HARMONIZING INTERNATIONAL AND NATIONAL LEGAL SYSTEMS THROUGH THE PRINCIPLES OF SUSTAINABLE DEVELOPMENT IN THE MODERN STATE

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Abstract
Sustainable development is a critical concept used to enhance global welfare. In this context, peremptory norms recognized within international law are integrated as general, universal, essential, and fundamental principles for societal benefit. Therefore, this research aimed to investigate the role of sustainable development within international law and examine the contribution of norms to the formation of a modern legal state. The legal status of norms and capacity to embody universal values are clarified using descriptive analysis with a normative juridical approach and qualitative data. The results show that sustainable development has been developed as an indispensable paradigm, widely confirmed across legal frameworks. In addition, the integration as a universal norm within international law reflects the potential to influence legal systems globally. This depends on the balance of established sources such as treaties and customary practices. Moreover, this research contributes to legal scholarship by stating the role of international norms in advancing sustainable development.

Keywords: Harmonization, Sustainable Development, Modern State and Law System.

A. Introduction

From a historical perspective, the years succeeding the Stockholm Conference constituted an important era in the evolution of sustainable development.¹ In this context, terms such as "development and environment," "development without destruction," and "development in accordance with the environment" appeared more frequently in publications. In 1978, the term "eco-development" was first stated in a United Nations Environment Program (UNEP) publication in 1978. Meanwhile, the International Union for Conservation of Nature (IUCN) advanced the concept by proposing the linkage of the economy and the environment through sustainable development in 1980.

After several years of concerted effort, an important moment came in 1987 when the World Commission on Environment and Development (WCED)², chaired by Gro Harlem Brundtland (then Prime Minister of Norway), published the landmark report "Our Common Future," commonly known as the Brundtland Report. This document introduced and defined

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the concept of sustainable development in the modern sense. Even though the term was not explicitly used, the international community broadly accepted the principles.\(^3\)

The principle of sustainable development, as articulated in the Brundtland Report, is understood as "development that meets the needs of the present without compromising the ability of future generations."\(^4\) Therefore, current generations should use natural resources in a manner that ensures future generations will still have the means to satisfy their needs. This includes fully exploiting natural resources while simultaneously investing in alternative methods or technologies for restoration or replacement. The investments should not impose undue burdens, particularly when the primary benefits will accrue to future generations.\(^5\)

According to Karl Doehring in Huala Adolf's writings, states are the primary subjects of international law. The state is considered the most significant legal subject, "par excellence" compared to other international legal entities. Therefore, supreme power, or "leges imperii" represents the collective will of the entire populace.\(^6\) As genuine subjects, states possess rights and obligations under international law.\(^7\) In addition, it functions as a political and legal institution, subjecting to the public legal order. State aims to ensure comprehensive welfare for citizens through various governmental activities.\(^8\)

Modern state theories can be categorized into those focusing on organizational structures and emphasizing functions. In this context, international cooperation, especially among developing nations, increases development efforts.\(^9\) The cooperative efforts are part of the broader initiative to achieve sustainable development, which can be considered as a global development model including the linkages between economic, social and environmental policies.\(^10\)

As a public legal entity, Indonesia can engage in actions to achieve social justice, adhering to the identity as a modern welfare state.\(^11\) National development includes the collective effort of all components to achieve state objectives. This development is grounded in democratic principles, emphasizing togetherness, justice, sustainability, environmental awareness, and independence, while maintaining a balance between progress and national unity.\(^12\) The objective is to create a just and prosperous society, as mandated by the 1945 Constitution of Indonesia. The preamble of the Constitution protects the entire nation, advances the general welfare, educates the populace, and contributes to global peace and social justice.

The Indonesian government's national strategy incorporates a macro perspective on inclusive and sustainable development.\(^13\) In the era of globalization, the interaction and intensity of international relations have increased, evidenced by various bilateral, regional, and

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\(^8\) I Gede Pantja Astawa and Suprin Na’a, Memahami Ilmu Negara & Teori Negara (Bandung: Refika Aditama, 2009), p. 121.


\(^10\) Francesco Sindico, Unravelling the Trade and Environment Debate through Sustainable Development Law Principles (Amsterdam: The Institute for Environmental Studies, Faculty of Earth and Life Sciences, Vrije Universiteit, 2003), p. 5.


\(^12\) Ibid.

multilateral cooperation agreements. These agreements span multiple domains, including politics, economics, trade, law, defense, and socio-cultural fields, stating the comprehensive nature of international cooperation.\textsuperscript{14}

Based on the explanations, the following legal problems were proposed:
1. What is the position of the Principles of Sustainable Development as a universal concept from an international legal perspective?
2. What is the position of Sustainable Development norms in realizing a modern legal state?

B. Discussion

1. The Position of Sustainable Development Principles as a Universal Concept in an International Legal Perspective

The international legal system can be seen as a collection of rules and regulations binding and regulating relations between states and other legal entities.\textsuperscript{15} Baderman explains the unique position by stating, "Public international law is the legal system, with a unique method of making and enforcing rules. Due to the sense of separation from municipal or domestic legal systems, international law has been criticized."\textsuperscript{16} This shows the distinct nature of international law and the criticism faced due to the separation from domestic legal systems.

From a positive law perspective, Article 38(1) of the Statute of the International Court of Justice outlines the sources of law applied when resolving disputes. These sources include (a) general or specific international conventions, establishing rules expressly recognized by the contesting states, (b) International custom, as evidence of a general practice accepted as law, (c) General principles of law recognized by civilized nations, as well as (d) Judicial decisions and the teachings of the most highly qualified publicists of various state for the determination of rules of law, subject to the provisions of Article 59.\textsuperscript{17}

The term "International Law" includes a broad array of legal obligations to regulate interactions. This comprises legal obligations between states as well as laws, norms, and judgments with interstate elements relevant to court cases. In essence, international law includes a framework of legal rules adopted to manage relations and address elements existing between states.\textsuperscript{18}

Anthony Anghie defines the universality of International Law by stating that those previously excluded from sovereignty are included and can participate as sovereign equals.\textsuperscript{19} In this context, state sovereignty must be accompanied by participation within the international system, ensuring a balance. The evolution increasingly addresses common issues related to humanity, such as human rights, environmental concerns, international trade, and war. This shift shows the growing importance of global cooperation and legal frameworks to manage critical areas.

The principle of sustainable development, as outlined in the 1987 Brundtland Report, is defined as "meeting the needs of the present without compromising the ability of future generations."\textsuperscript{20} Agenda 21, adopted in Rio, establishes an action program, including the

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\textsuperscript{18} Diane Marie Amann, Benchbook on International Law, \textit{American Society of International Law}, ed. 2014.
\textsuperscript{20} Daud Silalahi, \textit{Perkembangan Hukum Lingkungan Internasional}, Loc.cit.
formulation and elaboration of appropriate legal principles and rules. In response, the International Law Association (ILA) formed a committee to address the legal aspects.\(^{21}\)

This concept received clear recognition and status as a principle through the opinion of International Court of Justice (ICJ) Judge C.G. Weeramantry in the Gabčíkovo-Nagymaros Project case (Hungary-Slovakia) in 1997. According to Judge Weeramantry, sustainable development has achieved the status of a modern principle or norm of customary international law, crucial to the determination of the case.\(^{22}\) Therefore, the concept is recognized as a binding principle of contemporary international law. This status balances with the general principles as stated in Article 38 of the ICJ Statute.\(^{23}\) Another key instrument for upholding the concept is the international agreement established at the World Summit on Sustainable Development (WSSD). This summit laid down the basic principles, emphasizing the interconnectedness and interdependence of economic, social, and environmental development.\(^{24}\)

Sustainable development, popularized by the 1987 Brundtland Commission report "Our Common Future," has become a central paradigm in thinking. Since the UN Conference on Environment and Development held in Rio in 1992, there has been a focused effort to address the links between environmental degradation, poverty, development, social justice, and trade. In this context, government and non-government organizations have promoted "sustainability" as the primary objective.\(^{25}\) Sustainable Development Goals (SDGs) represent a continuation and expansion of the Millennium Development Goals (MDGs) concluded in 2015.\(^{26}\) MDGs were often criticized for developing and developed state dichotomy, while SDGs were universally applicable. In addition, SDGs significantly broaden the scope and content of MDGs to benefit humanity and the planet by enhancing development based on equality.

SDGs are structured around universal, integrated, and inclusive principles ("No one left behind").\(^{27}\) There are 17 SDGs, ranging from ending poverty (Goal 1) to enhancing global partnerships (Goal 17). These goals are interconnected and contribute to the success of others. The implementation is driven by partnership and cooperation for the betterment of humanity to improve life sustainably for future generations.

There are 17 intercorrelated aspects targeting SDGs, ranging from aspect 1 (no poverty) to 17 (partnerships to achieve the goals). These aspects are the keys to achieving partnership and togetherness for the benefit of humanity to improve life sustainably for future generations.\(^{28}\)

### 2. Fundamental Legal Norms (peremptory norms) Underlying Sustainable Development

Sustainable development has become a broadly accepted paradigm actualized through real actions. This concept includes environmental, social, political, economic, and cultural protection, addressing issues at local, national, and global levels. Moreover, the legal field has

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\(^{21}\) International Law and Sustainable Development.


\(^{28}\) Ibid.
been significantly penetrated, becoming integral to numerous international instruments, with the numbers steadily increasing.\(^{29}\)

Historically, the foundation of legal protection for human rights in modern law commenced with the Universal Declaration of Human Rights in 1948. This declaration was expanded through two key covenants, namely the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).\(^{30}\) These covenants and SDGs form an action plan to strengthen universal peace and broad freedoms while addressing extreme poverty as the greatest global challenge. SDGs represent a necessary new development framework accommodating changes since the 2015 MDGs.\(^{31}\)

The critical role of law was reflected in various international documents and was firmly established in 1987 Brundtland Report. This report emphasizes that SDGs are inherently tied to the rule of law and the concept contains essential norms (laws), and fundamental obligations.\(^{32}\) Peremptory norms, also known as jus cogens, are fundamental principles of international law defined as follows.\(^{33}\)

“A peremptory norm of general international law (jus cogens) is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”.

Generally, peremptory norms are recognized and accepted by the international community for reflecting and protecting fundamental values. The norms are superior to other rules of international law and apply universally.\(^{34}\) The definition is codified in Article 53 of the Vienna Convention on the Law of Treaties 1969, where a peremptory norm is accepted and recognized, permitting no derogation.\(^{35}\) Therefore, the concept cannot be reduced but changed by subsequent norms of the same character. Some criteria or indicators determine the possibility of considering a peremptory norm (basic norm). Lon Fuller identified seven formal criteria, or "desiderata," regardless of the substantive content and these included:

1) Basic or peremptory norms must embody general and universal principles.\(^{36}\)

2) Basic or peremptory norms must have substantive criteria for bringing goodness to society or humans in general.\(^{37}\)

Based on the explanation, these universal values reflect general principles. Therefore, international law is a set of legal systems for accommodating fundamental norms. The basic norms embedded in the concept of SDGs from a legal perspective are not constrained by local and partial policies. Sustainable development is a collective responsibility of humanity, ensuring the sustainability of existence and the environment on Earth as explained by the following opinion:

"Sustainable development is one of those forward-looking legal concepts on which the future happiness of the human family very heavily depends. The betterment of the economic and social conditions of every individual is one of the

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34 Ibid.


37 Ibid.
cardinal missions of all legal systems. “Development” aims at achieving this result at a practical level through such measures as the development of economies, development of skills, development of wealth, development of utilization of resources, development of necessary infrastructures, development of living conditions, development of health and development of the overall quality of life.”

3. The Concept of Sustainable Development as a Means of Global Development.

International Law, in the basic concept, is intended to serve as a legal framework for the society of States. It prescribes what is right and wrong, dictates how States should behave toward one another, and provides sanctions for violations. Therefore, international law should reflect universal values rooted in the collective wisdom of the world’s nations.

The targets to be achieved within the framework of international cooperation were initiated by a joint agreement resulting from an international forum organized by the United Nations Development Program (UNDP) on September 25, 2015. During this forum, countries agreed to form SDGs, which are the targets set within the UNDP framework. SDGs are a universal call to action to end poverty, protect the planet, and ensure peace and prosperity.

Due to the New York meeting, the UN adopted SDGs, consisting of 17 goals and 169 targets covering economic growth, social inclusion, and environmental protection. The agenda has moved beyond agreement to focus on the implementation and achievement. This requires a highly rapid and integrated global innovation system connecting regions, and facilitating the co-production of locally appropriate knowledge and technology.

The concept represents human aspirations to achieve a harmonious state of existence. As an abstract construct and a product of human thought, sustainable development is underpinned by shared values including ethical and moral dimensions. These dimensions are increasingly interconnected and interdependent in the globalized world.

Sustainable development is similar to democracy, freedom, and justice. The concept is universally interpreted differently across cultures and is complex in the implications. Even though the concept is challenging to implement fully, it is impossible to disregard entirely. In addition, the capacity of state institutions to manage change and advocate for specific public policy visions is important. This necessitates a robust and adaptive framework capable of steering society toward long-term environmental, economic, and social health.

4. The Legal Position of the Norms of the Concept of Sustainable Development (Sustainable Development) in Realizing a Modern Legal State

The implementation of sustainable development is tied to state sovereignty. In this context, states, through political and juridical frameworks, bear the responsibility to enhance the welfare of the citizens. Reflecting on Aristotle’s thoughts, state evolves naturally and is characterized by growth. In the developmental stages, human-created laws and conventions have played an integral role. These laws and conventions were created to achieve beneficial objectives, facilitating and enriching the functioning of the state.
The concept of state sovereignty remains an important and thought-provoking topic within academic discourse in international law and political science. The dynamic and often contentious debates surrounding state sovereignty reflect the complexity, specifically when viewed from an international legal perspective. The intense international cooperation and occasional failures of national authorities to protect citizens prompt a reevaluation of the traditional meanings of sovereignty. The concept is discussed in terms of the supreme power of a government, representing the highest political authority of a state. The interpretations of sovereignty vary widely depending on the scholarly method. Hugo Krabbe’s views emphasize the organizational aspect of a state’s legal relations, asserting the difficulty of conceiving a state without a structured legal system and operational governmental organs. This organization is essential in civilized states for the effective execution of governance. Harold Laski’s perspective suggests that sovereignty should serve as a method to achieve the greatest welfare for the people. The reorientation aims to support the fundamental objectives by balancing state authority to enhance long-term societal, economic, and environmental health.

The concept of sovereignty contends that a state should achieve the greatest prosperity of the people, rather than acting as an impediment to development. Additionally, Hugo Krabbe contributes by asserting that a state, defined by its organized legal relations, cannot exist without governmental structures that facilitate its operation, a common feature in all civilized states. The meaning of state sovereignty can be understood as an effort to integrate the concept within the normative framework of the community, particularly under international law. Sovereignty is often equated with “independence” reflecting a state’s formal status in the legal system. Moreover, the concept is interpreted in two interrelated methods within the framework. The first interpretation relates to the political status of a community as a "sovereign" or "independent" state. The second focuses on sovereignty as endowing a state with fundamental rights, powers, and corresponding obligations. The recognition is shaped by peremptory norms, which are basic and overriding principles. This is because the sovereign rights and powers of a state come with fundamental obligations towards ensuring the welfare of citizens. Therefore, sovereignty burdens a state with duties that uphold and enhance the livelihood of the society.

Theoretical research of state sovereignty often explore the intersection of universal values embedded in international law with the obligations to be fulfilled. A key aspect of this research includes the definition and extent of state sovereignty influenced by the evolving international legal system. This relationship is increased through analyses of *erga omnes* obligations and examination of new criteria for sovereign states within the international legal framework. The case of "Westphalian International Community" and "Island of Palmas" shows an intrinsic connection between state sovereignty and the responsibility to fulfill international obligations. These cases report that every state holds equal rights and responsibilities within the international community regardless of economic, social, and political systems.

The debate surrounding the function of international law in political systems worldwide depends on differing theoretical perspectives. A primary function is to facilitate justice when

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51 Ibid.
52 Ibid.
53 Ibid.
the essence of law is the realization. This perspective focuses on the role of international law as a tool for achieving equitable resolutions in global disputes. The concept fundamentally relies on the capacity of state institutions to manage change effectively and advocate for specific public policy objectives. Sustainable development aims to enhance environmental standards and alleviate global poverty. As a modern iteration of a new world economic order, the concept is viewed as promoting an equitable global system. In this system, trade is emphasized, and differentiated treatment is recognized as a feature of sovereign equality.

In the context of national legal frameworks, integrating international values and norms presents an opportunity to address and resolve constitutional dilemmas effectively. This method is consistent with the views of Sunaryati Hartono, where the legal system should be adaptive and preemptively responsive to social, technological, political, and economic landscapes.

A prominent example of the assimilation of international norms into national law is through the incorporation of Sustainable development principles largely consistent across various legal systems. In the case of Indonesia, the concept is explicitly addressed in Law No. 32 of 2009 concerning Environmental Protection and Management.

Sustainable development includes the enactment of laws to ensure environmental sustainability and social inclusivity. At the national regulatory level, the concept has been regulated in Law No. 32 of 2009 concerning Environmental Protection and Management as follows:

"Sustainable development is a conscious and planned effort that combines environmental, social and economic aspects into strategies to ensure the integrity of the environment as well as the safety, capabilities, welfare and quality of life of present and future generations."

The concept of sovereignty can be viewed from two perspectives. Firstly, sovereignty serves as a tool to fulfil the mandates of the constitution, hence shaping national and state life. Secondly, the concept is used by states to exercise rights and fulfil obligations within the international community and under an international legal framework.

5. Realization of the Rule of Law and Implementation of Sustainable Development Principles in Indonesia

The state and law are fundamental to the modern understanding of governance. In this context, the rule of law serves as the foundational basis for state administration within various constitutional systems, as reflected in the norms. Even though countries such as Indonesia explicitly incorporate the rule of law into the constitutions, others only embed the principle in articles to define the identity. In this context, the constitution or basic law plays a crucial role.

This notion is supported by Weeramantry, who emphasized the critical role of law in maintaining law and order. Weeramantry articulated the idea by stating, “It has a special mission in that it bears the responsibility not merely for global law and order but for the very survival of humanity. If it fails we may well be reduced to contemplating the fading embers of

57 Article 1 Number (3) of Law No.32 Year 2009 on Environmental Protection and Management (Undang-Undang No.32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup).
dying civilizations rather than the promise of a brand new world of unsurpassed achievement.”

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The concept of the rule of law includes a governance framework where individuals, institutions, and entities are accountable to laws that are publicly declared, equally enforced, and independently adjudicated. These laws also need to be balanced with international human rights norms and standards. 60 Morlino and Palombella offered a detailed explanation and interpretation of the rule of law61, stating that:

“The rule of law is an institutional ideal concerning the law. Due to its normative nature, it has been interpreted in various ways at different times and contexts. The complexity and contestability are due to many causes, including the interweaving of conceptual, historical, and philosophical meanings. In addition, the concept belongs to multiple domains, from law to political morality.”

Laski stated that "state action" should realistically be understood as governmental action. This shows policies presented by the government for public approval, effectively shaping the interactions between the state and citizens. In the modern state context, the concept is the actions undertaken by the government through policy implementations targeted towards the people. 62

In Indonesia, the state is articulated in Article 1, paragraph (3) of the 1945 Constitution, as follows, "The State of Indonesia is a state of law." This assertion serves as a foundational justification for realizing the national objectives outlined in the Preamble of the 1945 Constitution. “Indonesia is undergoing profound developments, arising from internal and external influences. Internally, as a new democratic state, its legal system has been called to meet international standards through the passing of domestic law that can put treaty obligations into domestic effect. Externally, Indonesia is witnessing profound changes in the international legal system - globalization - which imposes international minimum requirements concerning the internal legal order of the state.”63

The commitment to SDGs was solidified in the 1993 Outlines of State Policy and influenced by the United Nations Conference on Environment and Development (UNCED). This conference was held in Rio de Janeiro in 1992 and the principles were defined as a perpetual national policy. 64 The commitment was continuously evident in the current National Medium-Term Development Plan (RPJMN) for 2020-2024, where SDGs were prominently integrated. The 17 SDGs targets, with the respective indicators, are integral to the seven strategic development agendas65 and the roadmap can be conceptualized as follows:

62 Harold J. Laski, Loc.Cit.
6. Goals and Targets to be Achieved in the Concept of Sustainable Development by Indonesia.

Several experts have articulated different elements central to the concept of sustainable development. These elements predate the formal introduction of the concept. According to Sharples, development and sustainability may produce conflicting outcomes. In contrast, neoclassical economists, such as Lele, argued that there was no inherent contradiction. Sachs elaborated that sustainability and development did not exist independently.66

The term development is aimed at achieving tangible results. This includes various aspects such as economic, skills, wealth, resource utilization, infrastructure, living conditions, health, and quality of life improvements. Fundamentally, sustainable development, which has been classified into 17 specific goals, shows a global commitment of preventing the exclusion of initiative. The concept is inherently connected to the creation of a sustainable global society predicated on the principles of respect for nature, adherence to universal human rights, economic justice, and the promotion of a culture of peace.67

The long debate regarding the definition of SDGs has been explained by Lucas Bretschger:

“*The sustainability debate suggests to aim at a long-run development which is characterized by non-decreasing living standards, a protection of crucial natural resources, and low risks of economic and ecological crises.*”68

SDGs represent a multi-faceted method to development that emphasizes the continuous improvement of economic welfare, sustainability of social structures, protection of environmental quality, as well as assurance of justice and effective governance to enhance

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quality of life across generations. The concept was adopted by 193 countries at the United Nations General Assembly in September 2015 and comprised 17 goals collectively aimed to elevate global well-being.69

Indonesia has embraced SDGs with strong governmental commitment and initial measures. The government has integrated the majority of the targets and indicators within the national medium-term development plan (RPJMN), creating a robust synergy, including the 9 strategic pillars known as Nawa Cita. This balance shows the dedication to fulfilling SDGs, recognizing the reinforcement of national and global development goals.70 In addition, the achievement requires collective effort and collaboration across all sectors of society, including government bodies, non-governmental organizations, private sector, academic institutions, and community groups. This universal framework serves as a crucial tool for guiding policy and strategy development in developing and less developed nations. In Indonesia, SDGs provide a foundational reference for shaping RPJMN, guiding the state towards sustainable and inclusive development.71 As outlined in the Guidelines for Preparing National Action Plans (RAN) from the Ministry of National Development Planning/Bappenas, SDGs aim to ensure sustained economic welfare, social stability, environmental integrity, as well as judicial and governance systems that perpetuate the quality of life improvements across generations.

In the context of national policy, sustainable development is crucial and deeply integrated into various existing laws and regulations. This integration ensures that the concept is an indispensable aspect of the ongoing national development process. To reinforce the commitment, the government has incorporated the principle into numerous legislative frameworks addressing environmental and economic issues. Moreover, the significance in national policy is shown by Presidential Decree No. 59 of 2017, which specifically mandates the Implementation of SDGs.72

An important target in the action plan is the elimination of poverty as the government strives to meet the commitments by 2030. Goal 1, "No Poverty," eradicates extreme poverty and creates an inclusive society as follows.73

a. The program eradicates extreme poverty for all people who currently earn less than 1.25 US dollars per day.

b. The target is to reduce by at least half the proportion of men, women, and children of all ages living in poverty across all dimensions, following national definitions.

Indonesia, as a member of the global community, has adopted sustainable development as a guiding principle under international law. This principle mandates that all countries should implement strategies to ensure a better future. The concept of "no one left behind" includes the universal aspiration for inclusivity and progress for all people worldwide.

C. Conclusion

In conclusion, the following results were obtained based on the research.

1. Sustainable development was an unavoidable paradigm, universally recognized and endorsed. This concept was acknowledged by C.G Weeramantry, a judge at the International Court of Justice, in a separate opinion on the Gabcikovo-Nagymaros Project case (between


71 Kajian Lintas Sektor: Potret Awal Pembangunan Pasca MDGs, Sutainable Development Goals (SDGs), Badan Pusat Statistik (2015), 4.


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Hungary and Slovakia) in 1997. The results showed that the concept was a universal principle essential for achieving societal welfare.

2. The implementation was tied to state sovereignty. According to the political and juridical framework, each state bore the responsibility to enhance the welfare of the citizens. In this context, the role of law was crucial in supporting the fulfilment of the agenda. Moreover, legal advancements were indispensable for realizing sustainable development.

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