennium. This decision was not without its strings, for it was entwined with a promise of US$3.1 billion in aid from Western nations, including those that.[103]

The global fraternity swiftly engaged in evaluations and tangible endeavors to mitigate the repercussions of the Chernobyl calamity. In August of the fateful year 1986, the International Atomic Energy Agency (IAEA) convened the inaugural review meeting in the aftermath of the disaster, marking the commencement of a concerted international response. If a nuclear accident is reported to the IAEA, the IAEA is obliged to inform member states and countries that may be affected by the nuclear

[102] Philippe Sands, 1988, Chernobyl Law and Communication: Transboundary Nuclear Air Pollution-The Legal Materials 4.

[103] Devereaux F. Mcclatchey, 1996, Chernobyl and Sandoz One Decade Later: The Evolution of State Responsibility for International Disasters, 1986-1996, 25 Ga. J. Int'l & Comp. L. 659, 661.

accident. This is intended to minimize radiological risks in countries that are potentially affected by the accident as soon as possible.

In the aftermath of the Chernobyl calamity, the IAEA embarked upon a noble collaboration with various esteemed organizations of the United Nations, uniting under the illustrious banner of the "International Chernobyl Project." This initiative sought to meticulously gauge the radiological repercussions of the disaster while assessing measures for the safeguarding of humanity. Swiftly following the tragic incident, the IAEA formulated two significant conventions, which garnered the assent of its Member States, the Convention on Early Notification of a Nuclear Accident and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency. These hallowed texts established a far-reaching international framework, enabling timely notifications in emergencies, facilitating the exchange of critical information, and providing assistance upon request. Thus, the IAEA was designated as the preeminent center of coordination, tasked with the orchestration of these vital efforts in the service of global safety and security.[104]

E. Indonesia Legal Instrument

As a sovereign state, Indonesia has regulations governing human rights violations and environmental destruction. Starting from the

[104] International Atomic Energy Agency, https://www.iaea.org/topics/chornobyl, accessed at November 20th, 2023 on 21:06

constitution that contains the basic norms in Indonesia, to the regulations that regulate in detail.

1. Constitution of the Republic of Indonesia of 1945.

The 1945 Constitution of the Republic of Indonesia is the constitution of Indonesia. The constitution is not a regulation made by the government, but is a regulation made by the people to govern the government, and the government itself without a constitution is the same as power without authority.[105]

The form of the 1945 Constitution in Indonesia is the norms that are born from society and then made into basic law in Indonesia. The position of the 1945 Constitution as a written basic law for Indonesia. As is known, usually a constitution or basic law of a country only regulates general and abstract matters related to the joints of the life of the nation and state. In other words, the constitution of a country only contains matters that are fundamental to a country. The further and detailed rules of a number of provisions in the constitution are usually set out in derivative regulations, such as laws and other regulations.[106] In this case the 1945 Constitution contains the rights possessed by humans, starting from article 28A to article 28J.

[105] Jimly Asshiddiqie, 2006, Pengantar Ilmu Hukum Tata Negara, Sekretariat Kendral dan Kepaniteraan Mahkamah Konstitusi RI, p.200

[106] Janpatar Simamora, 2015, Mengkaji Substansi Uud Nri Tahun 1945 Dalam Hakikatnya Sebagai Hukum Dasar Tertulis (Analyzing Substance of The 1945 Constitution Of The Republic Of Indonesia As A Written Fundamental Norm), Fakultas Hukum Universitas HKBP Nommensen, Medan, p. 4

The status of the 1945 Constitution as the foundational legal document of Indonesia is further substantiated by the prevailing hierarchy of laws and regulations. As articulated in Article 7, paragraph (1) of Law Number 12/2011 regarding the Establishment of Laws and Regulations, it is expressly declared that the Constitution occupies the apex of the legal hierarchy within the Indonesian legal framework. This reinforces its primacy and essential role as the cornerstone upon which all subsequent laws and regulations are built.[107] Given that the 1945 Constitution stands as the supreme legal authority, all subsequent laws must align with the principles and norms enshrined within it. This foundational requirement ensures that no legislation may contradict or undermine the values established by the Constitution, thereby maintaining the integrity of the legal framework and upholding the rule of law within the nation.

2. Law Number 39 of 1999 concerning Human Right.

The definition of human rights is written in article 1 paragraph (1) of law number 39 of 1999:

> "Human Rights are a set of rights inherent in the nature and existence of human beings as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for the sake of honour and protection of human dignity."

Law No. 39/1999 concerning Human Rights, which was enacted on September 23, 1999, is regarded as a significant regulatory framework

[107] *Ibid*, p. 13

implementing MPR Decree No. XVII/MPR/1998 on Human Rights. This relationship is evidenced by one of its legal foundations, which explicitly references the decree, thereby establishing a clear connection between the two and reinforcing the commitment to uphold and protect human rights as articulated by the People's Consultative Assembly. When Law No. 39/1999 was being discussed, there were several opinions that fell into two broad categories, namely the opinion that basically provisions on human rights were scattered in various laws, and therefore there was no need for a special law on human rights. Another perspective suggests that the enactment of a dedicated law on human rights is essential, given that the MPR Decree lacks practical applicability and that various existing statutes inadequately encompass the breadth of human rights issues. Human rights are thus classified into several fundamental categories: the right to life, the right to family and progeny, the right to personal development, the right to justice, the right to individual liberty, the right to security, the right to welfare, the right to engage in governance, alongside the rights specifically pertaining to women and children.[108]

The definition of human rights violations is also written in article 1 paragraph (6) of law number 39 of 1999:

> "Human rights violation is any act of a person or group of people including state apparatus either intentionally or unintentionally or negligently that unlawfully reduces, obstructs, limits, and or revokes

[108] T. Haryanto, Suhardjana, A. Komari, Fauzan, Kusuma, 2008, Pengaturan Tentang Hak Asasi Manusia Berdasarkan Undang-Undang Dasar 1945 Sebelum Dan Setelah Amandemen, Fakultas Hukum Universitas Jenderal Soedirman, Purwokerto, Vol.8, No:2, p.142.

the human rights of a person or group of people guaranteed by this Law, and does not get, or is feared will not get a fair and correct legal settlement, based on the applicable legal mechanism."

The formulation of Law No. 39/1999 was inspired by the UN Convention on the Elimination of All Forms of Discrimination Against Women, the UN Convention on the Rights of the Child, and an array of other international legal instruments that delineate human rights. While not overtly classified, the essence of human rights enshrined within this law encompasses a broad spectrum, fundamentally addressing civil, political, economic, social, and cultural dimensions.[109]

3. Law Number 26 of 2000 Concerning Human Right Court.

Indonesia adheres to a constitutional system, so that human rights issues become very important, because the essence of constitutionalism itself is basically divided into two, namely, the protection of human rights and the division of state power with a system of checks and balances, so that the government can provide protection for human rights.[110] Among the government's endeavors to safeguard human rights was the promulgation of Law No. 39 on Human Rights on September 23, 1999, followed by Law No. 26/2000 on Human Rights Courts on November 23, 2000. The term

[109] T. Haryanto, Suhardjana, A. Komari, Fauzan, Kusuma, 2008, Pengaturan Tentang Hak Asasi Manusia Berdasarkan Undang-Undang Dasar 1945 Sebelum Dan Setelah Amandemen, Fakultas Hukum Universitas Jenderal Soedirman, Purwokerto, Vol.8, No:2, p.143.

[110] A.Yulia Yunara, 2019, Efektivitas Undang-Undang Nomor 26 Tahun 2000 Tentang Pengadilan Hak Asasi Manusia Dalam Penuntasan Pelanggaran Hak Asasi Manusia (HAM) di Indonesia (StudiPengadilan HAM Makassar), Jurnal Al-Dustur, Vol:2, No:2, p.2

"Human Rights Court" refers to a specialized tribunal operating under the auspices of the General Court, designated to adjudicate grave offenses. Hence, it is evident that the Human Rights Court functions as a division within the General Court, solely entrusted with the examination and resolution of cases pertaining to egregious violations of human rights. Article 7 of Law No. 26/2000 explains that gross human rights violations consist of:[111]

1. Crimes of genocide
2. Crimes against humanity

Along with cases against the environment, as a recommendation National Commission of Human Rights included an ecocide clause in the draft amendment to Law Number 26 of 2000. Although National Commission of Human Rights decision was very disappointing, this institution has laid a trail to voice ecocide as a crime to be followed up legally. As a state institution, National Commission of Human Rights plenary decision recognizing the Lapindo Mud tragedy as an ecocide crime means that ecocide as a crime is closely related to human rights violations. This determination arises from the conclusions drawn from an investigation, meticulously carried out in harmony with the extant laws and statutes that govern the realm of Indonesia.[112]

[111] Anwar Hafidzi, 2015, Dampak Dari Penetapan Uu Nomor 26 Tahun 2000 Terhadap Kejahatan Kemanusiaan Dan Genosida di Indonesia, SYARIAH Jurnal Ilmu Hukum, Vol: 15, No:2, p.111.

[112] M.Ridha Saleh, 2020, *Ecocide Melawan Pelanggaran Berat HAM di Indonesia*, Jakarta Timur: Rayyana Komunikasindo, p.110-111

4. Law Number 32 of 2009 concerning Protection and Management of The Environment.

Environmental Law constitutes a body of legislation crafted to safeguard and steward the natural world, ensuring its sustainability and well-being. The primary objective of such laws lies in preserving an equilibrium between the pursuits of economic advancement and the imperatives of ecological conservation. Each country has its own environmental laws that reflect the conditions, needs and values of the local community. In Indonesia, this is regulated in Law Number 32 of 2009. Article 1 paragraph (1) of Law Number 32 of 2009 states the definition of the environment:

> "The environment is the unity of space with all objects, forces, conditions, and living things, including humans and their behaviour, which affect nature itself, the continuity of life, and the welfare of humans and other living things."

This law also provides a definition of environmental destruction. According to Article 1 Paragraph (16) of Law 32 of 2009 states the definition of environmental destruction:

> "Environmental destruction is the action of a person that causes direct or indirect changes to the physical, chemical, and/or biological properties of the environment so that it exceeds the standard criteria for environmental damage."

Absolute liability is a principle in environmental dispute resolution, particularly disputes over environmental pollution and destruction. This principle is contained in Article 88 of Law No. 32/2009 on Environmental Protection and Management:

> “Every person whose actions, business, and/or activities use (B3), produce and/or manage (B3) waste, and/or pose a serious threat to the environment is absolutely responsible for the losses incurred without the need to prove the element of fault.”

However, the amendment in Law Number 11 of 2020 on Job Creation has eliminated the clause "without the need to prove the element of guilt" which favors victims by implying that every environmental crime case must be accompanied by strong evidence. The provisions of Article 88 in Law Number 11 of 2020 concerning Job Creation become:

> "Every person whose actions, business, and/or activities use (B3), produce and/or manage (B3) waste, and/or pose a serious threat to the environment is absolutely responsible for the losses incurred from their business and/or activities."