

Maqasid As-Sharia *Hifz Al-Bi'ah* in Responding to the Policy of the Cement Factory In Pati

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Abstract

This article discusses the policy on the plan to build a cement factory in Pati Regency which triggered a long conflict between PT Sahabat Mulia Saktin as the corporation, the Pati Regency Government, and the society around the Kendeng Mountains in Pati, which was analyzed interdisciplinary based on the approach of public policy reasoning and maqashid sharia hifzu al-bi' ah. The academic problem in this study is that, there are differences basic paradigms behind the actions of each of these parties. This research is a literature study with a qualitative-descriptive method. The data are taken from previous research publications, online news as well as trusted online sites. Meanwhile, in the analysis process the method of Miles and Huberman is use maximally. The results of the analysis process concluded that the genealogy of the public policy formulation process was carried out starting from the agenda setting (2010), legitimacy and formalization (2010 – 2011), implementation (2011 – 2014), and, policy evaluation (2015-present). By using maqashid sharia hifzu al-bi'ah reasoning, it is concluded objectively and neutrally that policies tend to lead to claims of mafsadah (badness). A recommendation worth considering is the initiation of the ijihad jama'i forum by presenting expert sources in various relevant fields, far from political interests and subjectivity, so that alternative benefits are formulated for the phenomenon of policy and conflict in cement factories.

Keyword: *Maqasid as-Sharia, Hifz al-Bi'ah, Construction of a Cement Factory*

Introduction

This study aims to discuss the phenomenon of social conflict between corporations and the grassroots community behind the plan to build a cement factory in the Kendeng Mountains, Pati Regency, which has been heating up since 2006 (Solihin & Kurnia, 2017). The plan has become the official policy of the Pati Regency Government along with the issuance of the Pati Regent's Decree No. 660.1/4767/2014 concerning limestone mining permits and the establishment of cement factories for corporations. This decree was issued based on the Environmental Feasibility Decree (SKKL) No. 660.1/4766 Yr. 2014 following recommendation No. 660.1/012/XII/Amdal/2014 (Suharko, 2017).

Even though, it has become an official policy that has legal force, the plan actually invites a conflict of interest between PT. Semen Gresik (which later changed to PT. Semen Indonesia) and PT. SMS (Sahabat Mulya Sakti), dealing with the grass root community which is a combination of forces from the residents around the Kendeng Mountains, the Samin community, JMPPK (Network for Community Care for the Kendeng Mountains) supported by dozens of NGOs such as SHEEP Indonesia, the Indonesian Farmers Union (SPP), and Walhi (Suharko, 2013).

The tug-of-war between the corporations and the society, which also included the Pati Government and Central Java Government, forced the Central Government of Indonesia to intervene, took place dynamically and led to heroic actions from activists. Not only latent, conflict has become a manifest entry into hot forums for court proceedings starting from the Semarang District Court, the Surabaya District Court, to the Supreme Court. Legal decisions have not been able to resolve this conflict at the meeting point of agreement. The dynamics of the conflict then gave rise to social advocacy movements and community demonstrations which have received enough attention from many groups (Suharko, 2017).

These heroic actions reached their climax with the death of Patmi, one of the women participants in the cement foot action in front of the Indonesian state palace in mid-March 2017 (Pratama, 2017). After the incident, the president answered the people's complaints and instructed the Ministry of Energy and Mineral Resources to conduct an analysis of the KLHS (Strategic Environmental Study) study which instructed that there be a review of the permit for the construction project of a cement factory in the Kendeng Mountains from the Pati Regency Government. Until now, there has been no final decision on this conflict and the tug of war of interest is still happening (Persada, 2019).

In the brief description above, it appears that there are academic problems in the form of differences in thinking paradigms which are the basis of the stubborn action taken by each parties. The corporation, which is a profit institution, tries in all kinds of ways to increase economic profits which in the history of the world, has always dealt with the exploitation of the environment. District governments, which in this case support the interests of corporations, still use a top-down development paradigm that considers investment in economic development as the main element in development, especially for third world countries (Budiman, 1996).

Meanwhile, the grassroots society, who has received support from various environmental activist NGOs, in the history of social theories have always occupied a marginalized position, having a paradigm to protect ecosystems. If this paradigm difference continues, forever the conflicts will continue without a meeting point. All legal steps, various protests will continue to widen the polarization and create debate among the coachmen, because both of them depart from differences, not the principle of unity of purpose.

Borrowing the perspective of public policy theory explains that in the process of making public policy, there is always a mutually influencing relationship between policy actors, the policy environment and public policy products. The discourse of public policy theory, which places the government as the main actor or actor, must not ignore the conditions of the policy environment in which there are elements of political culture and socio-economic culture. The society and the environment where the policy locus will apply, tend to have their own paradigm that is autonomous from government influence. Therefore, in turn, a public policy discourse will get one of two responses, namely if it is supported if it is in line with the interests and culture of the community (incentives). On the other hand, it is rejected if it is contradictory (dis-incentive) (Taufiqurakhman, 2014).

Meanwhile, in the discourse of Islamic legal thought, there is a popular rule that *"tasharruf al-imam 'ala ra'iyah manutun bi al-maslahah"* a leader's policy towards the people must be based on and lead to public benefit (As Suyuti, 2010). In this case, the benefit in question is not the benefit that favors the interests of a particular person or group. Rather, objective benefits are measured based on maqashid sharia indicators. Departing from here, as a material for philosophical considerations and conflict resolution in the process of formulating *maslahah* claims against the public policy of a cement factory construction plan in the Kendeng Mountains, the author presents the concept of maqasid sharia *hifz al-bi'ah*.

Yusuf Qardawi explained that preserving ecosystems (*hifz al-bi'ah*), is part of human responsibility as *khalifatullah fil ardh*. He categorizes the task as a *daruriyyat* (primary) principle that is in harmony and intertwined with *al-daruriyyat al-khams* which was initiated by Al-Ghazali, which includes safeguarding faith (*ad-diin*), life (*an-nafs*), intellect (*al-aql*), posterity (*an-nasl*) and wealth (*al-maal*). The argument from this principle is based on the importance of the ecosystem element (*al-bi'ah*)

which is directly or indirectly for the maintenance of the five indicators of maqasid sharia. By maintaining the ecosystem automatically also helps maintain the sustainability of the five elements (Al-Qardawi, 2001). Meanwhile, as an operational framework, Abdul Majid Najjar sparked 4 features that can be used as a basic analysis to public policy evaluation ; Hifz Al-Bi'ah min at-talaf (guarding from damage), Hifz Al-Bi'ah min at-talawwus (guarding from pollution), Hifz Al-Bi'ah min farth al-istihlak (guarding from excessive exploitation), Hifz Al-Bi'ah bil at-tanmiyyah (guarding by developing) (Najjar, 2008).

Basically, scientific research that highlights the phenomenon of cement factories in Pati Regency has been widely carried out. The results of the search that can be carried out show that on average the researchers who choose to discuss this issue, are not far from academic circles who come from campuses in Semarang, Yogyakarta, and Surakarta. Even if there were others, only a few could be found. Suharko, an academic from UGM, for example, published two articles from field research that traced the history of the conflict in the cement factory. The first article describes the dynamics of the conflict from its inception until 2012 (Suharko, 2013). The second article which is a continuation, talks about conflicts that have occurred since 2013 - 2016 (Suharko, 2017). Solihin and Kurnia, who are also UGM academics, analyzing the dynamics of the cement factory conflict with a content analysis research model on the online media framing of *kompas.com* and *suaramerdeka.com* (Solihin & Kurnia, 2017).

Then, some of the results of further research that can be found, can be said to be indicated as "supporting" the interests of the grassroots society. The focus of their research on the uniqueness of the indigenous people of the Samin, Sedulur Sikep, strengthens this hypothesis. For example, Mojo's dissertation is an academic from Semarang who describe Sedulur Sikep's environmental wisdom as a catalyst for rejecting the cement factory plan (MOJO, 2017). Buana, a graduate student from the Muhammadiyah University of Surakarta, also did the same thing (Buana, 2012). In addition, Aziz as an academician from Pati, also shows the same indication by examining the similarities of the pre-colonial and post-colonial Samin communities in the frame of the protest movement against corporate repression (Aziz, 2012).

Although this phenomenon has been widely discussed by some academicians in Indonesia. However, as far as the author searches from various existing studies, it

tends to only map the genealogy and dynamics of the conflict in a descriptive-narrative way, and some are indicated to be "tendency" in defending the grassroots society from using approaches, as well as social-humanities theory. Therefore, the research conducted by this author has its own uniqueness and novelty because it uses the maqasid sharia approach which is in the discourse of Islamic studies, still gets a lot of responses, criticisms, developments, especially those dealing with the concentration of developing Islamic law and interdisciplinary Islamic studies.

Furthermore, the concept of public policy reasoning that greets with maqasid sharia reasoning will in turn give birth to a holistic discourse. This can happen because there is an integration between the reasoning of public policy which tends to be rational, positivistic, empirical, or if borrowing Al-Jabiri's thought is included in the domain of burhani epistemology. As for maqasid studies, it tends to use the epistemology of bayani which emphasizes the inevitability of the authority of Islamic texts as a basis in measuring claims of *maslahah* (goodness) and *mafsadah* (badness) (Al Jabiri, 2015).

To further analyze the phenomenon of the cement factory in Pati, two approaches with interdisciplinary nuances are presented in this study. The public policy approach was chosen as a tool in mapping the genealogy of the policy formulation process. Meanwhile, *maqashid sharia hifz al-biah* approach is presented as a tool to analyze the philosophical basis for determining *maslahah-mafsadah* claims in the norms of maqasid sharia thought.

Regarding the study of public policy, Thomas R. Dye's thoughts act like a "handbook" or one of the primary literature for those interested in the study. According to Dye, the meaning of public policy means the focus of the study on whatever the government chooses to do or not to do when facing certain public problems (Dye, 2013). In a quote uncovered by Taufiqurrahman, Dye explains that public policies taken by a government will be closely related to a set of values allocated to the community. The alignment of the values allocated by the Government with the values adopted by the culture of society as both the subject and the object of the policy, in turn will affect the acceptance or resistance to the formulated policy (Taufiqurakhman, 2014)

Then, in an effort to formulate a public policy, Taufiqurrahman cites the opinion of Ripley (1985) which describes the existence of a set of process stages;

1. Preparation of the Agenda in which there are 3 steps; (a) build a perception among stakeholders that there are serious problems and the need for a public policy as a solution. (b) define problem boundaries, (c) mobilize support by organizing certain community groups, political actors, and media publications.
2. Policy Formulation and Legitimacy, which contains identification of problems that are likely to occur, then plans for alternative solutions.
3. Policy implementation, which in the process requires the support of resources, the preparation of the implementing organizational structure, and the existence of a reward and punishment mechanism as the driving value of the system.
4. Policy evaluation, which contains an evaluation process of policy implementation, the resulting impact, and bringing up new policies as needed (Taufiqurakhman, 2014).

Meanwhile, maqasid sharia hifz al-bi'ah as a thought and approach in this study - borrowing Al-Jabiri's term "al-'aql al-mukawwan" (Al Jabiri, 2014), and "episteme" in Foucault's idea (Foucault, 1972) - has a basic principle as revealed by Yusuf Qardawi. According to him, maintaining and preserving ecosystems (hifz al-bi'ah) normatively in maqasid shariah thought, is classified as an element of *daruriyyat*, which means must be implemented as a "primary" command that is integrated with protection of all instruments of *al-daruriyyat al-khamsah* (faith, life, intellect, posterity, wealth) which was initiated by Al-Ghazali (Al Qardawi, 2001).

The argument built by Al-Qardawi in strengthening his thesis is based on its reasoning of mankind function in this world, which is different from the anthropocentrism paradigm in classical European philosophical thought, which defines humans as the center of the universe. This philosophy brought an impact on excessive exploitation of nature (Hubertus, 2018). According to Qardawi, mankind carry out 3 tasks and functions that are integrated with each other ; (1) as servants of Allah to worship Him (Az-Zariyat: 57), (2) as caliphs to replace Him in upholding justice and spreading the value of goodness in society (Al-Baqarah: 30 and Shaad: 26), (3) as 'amir in charge of managing and prospering the earth (Huud: 61) (Al Qardawi, 2001).

In addition to these basic principles, there are two principles of Islamic law (qawaid fiqh), initiated by As-Suyuti in her book *Al-Asybah Wa An-Nazair* which normatively serve as the basis philosophy for evaluating public policy.

1. Rejecting damage (mafsadah) in the norms of Islamic law, takes precedence over attracting benefits (maslahah).

2. The leader's policies, which are intended for the people, must be in harmony with the public benefit (which is neutral, objective, holistic) (As-Suyuti, 2010).

Furthermore, to avoid haphazard, tendentious, non-neutral, and subjective evaluation measures, in-depth analysis is needed, collecting credible data and using relevant evaluative indicators. Inspired by the premise revealed by Jasser Auda when he integrating the theory of systems philosophy and maqasid sharia theory, an analogy (rule) was born. Auda said that if a success of any systems is measured by the achievement of its goals. Thus, the success of Islamic law (substantially in this case is public policy) is measured based on the achievement of maqasid sharia indicators which can be identified later in a more contextual manner (Auda, 2007). Departing from here, 4 analysis features of maqasid sharia hifz al-bi'ah are sourced from AM Najjar thought, appears in this paper as the basis for policy evaluation.

Hifz Al-Bi'ah min At-Talaf (Keeping the ecosystem from Damage); Protection in this concept, is basically presented as an effort to avoid destructive actions that are oriented to wasting nature, and efforts to conserve or preserve certain ecosystem elements. The first attempt, based on the Koran Al-Baqarah: 205. The second effort, formulated based on the KORAN: Hud: 40 (Najjar, 2008).

Hifz Al-Bi'ah min at-Talawwus (Protecting Ecosystems from Pollution); Departing from the analysis of the content of the meaning of Koran Al-Mudatsir: 4, Hadith narrated by Bukhari about recommendations for maintaining body hygiene. Najjar provides a size limit that is used as a guide to assess whether or not an ecosystem entity is polluted, which is reviewed based on the fact that changes in existing elements, both in content and form. For example, if the water has been mixed with dust in excess. So, this has been categorized as pollution, because it can disrupt the continuity of life. Therefore, in Najjar's view, Islamic law gives great attention to the slightest act of pollution. Likewise, high appreciation is given to the perpetrators of preventing pollution even in a small scope such as maintaining body hygiene and sweeping the yard (Najjar, 2008).

Hifz Al-Bi'ah min Farth al-Istihlak (Protecting Ecosystems from Exploitation); Ecosystem protection at this point is assumed by Najjar by giving an analogy that in order to maintain the sustainability of the living system, every element of the ecosystem "destroys" each other in certain levels and limits. The destruction

functions to create a process of recycling energy and raw materials which then function as compound elements that are useful for maintaining the sustainability of compound elements in other ecosystems. Then, Najjar emphasized the prohibition of *israf* (excessive) based on the Koran Al-Syu'ara ': 149 - 152, and *tabzir* (making in vain) contained in the Koran Al-Isra : 26-27 which applies to the use of all elements of the ecosystem (Najjar, 2008).

Hifz Al-Bi'ah bi at-Tanmiyah (Maintaining Ecosystem with Development); The preservation of the fourth point ecosystem, according to Najjar, is related to natural elements that have the potential to be developed through the *tastmir* and *tanmiyyah* processes. For example, he gave an example in Islamic norms which glorify farmers who develop a land and care for rice plants, appeal to the shari'ah to do *ihya' mawat* (land clearing). Also, for those who do not own their own land, it is recommended to carry out *muzara'ah* transactions (Najjar, 2008), which is a transaction between land owners and farm workers who do not own land. The land owner – based on the agreement – allows the farm laborer to manage a certain part of the vacant land according to the agreement, while the plant seeds come from the land owner and the laborer is entitled to enjoy the results (Al-Ansari, 1986).

Research Methodology

This research is classified as a type of library research, which is carried out with a qualitative research paradigm. In order to meet the needs in the analysis process, relevant data is taken from online news accessed from digital media platforms and some previous research results that have been published in online journals, as well as other research results that can be justified scientifically. In line with what was initiated by Zed Mestika, these data are indeed classified as secondary data that are "ready to use" without the need to go directly to the field, such as primary data obtained from the observation process, as well as interviews (Zed, 2003). However, starting from Yasraf's thought which builds on the premise that the inevitability of the rapid development of information technology, has an impact on massive social changes in all lines of life, from an "offline" model that is limited by natural laws (space-time, biological, chemical, physical), to a "online" model (cyberspace) which tends to go beyond all boundaries (Piliang, 2013). Likewise, information that can be accessed through online platform media – especially in the form of online news and journal articles – with a selective access

and citation, can be used as verification and credible qualitative research data. Meanwhile, in the analysis process, we choose to use the Miles and Huberman analysis method, with 4 steps of analysis : (a) collecting data, (b) data reduction, (c) data display, (d) conclusion drawing / verification (Bungin, 2007).

Analysis and Discussion

Genealogy of the Policy in The Cement Factory Development Plan in Pati

The North Kendeng Mountains area which includes Pati, Grobogan, Blora and Rembang has been designated as a Karst area based on the Decree of the Minister of Energy and Mineral Resources No. 0398K/40/MEM/2005. In Pati Regency itself, this area includes Sukolilo, Tambakromo, and Kayen Districts. This decision means that the limestone or limestone content in this area tends to be high (Apriando, 2014). On the other hand, this region actually has abundant natural resources. Capable of absorbing water in the rainy season and storing water in the dry season. Therefore, residents in this area choose to focus on developing agricultural land in the form of rice fields, to horticultural crops such as palawija, bananas, mangoes, and so on. This natural potential has triggered corporations to target cement factory construction projects in the area which in the process resulted in conflict (Suharko, 2013).

The dynamics of the conflict in the cement factory development plan, started around 2006-2007 where PT Semen Gresik (changed its name to PT Semen Indonesia in 2012) started to disseminate information about the planned cement factory project in Sukolilo, Pati Regency (Solihin & Kurnia, 2017). The plan immediately received strong rejection from the Sedulur Sikep community or the Samin indigenous community who later built strength in the NGO network, the Kendeng Mountains Concerned Community Network (JMPPK). Not only carrying out oral protests, demonstrations, and prayer rituals, the Samin Community, which was pioneered by Gunarti and Gunretno, filed a lawsuit to the Semarang Administrative Court which was later won by Samin, and made the corporation withdraw the project plan and cancel its investment in Pati in 2009 (Karega, 2018).

In 2010 the efforts of the corporation to realize the cement factory construction project were launched again. This time, this effort was carried out by PT Sahabat Mulia Sakti (SMS), which is a subsidiary of PT Indocement Tunggal Prakasa. This corporation, invested 4-5 trillion to the Regency Government of Pati Regency which later resulted in moral and administrative support. However, it

didn't go smoothly. This plan was again met with resistance from JMPPK, who considered that the struggle to protect the Kendeng area was inevitable and non-negotiable. These facts open a new page of conflict that will continue (Suharko, 2013).

PT SMS, which learned from the previous failures of PT Semen Gresik, tried to make soft efforts and involve the elite of the society. The corporation invites the cooperation of the village political elite and some residents in socialization forums, comparative studies to the PT Indocement cement factory in Bogor, and various other incentives that seek to convince the community of the possibility and feasibility of a cement factory project. However, this effort is seen as a "*pologoro*" strategy or a reciprocal strategy effort so that the project can run smoothly. A covert effort that only includes the political elite and citizens who have kinship with them. Because of this, JMPPK's protests have emerged again through appeals, media communications, banners, pamphlets, and documentaries on the YouTube channel (Suharko, 2013).

The resistension movements of the society did not stop PT SMS from implementing the cement factory project. In May 2011, the corporation began to disseminate information on the preparation of an Environmental Impact Analysis ("*Amdal*" / EIA) as the main condition for allowing the project to run according to Law No. 32 of 2009 concerning Environmental Protection and Management. Until, in 2014 the new EIA document could be completed and its feasibility tested in a feasibility meeting forum held at the Pati Hotel on September 3, 2014. This document was finally declared valid and used as the basis for the feasibility of the project. The district government then made an Environmental Feasibility Decree (SKKL) No. 660.01/4766 of 2014 and Letter of recommendation number 660.01/012/XII/Amdal/2014 which later became the basis for the issuance of a cement factory environmental permit by the Regent in Pati Regent Decree Number: 660.01/4767/2014 which was made in December 2014 (Suharko, 2013).

After the Regent's Decree was issued, the conflict escalated. JMPPK claims that the *Amdal*/EIA document is just a formality to launch the project. JMPPK then collected the voices of the people's aspirations and the results of the poll were that 67% of the people around the Kendeng mountains rejected the *Amdal* document, 20% accepted and 13% did not vote. In the perspective of JMPPK which is based on

field research in collaboration with Acintyacunyata Speleological Club (ASC) Yogyakarta, there is a discrepancy in the data written in the Amdal regarding the condition of natural resources in the Kendeng mountains as a potential location for cement factory education. Based on their research, they found 30 caves, 110 springs and 9 ponds, while the company's Amdal only mentions 10 caves, 29 springs and 3 ponds (Apriando, 2014)

Based on these findings, the Pati Regent's Decree, which legitimizes the cement factory licensing, can be said to be contrary to the Act. No. 26/2007 on Spatial Planning, Government Regulation No.26/2008 on National Spatial Planning, Decree of the Minister of Energy and Mineral Resources No. 0398 K/40/MEM/2005 concerning Designation of the Sukolilo Karst Area and Minister of Environment Regulation No.16/2012 concerning Guidelines for Preparation of Environmental Documents and is contrary to general principles of good governance (Apriando, 2014).

Based on the results of a vote poll conducted by JMPPK which stated that the majority of the people of the Kendeng Mountains rejected the EIA results, a lawsuit against PT SMS and against the Pati Regent's Decree Number: 660.01/4767/2014 was submitted to the Semarang Administrative Court in 2015. While waiting for the trial process, hundreds of farmers mobilized by JMPPK carried out a 122 KM long march from Sukolilo Pati, passing through Kudus and Demak to the PTUN Semarang. In addition, an audience with Governor Ganjar Pranowo was also held. Thus, these actions have attracted the attention of media partners and the Indonesian public at large. Then, on November 17, 2015, the result of the trial was finally decided by the Semarang Administrative Court Judge who granted the residents' claim and canceled the Pati Regent's Decree. Based on that decision, the cement factory project by PT SMS again had to accept the stumbling block of failure and win the cultural strength of the society (JMPPK) (Firmani, 2014).

However, the results of this decision did not last long. The corporate party PT SMS filed an appeal against the decision of the Semarang Administrative Court trial to PTTN Surabaya on March 4, 2016. With various arguments that have been prepared, finally on July 1, 2016 the judges of PTTN Surabaya won the corporation which marked the re-enactment of the SK permit. The Regent of Pati to the corporation to carry out a cement factory project (Firmani, 2014).

On August 12th, 2015, the Governor of Central Java made mediation efforts between JMPPK and the Pati Regency Government, at the Pati Regency Hall. However, this forum did not produce a mutual agreement, both parties were still adamant about their respective paradigms which made this conflict still continue. Until at its peak, the JMPPK took an alternative step by holding a demonstration in front of the state palace in the hope of getting a direct response from the President. On April 12-14th 2016, a demonstration was held featuring 9 female farmers "Kartini Kendeng" whose legs were cemented.

This action produce the expected results with the acceptance of 17 representatives of the citizens for dialogue with the President at the State Palace. This dialogue eventually led to a decision that the President of the Republic of Indonesia would respond to this case, with the decision to accept/reject the results of PT SMS's Amdal analysis, which would later impact on the final decision whether to build a cement factory in Pati, based on the Strategic Environmental Assessment (KLHS) which will be conducted. Carried out by several ministries which in this case is chaired by the Ministry of Environment and Forestry (LHK). After this decision was taken, to date the KLHS has not yet been issued and these two conflicts have not yet found a final descision (Suharko, 2017).

Maqasid as-Sharia Hifz Al-Biah in Responding to the Policy of The Cement Factory Plan in Pati

Maintaining the ecosystem (al-bi'ah) within the norms of maqasid sharia by using the lens of Al-Qardawi's thought, is a " primary command/daruriyyat" that is intertwined with the process of protecting *ad-daruriyyat al-khamsah* in the form of faith, life, intellect, posterity, and wealth. Likewise, in the context of this study, maintaining the ecosystem in the Kendeng Pati Mountains is an "fardhu/wajib", especially for adult muslims who live around the location.

However, the implementation of the preservation process cannot be done haphazardly. In reality, this phenomenon is not only limited to the people around Kendeng Pati. However, it involves various parties and the friction of interests is unavoidable. Thus, creating a situation that are quite complex. Therefore, further analysis is needed of an objective, neutral, and holistic to the cement factory policy, which in turn produces normative claims in maqasid shariah concept in the form of *maslahah* (good) or *mafsadah* (bad).

As one of the evaluation bases in this qualitative research, the point of protecting ecosystems from damage refers to An-Najjar's thought that can be analyzed with two models of reasoning ; preventive action and ecosystem conservation action (Najjar, 2008). Regarding conservation action, normatively when referring to the Decree of the Minister of Energy and Mineral Resources No. 0398 K/40/MEM/2005, this effort has been implemented. The decision confirms that the Kendeng Mountains are included as a conserved karst area (Suharko, 2013). Normatively, preventive action have also been regulated in Law No. 32 Th. 2009 concerning Environmental Protection and Management. One of the substances of these law, is to require an environmental impact analysis process (EIA). The existence of this law, indirectly also shows that efforts to avoid pollution actions have been applied normatively.

In addition of that, implementation action have also been carried out by PT SMS and the Pati Regency Government. PT SMS has conducted an EIA research in collaboration with an EIA consulting company from Semarang since 2010 – 2014, which in the end became the basis for the issuance of the Pati Regent's Decree Number: 660.01/4767/2014 regarding project licensing (Suharko, 2017). However, the results of this EIA are considered "defective" and contain "data fraud" by the JMPPK. One of the highlights in the document is the difference in the findings of the description of Natural Resources in the Kendeng mountains as described in the previous sub-chapter (Apriando, 2014).

The difference of paradigm between the corporations, the Pati Regency Government, and the community in interpreting the preservation and utilization of the Kendeng ecosystem has triggered a vortex of prolonged conflict. For the corporation PT SMS as a business institution, this decision seems to be understood as a business opportunity by knowing the potential of karst as an abundant cement raw material. Likewise, the Pati Regency Government, which has complied with the guidelines and normative legal mechanisms and granted a project permit to PT SMS, tends to benefit by disbursing investment funds and mathematical projections in the future (Suharko, 2013). Meanwhile, referring to Aziz's research which says that the identity of the community around Kendeng (the Samin indigenous people) who hold heritage beliefs to maintain natural sustainability (Aziz, 2012), provides a logical

consequence for the emergence of protests and rejection of the plan to build a cement factory.

The interesting basic assumption comes from Najjar's thought at this point is that Islamic law is well aware that the act of "destroying" certain compounds in an ecosystem to be used as raw materials for recycling other compounds is a natural law necessity that cannot be denied. Normatively, Najjar explained that excessive exploitation is prohibited by Islamic law, which is referred to as "israf and tabzir". Unfortunately, Najjar did not explain in more detail the limitations of the "excessive" claim (Najjar, 2008). Therefore, it is relevant to present national cement demand data which is the basis for analyzing the phenomenon of the plan to establish a cement factory in Pati.

Eddy conducted a study on the potential of cement raw materials in Eastern Indonesia. He mapped the projected national cement demand which continued to grow since 1993 - 2007 (15 years) at 7.8%. In 2002 - 2007 the growth reached 11.2%. Through the calculation of the assumption that the Gross Domestic Product growth rate of 4% - 5% per defense, the projected demand for up to 10 years (in 2015) is estimated to reach 8% per year. In 2007, the volume of national cement consumption reached 42.2 million tons. Referring to the data, corporate parties, both state-owned and private, were mobilized to overcome concerns about the lack of supply of cement needs in order to launch development projects, both official and private, which based on research from the Ministry of Industry there will be a cement crisis in 2011. In 2005 it was already there are several names of corporations that until 2020 become economic giants, including PT. Semen Gresik, PT. Indocement Tunggul Cement, PT. Semen Andalas Indonesia (Eddy, 2008).

The results of the above analysis can be understood as the real foothold of the corporation in carrying out factory expansion, as well as the Government in issuing permits in the policy for the construction of a cement factory, which in this context is located in Pati. The root of the background of the establishment of the factory stems from the concerns of various parties in reading the projection of cement demand in order to launch a national development project.

In its development, the reality of cement supply and demand shows quite positive data, even the supply of cement is abundant. Based on 2019 PUPR Ministry data, there are 13 corporations that are the main producers of national cement

needs that are members of the Indonesian Cement Association (ASI) which was founded on October 7, 1969. Meanwhile, data on the development of national cement demand released by the Ministry of PUPR from 2013 to 2019 continued to increase.

Table 1
National Cement Supply

Island	Cement Supply (ton)					
	2013	2014	2015	2016	2017	2018
Sumatera	12.182.107	12.472.539	13.058.295	13.525.795	14.191.783	15.024.462
Jawa	32.692.069	33.732.189	34.451.164	33.460.538	37.464.485	39.009.831
Kalimantan	4.388.000	4.546.680	4.774.821	4.196.281	4.121.034	4.419.439
Sulawesi	4.273.766	4.527.959	4.647.591	5.442.845	5.322.724	5.638.823
Bali-Nusa Tenggara	3.261.184	3.335.788	3.497.852	3.534.351	3.729.849	3.854.058
Maluku-Papua	1.206.518	1.274.347	1.396.417	1.380.523	1.522.947	1.594.443
Total	58.003.644	59.889.529	61.826.140	61.639.333	66.352.822	69.541.056

Source : (ASI, 2019)

The total production capacity of all the corporations above, when added up, is 109,971,480 tons. This number does not involve other corporations that are not part of the ASI network, which will certainly increase the surplus in the national cement supply. Therefore, in the latest developments, based on the narrative of the President Director. PT. Indocement Tunggul Prakarsa Tbk. Christian kartawijaya, until last December 2020, the national cement production experienced an oversupply. This condition is massive as the impact of the Covid 19 pandemic which suppresses the performance of industry and development projects. This means that there is an imbalance between the surplus of cement supply, while consumption in the field is minimal (CNN Indonesia, 2021).

Looking at the data, it can be understood that the plan to build a cement factory tends to be more focused on business expansion rather than the demand for cement supply for national development, both from government and private projects. This data has implications for the consideration of the benefits of the plan to build a cement factory in the Kendeng Mountains, Pati Regency. The oversupply claim, if analogized with Najjar's previous thought, can act as a synonym with the terminology "tabzir and israf" which is prohibited in the norm of Islamic law.

Protecting Ecosystems with Development Principles (At-Tanmiyah)

AM. Najjar explained that the model of ecosystem care adopted by the principle of development, applies to certain ecosystem elements that still contain potential or usability value, and in general deserves to be developed more optimally

(Najjar, 2008). Meanwhile, in the previous sub-chapter, data has been presented which describes that the Kendeng Mountains are not only limited to storing karst potential which is useful for cement raw materials. Instead, it can also be found abundant natural resource potential, such as natural beauty, caves, springs, rice fields and plantations (Suharko, 2013).

Therefore, the utilization of this natural commodity can basically be used as an alternative program to move away from the policy of the cement factory construction project. Utilization can be in the form of a combination of natural and artificial tourism branding that is designed in such a way as to be able to attract newcomers. In addition, agro-tourism and agribusiness models are also quite potential to be applied. With management, networking development techniques, mutually beneficial cooperation between the community, government stakeholders, and investors, as well as proper branding and marketing, this natural potential can reap benefits that can be felt not only for the surrounding community. Rather, also the Pati Regency Government.

This natural potential will be difficult to realize, if there are still differences in interests and mutual insistence to pursue its achievement for each party. In addition, communication and socialization must also be established in a dialogue and mutually beneficial way. The phenomenon of conflict that occurs behind the cement factory policy between the PT SMS corporation, the Regency Government. Pati, and the community represented by JMPPK, showed several biases that emerged along with the policy formulation process, and at a later level became the trigger for protests, resistance, and argument battles in court forums. Citing the results of Ardianto's research, the visible biases in this phenomenon are;

(1) Spatial bias, which occurs due to errors in EIA data in mapping natural resources such as caves, springs, and ponor (water absorption and underground water flow), (2) Project bias, which is marked by the efforts of the corporation to frame success stories development and waste management, as well as a positive impact on the surrounding population. In fact, the reality says otherwise, (3) The bias of the target group, where the socialization of the factory development plan is only made effective to the elite of the village government or residents who are pro to factory development from the start supported by the provision of incentives, (4) Bias of agricultural areas, contained in the error in the results of the Amdal research

on the agricultural area around Kendeng which was considered dry, barren, and unsuitable for agricultural land. Even though the reality is inversely proportional to the data, (5) Diplomatic Bias, after receiving incentives from the corporations, the village government elites and pro-policy communities tend to close themselves off from outsiders. Or at least gently contribute to spreading the framing of the positive side of the policy, (6) Professional Bias, which occurs when a group of researchers carelessly conducts the EIA analysis process, resulting in a lot of wrong data and triggering community resistance (Ardianto, 2019).

The policy formulation process as described above which triggers the dynamics of a long conflict, the results of a qualitative analysis using an approach of the maqasid sharia hifz al-bi'ah's instrument, show that there are biases in the policy formulation process. Especially, the bias that shows the existence of alleged data defects and their evidence related to the EIA document arranged by PT SMS. In addition, the oversupply condition of the national cement supply, then the claims of inequality and contradiction between the Pati Regency Government Policies and the Central Government several laws, which were shouted by the policy opponents (JMPPK), ultimately led to the final conclusion - while still holding the principle of objectivity and put forward the principle of neutrality - that the policy of planning to build a cement factory in the Kendeng Pati Mountains complex tends to lead to claims of *madarat* (danger, bad) rather than claims of *maslahah* (benefit, goodness) in the norm of Islamic Law based on maqasid sharia hifz al-bi'ah approach.

Based on the results of this analysis, which is supported by the data and arguments that have been described, the actions of protest and resistance carried out by the Kendeng Community (JMPPK), NGOs, and sympathizers, within certain limits are considered sufficient to have a strong argument base, both in terms of from a positive legal perspective, applied science (geography, chemistry), sociology, and no less important, normatively maqasid sharia hifzu al-bi'ah reasoning. In Islamic reasoning and terminology, these actions are commonly referred to as part of the implementation of *amar ma'ruf nahi munkar*. Also, if you use the basic principles of maqasid shariah which are inspired by As-Suyuti's qawaid fiqh ideas, this action is an implementation of the principle "rejecting mafsadah (danger) takes precedence over attracting maslahah (goodness)."

However, as has happened in the reality of conflicts and legal disputes between corporations and the Kendeng Mountains societies, it seems that it is very difficult to reconcile the agreement of the two parties, which then forces the Central Government to step in and promise to conduct a KLHS test. The promise to carry out the study that has been issued since 2016, until now has not seen tangible results (Persada, 2019). Moreover, with the Covid-19 pandemic situation that hit, it is necessary to take alternative steps to be taken into consideration for conflict resolution. In this paper, *ijtihad jama'i* is presented as a recommendation that is worth considering.

Ijtihad Jama'i in this context, is a terminology taken from the thought of Sahal Mahudh who is familiarly called Kyai sahal. As one of the ulama from Kajen, Pati Regency, he has served as Rais Amm PBNU (Executive Board of Nahdlatul Ulama) (1999 – 2014) and Chairman of the MUI (Indonesian Ulama Council) (2000 – 2014). Based on his research directly on Kyai Sahal, Jannah revealed that *ijtihad jama'i* is an alternative concept as an answer to the problem of the impossibility of carrying out the practice of fardi *ijtihad* which used to be the authority of the Imams of schools such as Al-Hanafi, Maliki, Syafii and Hanbali. Strict conditions - which apply include mastery of the knowledge of the Koran, nasikh mansukh, amm-khass, mastering the science of Hadith, knowing the opinions of the predecessor scholars, mastering oral and Arabic language knowledge, being able to distinguish similarities in the arguments - arguments, and mastering the qiyas method, knowing maqasid sharia - making it less likely that someone will be able to fulfill these requirements in good (Janah, 2015).

Ijtihad Jama'i (collective) is presented in this case, which means the process of establishing a certain agreement in a forum attended by various kinds of experts in certain fields related to the problem at hand. This forum can take the form of seminars, mass bahtsul, and discussions that bring together relevant theorists, practitioners, scientists and others. The point of emphasis on the *jama'i ijtihad* model is not the quantity of participants, but the quality and capacity of expertise, each of which will express opinions to each other about the problems discussed, until finally the points of agreement are formulated. To avoid political, economic, and non-objective interests of the forum, in *jama'i ijtihad* there are 5 basic principles that must be applied by each participant.

- 1) Collectivity in jama'i ijtiḥad is a collectivity based on good intentions and intentions to achieve the pleasure of God and the public benefit,
- 2) Decisions are not aimed at personal interests and follow their passions
- 3) Efforts to extract decisions are carried out together
- 4) Identification of problems and solutions is carried out collectively by considering the opinions of various relevant experts
- 5) Individuals who participate in the forum are individuals who are experts in their respective fields (Janah, 2015).

Then, in the case of the planned construction of a cement factory, *ijtiḥad jama'i* can be held by presenting various experts in the fields related to the concentration. Not only limited to researchers and practitioners of EIA analysts, some representatives from PT SMS, representatives from the Kendeng Community. But, also to present the opinions of scholars who have qualified Islamic authority and capacity, present economic analysts, social analysts, analysts of applied sciences, and others. The results of the *Jama'i Ijtiḥad* process which are presented as an alternative step in the case of a dispute between the corporation and the Kendeng Community in turn, will produce a kind of recommendation on the results of the KLHS that will be issued at a later date. The results of decisions that take into account the aspirations of various experts can become authoritative and objective recommendations, so that the dispute can find a bright spot for settlement.

Conclusion

The results of the analysis, which still adhere to the principle of objective and neutrality, tend to condense to the conclusion that the policy on the cement factory construction plan in Pati Regency tends to lead to *mafsadah/madarat* (danger, badness). This claim is based on bias, legal imbalances, oversupply conditions of national cement, problematic Amdal documents, and public communication that is not mutually beneficial in the policy formulation process. As an offer for conflict resolution at the implementation level, the *ijtiḥad jama'i* method is offered which can become a recommendation for final policy decisions, considering that the KLHS analysis plan initiated by the government has not been released since it was announced in 2016. In various fields related to the policy of building a cement factory to sit together to discuss the public benefit, which is far from political interests and subjective benefits for certain groups.

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