

ENVIRONMENTAL PERSONHOOD REIMAGINED: A CONCISE PHILOSOPHICAL REVIEW

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Abstract

This paper is built upon one question: can the natural world be recognised as a 'member' of a legal community? By exploring the nature of legal personhood, this paper revisits the concept of environmental personhood. This paper uses the naturalistic approach to ground legal philosophical analysis in empirical realities and gain a deeper understanding of the natural world. This paper argues that legal personhood is an institutional fact influenced by moral ideas configured based on how humans organise value. The concept of 'environmental personhood' is built upon the idea that the natural world possesses inherent rights that must be protected similarly to human rights. This paper finds that, although the ecocentric approach to environmental personhood must be rejected, it can be salvaged. By reformulating environmental personhood based on artificial personhood, this paper opens up opportunities for the concept to be maintained. It aims to ground a theoretical foundation for further constitutional law research, specifically regarding how the constitution should frame the natural world's ideal position within the state.

Keywords: *Environmental Personhood, Legal Personhood, Green Constitution, Naturalistic Jurisprudence, Democracy.*

Intisari

Penelitian ini didasarkan pada satu pertanyaan: dapatkah lingkungan dimasukkan sebagai anggota komunitas hukum? Dengan menelusuri konsep subjek hukum, penelitian ini meninjau kembali konsep lingkungan sebagai subjek hukum. Artikel ini menggunakan pendataan filsafat hukum naturalistik guna mendasarkan analisis filsafat hukum pada realitas empiris dan mampu menangkap pemahaman lebih dalam mengenai realitas alam. Artikel ini menemukan bahwa subjek

hukum merupakan fakta institusional yang dibentuk oleh gagasan moral, yang dikonfigurasi berdasarkan cara manusia mengorganisasikan nilai. Konsep lingkungan sebagai subjek hukum didasarkan pada gagasan bahwa alam memiliki hak inheren yang harus dilindungi. Artikel ini juga menemukan bahwa, meski pendekatan ekosentris dalam konstruksi lingkungan sebagai subjek hukum inkoheren dan mesti ditolak, konsep tersebut mungkin masih dapat diselamatkan. Penelitian ini diharapkan dapat menyediakan fondasi teoritis untuk penelitian Hukum Tata Negara lanjutan, utamanya mengenai bagaimana konstitusi harus mengonstruksikan posisi realitas alam dalam negara.

Kata Kunci: *Lingkungan Sebagai Subjek Hukum; Subjek Hukum; Konstitusi Hijau, Filsafat Hukum Naturalistik; Demokrasi.*

A. Introduction

‘Environmental personhood’ is built upon the idea that the natural world possesses inherent rights that must be protected, similarly to how the state protects human rights.¹ This concept was first popularised in the academic work of Christopher D. Stone, ‘Should Trees Have Standing?’² The concept relies on the deep ecological tradition motivated by ecocentrism to propose a reorganisation of how the state, as a moral community, positions the relationship between humans and the natural world within the moral and political framework of the state.³

Environmental personhood is predicated on several assumptions. Metaphysically, it sees humans as equal components of the natural world.⁴ Epistemologically, it treats knowledge as relative, including knowledge produced by modern science, which has been viewed as the ‘mode of operation of all discourse’ that tries to project human narrative as the only means of explaining the reality of the natural world, and thus must be balanced with non-anthropocentric epistemology.⁵ Axiologically, it sees nature as having

1 Roderick Nash, *The Rights of Nature: A History of Environmental Ethics*, History of American Thought and Culture (Madison, Wis: University of Wisconsin Press, 1989). 17

2 Sanket Khandelwal, ‘Environmental Personhood: Recent Developments and the Road Ahead’, JURIST: Legal News and Commentary, 24 April 2020, <https://www.jurist.org/commentary/2020/04/sanket-khandelwal-environment-person/>.

3 Matthew Stephens and Steven Brence, ‘Examining Personhood and Environmental Policy: Analyzing the Philosophical Frameworks of Granting Legal Rights To Non-Human Entities’ (2018). 30

4 Gwendolyn Gordon, ‘Environmental Personhood’, *Columbia Journal of Environmental Law* 43, no. 1 (2017): 57, <https://doi.org/10.2139/ssrn.2935007>

5 S. Oppermann, ‘Theorizing Ecocriticism: Toward a Postmodern Ecocritical Practice’,

intrinsic value and subjective interests.⁶

The idea has several flaws: firstly, it rests upon a weak and loose postmodern epistemological foundation. Secondly, the non-anthropocentric epistemology that underpins the metaphysical model of environmental personhood is, in principle, impossible. Thirdly, its metaphysical model that rests under the notion of natural balance is incorrect since there are no optimum conditions in the natural world that can be used to anchor its subjective interest.⁷ Fourthly, nature cannot be framed as a natural person. Therefore, environmental personhood should be rejected.

This research is built upon one question: can the concept be salvaged? This paper utilised a qualitative approach to address those questions by relying on the researcher's subjective observation and interpretation.⁸ To comprehend the reality of nature, knowledge about the natural world itself is required. Thus, in conducting interpretation, naturalism is utilised as an analytical tool. In legal philosophy, naturalism is applied as naturalistic jurisprudence or naturalised jurisprudence. According to Michael S. Moore, the primary project of naturalistic jurisprudence is legal ontology.

Moore frames it as a question, 'If law exists, then how should one describe its existence?'⁹ In Moore's view, naturalistic jurisprudence aims to describe the reality of legal phenomena.¹⁰ While the philosophy of law is generally treated as a priori conceptual analysis, naturalising philosophy of law seeks to ground philosophical analysis in empirical facts, making it a

Interdisciplinary Studies in Literature and Environment 13, no. 2 (1 July 2006): 116, <https://doi.org/10.1093/isle/13.2.103>

6 Helen Kopnina et al., 'Anthropocentrism: More than Just a Misunderstood Problem', *Journal of Agricultural and Environmental Ethics* 31, no. 1 (2018): 115, <https://doi.org/10.1007/s10806-018-9711-1>.

7 Muhammad Pasha Nur Fauzan, 'MENINJAU ULANG GAGASAN GREEN CONSTITUTION: MENGUNGKAP Miskonsepsi dan Kritik', *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, dan Agraria* 1, no. 1 (15 September 2021): 15-7, <https://doi.org/10.23920/litra.v1i1.573>.

8 John W. Creswell, 'The Selection of a Research Approach', *Research Design*, 2014, 3–23, <https://doi.org/45593:01>.

9 Michael S. Moore, 'Legal Reality: A Naturalist Approach to Legal Ontology', *Law and Philosophy* 21, no. 6 (2002): 620, <https://doi.org/10.2307/3505202>.

10 Brian Leiter, *Naturalizing Jurisprudence: Essays on American Legal Realism and Naturalism in Legal Philosophy*, 1st ed. (Oxford University Press Oxford, 2007), <https://doi.org/10.1093/acprof:oso/9780199206490.001.0001.286>.

posteriori.¹¹ By applying the naturalistic approach, this paper aims to gain a deeper understanding of the natural world and its relation to humans, which is essential for critically evaluating the theory of environmental personhood.

B. Descriptive Overview On The Nature of Legal Personhood

1. Legal Personhood as Empirical Phenomenon

According to Visa A.J. Kurki's findings, the modern concept of legal personhood generally consists of four main assumptions:¹²

- a. Human beings with certain criteria are legal persons;
- b. Animals and slaves are not legal persons;
- c. There is a difference in personhood status (such as between children and adults); and
- d. There are artificial persons (such as a company).

What kind of explanation can reconcile these inconsistent assumptions? If the status of legal personhood is attached to the condition of being human, then why are slaves not legal persons while companies are legal persons? If the status is attached to rationality or autonomy, why can fetuses become legal persons?

This paper suspects that legal personhood cannot be explained solely by conceptual propositions. Legal personhood is not entirely a result of intellectual rationalisation but rather a series of phenomena that arise from a specific context or background. This concept cannot be treated solely as propositions or a set of intellectual claims about reality. Legal personhood is an institutional fact that can also be analysed as a phenomenon.

From a naturalistic perspective, institutional facts are described as shared mental states and actions.¹³ An institution is established and sustained based on shared beliefs, expectations, and collective actions.¹⁴ Institutions

11 Luka Burazin, 'Is 'Naturalised' Methodology in Legal Theory Helpful?', 2014, <https://doi.org/10.13140/2.1.5099.6161>.

12 Visa AJ Kurki, *A Theory of Legal Personhood*, Oxford Legal Philosophy (Oxford: Oxford University Press, 2019). 91.

13 Moore, 'Legal Reality', 623.

14 Searle argues that institutional facts are operated based on 'collective intentionality,' which consists of shared intentional states, including beliefs, desires, and intentions that enable humans to engage in joint behavior or synchronized collective behavior, see: John R. Searle, *The*

are shared mental conditions reflected in the actions of individuals and groups. Thus, institutional facts are concrete conditions, a part of reality, or a phenomenon.¹⁵ Institutions, including legal personhood, change over time along with society,¹⁶ and are not always a direct result of deliberate, rational decision-making but can emerge spontaneously through complex interactions between individuals and groups.¹⁷

If, in a conceptual sense, legal personhood is viewed as propositions—a series of claims, as a phenomenon, legal personhood is not regarded only as a set of propositions but rather a circumstance/event. Describing legal personhood as a phenomenon is broader than describing it as a concept. It explains not only the set of propositions that make up the legal personhood concept but also the reality or the context in which the institution of legal personhood is formed. Understanding the background condition that serves as its foundation is necessary to comprehend how the legal personhood institution formed in its current form.

2. Correspondence between Legal Personhood and Moral Standing

According to Ngaire Naffine, the legal personhood discourse asks, ‘for whom should the law be organised?’¹⁸ As Charles Foster and Jonathan Herring expressed, ‘we can only define the proper object of moral concern in law by defining what types of things are morally important.’¹⁹ When society decides that an entity (X) has moral standing, it implies that society must be reorganised so that X can access its rights, not be denied, and not have its rights revoked. Generally, the state should condition society so that X can claim its rights. The state will be allowed to exercise political interventions to condition this, indicating that moral status has a legal nature.²⁰

Construction of Social Reality, Nachdr. (New York: Free Press, 1997) 20-2; Neil MacCormick, *Institutions of Law: An Essay in Legal Theory* (New York: Oxford University Press, 2007) 11.

15 MacCormick, *Institutions of Law*, 32-3.

16 Kurki, *A Theory of Legal Personhood*, 32.

17 Searle, *The Construction of Social Reality*, 22.

18 Ngaire Naffine, *Law's Meaning of Life: Philosophy, Religion, Darwin, and the Legal Person*, *Legal Theory Today* (Oxford: Hart Pub, 2009) 1.

19 Charles Foster and Jonathan Herring, *Identity, Personhood and the Law*, *SpringerBriefs in Law* (Cham: Springer International Publishing, 2017), 21-22. <https://doi.org/10.1007/978-3-319-53459-6>.

20 Helen Ryland, ‘On The Margin: Personhood and Moral Status in Marginal Cases of Human Rights’ (2020) 22.

In this framework, the issue of legal personhood will give rise to issues related to moral values.²¹ Organising law based on moral concepts itself is not uncommon. For example, the notion that an agent must be liable for their actions or fulfil a certain duty is a moral principle known as the moral agency or moral responsibility.²² A considerable portion of the criminal justice system (if not all) is built upon this foundation. Moreover, the idea that an individual has an absolute right that cannot be revoked or reduced (inalienable rights), such as the right to life, liberty, and property, is also a moral principle rooted in the moral theory of natural law.²³

It is important to note that this assumption does not equate legal personhood with moral standing. The two are distinct concepts that must be treated differently. Nevertheless, it is undeniable that how we construct legal personhood as an institution is heavily influenced, or even determined, by how we organise values around conceptions of moral standing. Generally, intrinsic value is considered as defining quality of moral standing.²⁴ Intrinsic value is the anchor where the perceptions of what is morally good and bad for an entity are derived,²⁵ determining whether or not an entity is worthy of moral consideration, regardless of its utility to humans.²⁶

In other words, how humans organise values and determine which entities have moral standing and deserve to be considered as member of the moral community is crucial in shaping the institution of legal personhood. The concept of legal personhood is influenced by how humans organise values and determine which entities are valuable enough to be part of the moral community; therefore, they should be considered natural persons. If the form and concept of legal personhood are based on how humans organise values, it

21 Foster and Herring, *Identity, Personhood and the Law*, 21-22.

22 Matthew Talbert, 'Moral Responsibility', in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta and Uri Nodelman, Fall 2022 (Metaphysics Research Lab, Stanford University, 2022), <https://plato.stanford.edu/archives/fall2022/entries/moral-responsibility/>.

23 John Finnis, 'Natural Law Theories', in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Summer 2020 (Metaphysics Research Lab, Stanford University, 2020), <https://plato.stanford.edu/archives/sum2020/entries/natural-law-theories/>.

24 Fredrick Munini Musee, 'ANTHROPOCENTRIC - ECOCENTRIC CONTROVERSY: FINDING A COMMON GROUND', n.d, 30.

25 Musee, 44.

26 Musee, 31.

is essential to understand how humans organise values and how it impacts the institutional construction of legal personhood.

3. Evolutionary Perspective of Value Organisation

Humans can only perceive reality through their sensory and cognitive organs, which do not act as passive mirrors. The human cognitive architecture will process the sensory data by interpreting it into a mental image,²⁷ and organise it as units hierarchically.²⁸ Through this process, the sense of value arises, allowing humans to ascribe meaning, significance, or importance to various aspects of reality.²⁹

The configuration of the cognitive architecture of organisms, including humans, is believed to be the result of natural selection.³⁰ This process of natural selection forms the human cognitive architecture that allows humans to understand, process, and respond to information in such a way as to increase their chances of survival and reproduction.³¹ Naturally, niches result in distinct adaptations in terms of the physical features of organisms characterised by their physiology and their survival strategies characterised by their behaviour.³²

In other words, the reality of the natural world implies that the traits of an organism (including humans) are configured around those processes and

27 Marina Kremer and Kristen Haberkorn, 'Mental Representations', in *The International Encyclopedia of Media Psychology* (John Wiley & Sons, Ltd, 2020), 1–17, <https://doi.org/10.1002/9781119011071.iemp0191>; James J Gibson, *The Ecological Approach to Visual Perception* (New York: Taylor & Francis, 2015) 344-51.

28 Gillian Cohen, 'Hierarchical Models in Cognition: Do They Have Psychological Reality?', *European Journal of Cognitive Psychology* 12, no. 1 (March 2000): 1–3, <https://doi.org/10.1080/095414400382181>.; A similar hierarchical model is used by Simmel in explaining his theory of value, see: Georg Simmel, *The Philosophy of Money: Third Enlarged Edition*, 3rd ed. (London: Routledge, 2004) 56-7.

29 Fabrice Teroni termed this phenomenon as an evaluative experience, which is a cognitive phenomenon that occurs at the sub personal level. This phenomenon allows humans to conceptually experience the value of an object. See: David Bain, Michael Brady, and Jennifer Corns, *Philosophy of Suffering: Metaphysics, Value, and Normativity* (Oxon: Routledge: Taylor and Francis Group, 2020) 6-7; In their article, Krauzlis et al. explain how value-based decision-making implies features such as filters that determine an organism's attention, see: Richard J. Krauzlis et al., 'Attention as an Effect Not a Cause', *Trends in Cognitive Sciences* 18, no. 9 (September 2014): 457–8, <https://doi.org/10.1016/j.tics.2014.05.008>.

30 Peter Carruthers, Stephen Laurence, and Stephen P. Stich, eds., *The Innate Mind: Structure and Contents*, Evolution and Cognition (New York: Oxford University Press, 2005) 11.

31 Carruthers, Laurence, and Stich 11-12.

32 Robert M. Sapolsky, *Behave: The Biology of Humans at Our Best and Worst* (New York, New York: Penguin Press, 2017) Chapter 11.

functions. For the same reason, human cognitive architecture is equipped with prosocial tendencies such as empathy, collaboration, and moral sentiment.³³ This paper suspects suspect that the cognitive configuration that determines how humans organise their values, priorities, and society impacts how humans organise society through social institutions.

4. Sense of Self and The Foundation of Person

Based on neurological studies, there are this two cognitive processes within human cognitive architecture, known as object recognition and categorisation.³⁴ Humans have a tendency to categorise elements of reality based on their similarities.³⁵ This ability is a fundamental feature of human cognition that helps us to efficiently process and comprehend the vast amount of information in our surrounding environment.³⁶

That ability allows humans to categorise elements of reality and, therefore, is the basis of the human ability to categorise oneself. The ability to categorise allows humans to reflect on themselves and understand that they are separate from other entities, that they are a unique unit, different from other natural components such as rocks, animals, and so on. Humans can understand that, unlike other entities that exist ‘out there,’ their subjective experience exists ‘here’ or ‘inside’ their body, which allows for the demarcation between self and others.

When humans begin to perceive themselves as a unique unit, they can recognise their subjectivity, characterised by how humans can differentiate between a phenomenon that is directed by the self or controlled by its subjectivity, such as their own deliberate actions, and a phenomenon that occurs outside their subjectivity and control, such as natural phenomena.

33 Ernst Fehr and Urs Fischbacher, ‘The Nature of Human Altruism’, *Nature* 425, no. 6960 (2003): 785–91, <https://doi.org/10.1038/nature02043>.

34 James J. DiCarlo, Davide Zoccolan, and Nicole C. Rust, ‘How Does the Brain Solve Visual Object Recognition?’, *Neuron* 73, no. 3 (9 February 2012): 415–34, <https://doi.org/10.1016/j.neuron.2012.01.010>.

35 Susan G. Wardle and Chris I. Baker, ‘Recent Advances in Understanding Object Recognition in the Human Brain: Deep Neural Networks, Temporal Dynamics, and Context’, *F1000Research* 9 (2020), <https://doi.org/10.12688/f1000research.22296.1>.

36 Shuichi Shigeno, Yasunori Murakami, and Tadashi Nomura, eds., *Brain Evolution by Design: From Neural Origin to Cognitive Architecture*, Diversity and Commonality in Animals (Tokyo: Springer Japan, 2017), <https://doi.org/10.1007/978-4-431-56469-0>, 375.

This distinction is the most basic and important foundation for the concept of agency. Humans organise themselves on the assumption that their species has subjectivity and is the producer or source of all their actions.

5. Human's Intrinsic Value

Since the sense of value has evolved due to adaptation and natural selection, it cannot be dissociated from these processes. It has implications for how we distribute value (negative and positive values), which will be expressed as 'valuable/harmful in relation to something' or 'valuable in relation to what?' In other words, the value distribution towards natural components must be anchored to something considered an ultimate goal.

One fundamental goal for human evolution is preserving their existence and genes. Naturally, human behaviour, including the way we organise ourselves as species, is shaped around those goals. Thus, it is reasonable to assert that values are organised in the proposition 'valuable in relation to humans.' As a result, humans tend to attach intrinsic value to themselves and extrinsic value to natural components, and the value of nature is organised based on its importance to humans.

6. The Case for The Exclusion of Slaves

The massive inter-group competition during the Pleistocene era drove humans to develop new patterns and complexities in how they organise themselves. In behavioural biology, this pattern is called in-group bias, making humans behave prosocially towards their own group and antisocially towards other groups. This bias developed because, in competitive situations, humans likely associated the presence of other groups with things like violence and resource scarcity.³⁷

Although advantageous in its time, in the modern context, this cognitive configuration could result in discrimination, xenophobia, or even war.³⁸ It can be said that humans have the cognitive ability to exclude members of their species as dynamics of natural selection. This configuration can explain why, although the concept of personhood rests upon humans' centrality, exceptions to other human groups are still possible.

³⁷ Sapolsky, *Behave*, Chapter 11.

³⁸ *Ibid.*

7. The Case for The Exclusion of Women

This paper suspects that discrimination towards women in legal personhood is more cultural. Discrimination against women stems from the conception of a gender-based division of labour between men and women. Men are perceived to hold positions in the public sphere, while women are relegated to domestic roles.³⁹ It explains why the restriction on women's legal personhood relates to public matters such as voting, capacity to litigate in court, and restrictions on holding public office.⁴⁰

8. The Case for Artificial Personhood

When the concept of natural personhood evolved, It expanded to the point where the status of personhood, which initially reflected moral standing, is now gradually detached from its origins by incorporating non-human entities. Although detached from its origins, the model and form of artificial personhood still reflect its moral nature with the use of terms such as 'rights' and 'duties' as if legal entities are metaphysically agents.

Basically, the concept of artificial personhood is pragmatic development stemming from company and organisation owners' concerns regarding contracts and property management.⁴¹ The primary purpose of such institutions is to provide a clear mechanism for public institutions to ensure that the property or wealth is not organised in the name of an individual and cannot be inherited when the board changes.⁴²

C. Descriptive Overview of Environmental Personhood

1. Contextual Background

Environmental personhood emerges as a response to the threat of environmental destruction driven by modern institutions. Modern science contributes to this threat through instrumental rationality and the projection

39 Nan Zhu and Lei Chang, 'Evolved but Not Fixed: A Life History Account of Gender Roles and Gender Inequality', *Frontiers in Psychology* 10 (2019), <https://www.frontiersin.org/articles/10.3389/fpsyg.2019.01709>.

40 'History of the Women's Rights Movement', *National Women's History Alliance* (blog), accessed 17 February 2023, <https://nationalwomenshistoryalliance.org/history-of-the-womens-rights-movement/>.

41 Gordon, 'Environmental Personhood', 62-63

42 *Ibid*, 64-65.

of dualistic human narratives onto the natural world.⁴³ According to Callicott, this dualistic narrative can be rooted back to the 17th century, specifically during the scientific revolution, marked by prominent modern scientists such as Isaac Newton, Francis Bacon, and Rene Descartes.⁴⁴ These thinkers are considered to have laid the groundwork for the assumption that humans are the subject who can control the environment as mechanical objects.⁴⁵

A growth-oriented economic institution is considered a product of instrumental rationality. For example, modern economic institutions are designed to sustain economic growth, ranging from corporations whose performance is measured by annual growth,⁴⁶ to nations whose economic success is evaluated by their Gross Domestic Product (GDP) growth.⁴⁷ Modern society continues to perpetuate this mindset without questioning its underlying rationale.⁴⁸

Legal and political institutions embody this anthropocentric perspective, marked by how the state, through its constitution, is always built around human welfare. The state's objective has traditionally been to safeguard human rights and ensure they are not violated. Various constitutional rights are guaranteed to protect life or aspects of human life. Although environmental protection

43 Robyn Eckersley, *The Green State: Rethinking Democracy and Sovereignty* (London: The MIT Press, 2004) 107.

44 Jean-Daniel Collomb, 'J. Baird Callicott, Science, and the Unstable Foundation of Environmental Ethics', *Angles*, no. 4 (1 April 2017): 4, <https://doi.org/10.4000/angles.1390>.

45 Stephens and Brence, 'Examining Personhood and Environmental Policy: Analyzing the Philosophical Frameworks of Granting Legal Rights To Non-Human Entities', 19-20.

46 *Ibid*, 38.

47 Mathew Humphrey, *Ecological Politics and Democratic Theory: The Challenge to The Deliberative Ideal*, Routledge Studies in Extremism and Democracy (Oxon: Routledge: Taylor and Francis Group, 2007), 36.

48 The current system in which we measure economic activity based on GDP was originally formulated by Simon Kuznets to measure the impact of economic policies on economic activity during the global economic crisis of the 1930s (the Great Depression era). GDP is calculated based on money circulation, to measure whether an economic policy has an impact on economic activity growth. The context in which GDP was developed was an effort to quit from a global economic crisis. This explains why the system is growth-oriented. Unfortunately, the system continues to be used even though the social context that underlies it has disappeared. The economy is configured to continue to grow without regard to the negative externalities of exploiting nature. Humans continue to develop methods to fulfil these procedures more efficiently, as if these procedures were the end goal itself. The system that was originally created for a purpose has now been separated from that purpose, and people have become accustomed to a method and have stopped asking, 'What is it for?'

and conservation efforts exist, they are generally seen as a means to protect human rights as the moral community's primary members.⁴⁹

On the other hand, environmentalism is criticised for its failure to address the fundamental root of problems, as it is still based on an anthropocentric perspective that is prone to repeating the same patterns of exploitation. Supported by the popularity of anti-establishment movements in the 1960s and 1970s, there was an urge to develop alternative movements and schools of thought in environmental ethics that were more radical and capable of addressing fundamental issues.⁵⁰

Various monumental literature emerged that fuelled the schism between environmentalism and deep ecology. Aldo Leopold's 'The Sand County Almanac,' which introduced the idea of ecocentrism, regained attention,⁵¹ and the publication of Rachel Carson's 'The Silent Spring,'⁵² as well as the introduction of the term deep ecology in Arne Naess's work,⁵³ and idea of eco-holism by Fritjof Capra,⁵⁴ to the phenomenal work 'Should Trees Have Standing' by Christopher Stone, strengthened the foundation of the deep ecology tradition.⁵⁵

2. Proposed Solution

Unlike environmentalism, deep ecology's main idea is to evaluate the relationship between humans and the natural world. The solution to environmental problems is not merely shifting how humans do things (business as usual but in green) but rather reorganising the moral community that is currently overly focused on humans. As part of this effort, deep ecology adopts

49 Rob Boddice, *Anthropocentrism: Humans, Animals, Environments* (Leiden: Koninklijke Brill, 2011), 13.

50 Humphrey, *Ecological Politics and Democratic Theory: The Challenge to The Deliberative Ideal*; Amir Abedi, *Anti-Political-Establishment Parties: A Comparative Analysis*, Routledge Studies in Extremism and Democracy (London: Routledge, 2004) 42.

51 Aldo Leopold, *A Sand County Almanac: With Essays on Conservation from Round River* (Random House Publishing Group, 1986) 203-05.

52 Nash, *The Rights of Nature*, 172-3.

53 Arne Naess, 'The Shallow and the Deep, Long-range Ecology Movement. A Summary*', *Inquiry* 16, no. 1-4 (January 1973): 95-100, <https://doi.org/10.1080/00201747308601682>; Mick Smith, 'Deep Ecology: What Is Said and (to Be) Done?', *The Trumpeter* 30, no. 2 (2014): 141.

54 Nash, *The Rights of Nature*, 116.

55 John Barry, 'The Limits of the Shallow and the Deep: Green Politics, Philosophy, and Praxis', *Environmental Politics* 3, no. 3 (1994): 369-70, <https://doi.org/10.1080/09644019408414152>.

an ecocentric perspective.⁵⁶ The concept of the green constitution emerges from this deep ecology movement and seeks to establish a legal framework that recognises the environment as having inherent value and deserving of protection.

This framework would require the integration of environmental concerns into all areas of law and policy. It would also recognise the interconnectedness of all living beings and the need for a holistic approach to environmental management. The implications of reorganising the moral community impact how the state, as a political organisation, should be organised. This concept offers a reorganisation of the foundation of political structures related to values and agency (morality) reflected by granting legal person status to the environment.

3. Key Concepts

a. Metaphysical Foundation

Ecocentrist metaphysical commitments are usually based on two sources; the first is ecology, and the second is pre-ecological beliefs that are dominant among indigenous communities in Africa, America, and Asia.⁵⁷ In ecology, it is understood that each species has a specific place in the ecosystem, referred to as an ecological niche. Ecology and the theory of evolution explain that biotic community members are interrelated both nutritionally and in terms of their origins. The entire complex network demonstrates a common interest in the continuity of existence.⁵⁸

According to the second view, nature is an indivisible whole, a unified entity that should not be divided. Some believe the natural world is a 'psychosomatic' entity that is alive and conscious. The fact that nature always returns to an equilibrium point indicates that the entire biosphere essentially

56 According to Humphrey, the difference between the ecological and environmental movements is that the ecological movement aims at fundamental changes to the political and economic institutions of society, while environmentalism only targets the reform of existing institutions towards greener practices, see: Humphrey, *Ecological Politics and Democratic Theory: The Challenge to The Deliberative Ideal*; Barry, 'The Limits of the Shallow and the Deep: Green Politics, Philosophy, and Praxis', 371-2

57 Musee, 'ANTHROPOCENTRIC - ECOCENTRIC CONTROVERSY: FINDING A COMMON GROUND', 78.

58 *Ibid*, 93.

operates as a living organism striving for survival.⁵⁹ Both claims lead to the conclusion that nature is fundamentally harmonious and balanced. An imbalance in nature is understood as a sign that there is a mismatch with the intrinsic values of nature.⁶⁰

b. Epistemological Foundation

Despite using ecology, environmental personhood, stems from postmodern tradition. Postmodern epistemology understands that representations of reality are burdened with meaning that varies across different cultures and historical periods,⁶¹ where each piece of knowledge is relative and contingent. Modern science is one of this knowledge (science is just another story).⁶² Nonetheless, science acts as if it is the mode of operating all discourses,⁶³ which results in projecting the human narrative as the dominant mode of describing natural realities (grand narrative).

The rejection of the centrality of human knowledge is a drive to develop a non-anthropocentric epistemology that seeks to open up possibilities for describing natural realities without depending on the 'human narrative.'⁶⁴ While this nature's narrative, independent of humans, provides space for marginal narrative. Epistemologically, it is claimed that knowledge of these facts can only be accessed through intuition and deep ecology methods, not traditional philosophical and scientific reasoning that is biased towards human narrative.⁶⁵

c. Axiological Foundation

If we accept that humans have intrinsic moral values, there is no reason

59 Musee, 79-80.

60 Tasos Hovardas, 'A Critical Reading of Ecocentrism and Its Meta-Scientific Use of Ecology: Instrumental Versus Emancipatory Approaches in Environmental Education and Ecology Education', *Science & Education* 22, no. 6 (June 2013): 1467-83, <https://doi.org/10.1007/s11191-012-9493-1>.

61 Eckersley, *The Green State: Rethinking Democracy and Sovereignty*, 122.

62 George Sessions, 'Deep Ecology, New Conservation, and the Anthropocene Worldview', *The Trumpeter* 30, no. 2 (2014): 112.

63 Ben Mylius, 'Towards the Unthinkable: Earth Jurisprudence and an Ecocentric Episteme', *Australian Journal of Legal Philosophy* 38 (2013), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ajlph38&div=3&id=&page=>.

64 Eckersley, *The Green State: Rethinking Democracy and Sovereignty*, 122.

65 Musee, 'ANTHROPOCENTRIC - ECOCENTRIC CONTROVERSY: FINDING A COMMON GROUND', 95.

to deny the inherent value of the environment in its entirety. Given that the life and well-being of every entity within it are determined by its relationship to other natural components, the environment is important, and each component should be taken into account.⁶⁶ Based on this, Leopold suggested framing the natural world as a single biotic community.⁶⁷

Ecocentrism rejects the moral value separation between human and non-human nature,⁶⁸ departing from its metaphysical and epistemological stance. Like humans, the environment is constructed as a bearer of intrinsic value, has its own interests, and its rights must be protected. In morality, the environment is a member of the moral community. Within the framework of a state, this status is reflected through the recognition of the environment as legal person.

D. Critical Analysis Against Environmental Personhood

The explanation implied how the concept of environmental personhood describes the nature of legal personhood:

Firstly, the concept is based on a metaphysical commitment that humans are equal to nature. Secondly, the concept is based on a relativist view, in which the mode of operation of all discourse is dominated by science, which projects dualism and human thought as absolute knowledge and mode of operation of all discourse. Thus, the concept proposed a non-anthropocentric epistemology. Thirdly, the environment is eligible to bear intrinsic value.

Fourthly, the environment is capable of and is a bearer of subjective interests; thus, it must be included as a member of the moral community. Legal personhood is an implication of a status that is existential in nature and based on a certain metaphysical property that can be identified. Fifthly, as a bearer of rights naturally, the environment can be constructed as a natural person.

Can these five basic assumptions be justified?

1. The Non-Anthropocentric Epistemology

This paper argues that a non-anthropocentric epistemology, where

⁶⁶ *Ibid*, 83.

⁶⁷ *Ibid*.

⁶⁸ Nash, *The Rights of Nature*, 18

knowledge is not centred on human narrative, is impossible. All knowledge is produced and processed through human perception and interpretation, which is inherently biased and subjective due to the subjective nature of the cognitive architecture of humans. The human mode of knowledge, or human episteme, is essentially unavoidable. How humans operate their minds is bound by their cognitive architecture, conditioned by the biological organs responsible for these functions. Humans cannot operate their cognitive abilities or experience mental states beyond what the brain allows and its predetermined configuration. In other words, accessing a non-human episteme is impossible.

Moreover, criticism of non-anthropocentric epistemology against modern science is, maybe, misguided. Modern science does not necessarily imply a dualistic and mechanistic view of the natural world, as neuroscience and ecology have refuted the dualism of humans and the natural world.⁶⁹ Additionally, postmodernism blurs the lines between science as a method and an institution. It cannot be denied that science as an institution can be misused, but this criticism is unrelated to science as a method.

2. Intrinsic Value of The Environment

Based on the previous explanation, it is known that the concept of moral standing (which determines how humans organise legal personhood) is an implication of how humans organise value through institutions. The sense of value is a mental device that helps humans ascribe meaning, significance, importance, or value to various aspects of reality.

Value is not an intrinsic property of the natural world that is ‘just there to be found’ but a relational concept constructed in the human mind. The existence of value depends on the subject, or in other words, value would not exist if no subject perceives it. It is because the value is a conceptual reality that exists and depends on the human mind. Without the human mind, any abstract form, including value, cannot have existence.

Before humans developed, the natural world was merely a physical

69 Thilo Hinterberger, ‘The Science of Consciousness – Basics, Models, and Visions’, *Journal of Physiology Paris* 109, no. 4–6 (2015): 143–51, <https://doi.org/10.1016/j.jphysparis.2015.12.001>.
Wayne Wu, ‘The Neuroscience Of Consciousness (Stanford Encyclopedia Of Philosophy/Winter 2018 Edition)’, Plato.Stanford.Edu, 2021, <https://plato.stanford.edu/entries/consciousness-neuroscience>.

landscape without value. Things like meaning, purpose, good, and bad never existed and were never attributes or intrinsic properties of any component of the natural world. Humans arbitrarily establish that a particular part of the natural world (humans themselves) has intrinsic value. Therefore, the environment or other entities cannot possibly bear intrinsic value.

3. Environment's Subjective Interests

Environmental personhood is based on the metaphor of the balance of the natural world. The natural world is depicted as a self-regulating system that tends to return to a state of equilibrium. The natural world has an implicit interest in returning to or maintaining this balance. Some even argue that this fact makes the earth essentially a single organism. These views are used to formulate the existence of environmental interests as the basis for granting legal person status.

The balance of the natural world implies the existence of an optimal natural condition. When the natural world is interfered with or disturbed, its balanced nature will cause it to return to this optimal condition. For example, if we think climate change, flooding, or global warming be disruptive and damaging to the balance of the natural world, there must be an optimal condition that serves as a benchmark for such disruption. What kind of condition should be used as the reference point for this optimum condition?

Unlike pens, windows, or glasses, whose essence precedes existence, the earth or the natural world exists before its essence. If a pen has a blueprint and function defining its existence, the earth does not have such a thing. The entire function of the earth is a construction and interpretation after its existence, not a function that accompanies its existence, while the function of the pen is the essence of its existence and the reason why its existence occurs. As a result, the earth does not have an optimum condition that can be used as a reference point for its destruction.

In principle, the natural world can change but cannot be destroyed. Destruction is nothing but a subjective evaluation and interpretation by humans who evaluate changes in the natural world in relation to other variables, usually their own interests and existence. If the optimum condition that is the

basis for attaching environmental interests is a product of human cognition, then the environment cannot have subjective interests that serve as the basis for granting legal person status, as deep ecologists believe.

4. The Environment as Natural Person

The primary determinant distinguishing natural personhood from artificial personhood is the assumption of a metaphysical gap between humans and non-human entities.⁷⁰ Humans are considered to have intrinsic value, making human interests deserving of being treated as an end in themselves.⁷¹ This value is regarded as an existential element of humans as rational beings. What distinguishes humans as ‘subjects’ from non-human entities as ‘objects’ is whether the entities are valuable as an end in themselves.⁷²

The subject’s value is valuable in itself, while the object’s value is only valuable in relation to the subject. By constructing the environment as the bearer of intrinsic value,⁷³ ecocentrism views personhood as a status that partially has an existential nature. In this understanding, the environment has always been eligible to become a natural person, but this status is only discovered through the deep ecology method. Environmental personhood constructed within deep ecology seeks to frame the environment as a natural person, just like humans.

However, this cannot be justified. Value and membership in a moral community are fundamentally a consequence of relationships, not properties that inherently attach to an entity. Value is a consequence of how humans organise themselves. As expressed by Foster and Herring, the question ‘Is X a person?’ is problematic because it implies that whether an entity is a person depends on the entity’s metaphysical properties.⁷⁴

Personhood itself can only be perceived in the context of relationships.

70 Tomasz Pietrzykowski, ‘Toward Modest Naturalization of Personhood’, *REVUS: Journal for Constitutional Theory and Philosophy of Law* 32:The Pro (2017): 59–71. Para 11

71 Humphrey, *Ecological Politics and Democratic Theory: The Challenge to The Deliberative Ideal*, 129-30.

72 Tim Hayward, ‘Anthropocentrism: A Misunderstood Problem’, *Environmental Values* 6, no. 1 (1997): 63, <https://doi.org/10.3197/096327197776679185>.

73 Humphrey, *Ecological Politics and Democratic Theory: The Challenge to The Deliberative Ideal*, 129-30

74 Foster and Herring, *Identity, Personhood and the Law*, 35-7.

A new entity may only be recognised as a person based on its relationships, which are determined by how society distributes value and organises relationships.⁷⁵ As explained in the previous section, morality and social institutions formed based on moral values are social tools society uses to organise itself. Moral values and status are mental tools used to navigate the relationship of individuals to others.

In this sense, it is inaccurate to perceive value as a part of objective reality that is discovered because value is a relationship that results from human cognition, and its existence is constructed. Thus, the status of personhood cannot be discovered but can only be constructed. The entire status of an entity is unconceivable if it is an isolated self. It only emerges in relation to others.⁷⁶ The status of being a person only arises when there is a need to organise relationships between individuals.

E. Environmental Personhood Reimagined

1. Justifying The Reformulation

Robert Heilbroner and William Ophuls argued that democratic societies would systematically fail to impose the necessary policies to reduce the environmental crisis. There is a strong assumption in this idea that the general public is politically incompetent, especially during a crisis.⁷⁷ Therefore, it is essential for those who understand how to address the crisis to take action without the public's consent.⁷⁸

This paper argues that incompetence may not be the right reason. Without ecocentrism, the idea that human life depends on the condition of the natural world is easily understood. The main problem in this issue is the limitations of human cognitive configuration. Psychologically, humans have a clearer understanding of short-term issues than long-term ones.⁷⁹

⁷⁵ *Ibid*, 38.

⁷⁶ Foster and Herring, 35-7.

⁷⁷ Humphrey, *Ecological Politics and Democratic Theory: The Challenge to The Deliberative Ideal*, 11.

⁷⁸ Dan Coby Shahaar, 'Rejecting Eco-Authoritarianism, Again', *Environmental Values* 24, no. 3 (1 June 2015): 345–66, <https://doi.org/10.3197/096327114X13947900181996>.

⁷⁹ Humphrey, *Ecological Politics and Democratic Theory: The Challenge to The Deliberative Ideal*, 13.

This paper suspects this biologically programmed behaviour has implications for societal choices when deciding to take political action within a democratic system. Due to their cognitive configuration, society will be more motivated by short-term rather than long-term interests that are not perceived as urgent.

As previously stated, physical and cognitive human characteristics are products of millions of years of adaptations. Some of these adaptations may have been highly advantageous in the setting of human ancestors' past environment. Nevertheless, considering the rapid development of human civilisation through culture and technology, these adaptations are not always suitable for the modern context (maladaptation).⁸⁰

In terms of physiology, these remaining adaptations are known as vestigial organs. Examples of vestigial organs that were adaptations from the past but no longer serve a significant function include the appendix, wisdom teeth, and thin body hair in humans. Some of these organs, such as the appendix and wisdom teeth, negatively affect human health. These types of evolutionary remnants occur not only in physiology but also in human behaviour.

Behavioural processes like 'fight or flight' evolved in response to severe environmental situations threatening human physical safety during the Pleistocene epoch. Currently, these adaptations often result in stress and acute anxiety disorders.⁸¹ Adaptations to rely on strong social bonds initially successfully maintained human group cohesiveness in the ancestral environment, where living in groups was essential to human survival. However, in today's world, where social bonds become less vital in navigating life, these adaptations usually lead to social anxiety, acute loneliness, and even depression.⁸²

80 Steven W. Gangestad and Ronald A. Yeo, 'Behavioral Genetic Variation, Adaptation and Maladaptation: An Evolutionary Perspective', *Trends in Cognitive Sciences* 1, no. 3 (1 June 1997): 103–5, [https://doi.org/10.1016/S1364-6613\(97\)89056-0](https://doi.org/10.1016/S1364-6613(97)89056-0).

81 Dean Mobbs et al., 'The Ecology of Human Fear: Survival Optimization and the Nervous System', *Frontiers in Neuroscience* 9 (18 March 2015): 55, <https://doi.org/10.3389/fnins.2015.00055>; Jennifer Senior, Stephen Pincock, and Brent A Mattingly, *Loneliness: Human Nature and the Need for Social Connection* (New York: W.W. Norton & Company, 2008) 88.

82 Senior, Pincock, and Mattingly, *Loneliness: Human Nature and the Need for Social Connection* 88.

Many physiological and cognitive configurations in humans are adaptations from the past but have become maladaptations when placed in a modern context. In other words, some parts of the human body still function more or less the same way as when their ancestors were still hunting and gathering, while the problems they face today are very different.⁸³ This paper speculates that some remnants of this cognitive evolution influence how humans organise values, establish priorities, and generally behave in running institutions such as democracy.

It is not that society is incapable of understanding environmental issues, but when individuals are faced with a pragmatic problem, the decision that benefits them in the short term is the most likely to be chosen. This impulse is suspected to be the filter for why popular socio-economic policies are complicated to reflect environmental protection values, as they come from short-term concepts and motivations.

There is a gap between the motivation underlying human behaviour and the coordination efforts to create collective action against problems.⁸⁴ Joseph Schumpeter explains this issue well. According to him, humans generally find it easier to feel the urgency of their short-term personal interests than that of complex long-term socio-economic and political issues.⁸⁵

This speculation is confirmed in several scientific findings in various fields of study. Based on Laura L. Carstensen's findings, human feelings or perceptions of 'remaining time' significantly influence how they process information, including motivation, cognition, and emotions. Things like goals, preferences, and cognitive processes like attention systematically change with perceptions of dwindling time.⁸⁶

The research uses age as a variable, where there are significant differences

83 Lieberman explains that human evolution is the product of various evolutionary pressures and adaptations that may no longer be relevant today. It can be said that some parts of the human body are products of past adaptive pressures, see: Daniel Lieberman, *The Story of the Human Body: Evolution, Health, and Disease*, First edition (New York: Pantheon Books, 2013). p. 23-5.

84 Humphrey, *Ecological Politics and Democratic Theory: The Challenge to The Deliberative Ideal*, 113.

85 *Ibid.*

86 Laura L. Carstensen, 'The Influence of a Sense of Time on Human Development', *Science (New York, N.Y.)* 312, no. 5782 (30 June 2006): 1913–15, <https://doi.org/10.1126/science.1127488>.

in cognitive processes between older and younger people. The variable that determines this difference is the perception of the remaining time. When time is perceived as open (rather than restricted), individuals are more likely to prioritise preparatory things, information-gathering, and new experiences. However, when time is perceived as something that restricts, priorities change towards things that can be realised in the short term. This condition is due to a tendency to prioritise feelings to optimise psychological well-being.⁸⁷

According to more specific research at Princeton University, the human brain prioritises instant gratification over long-term goals. This condition arises from the competition between the brain regions responsible for feelings and those responsible for abstractions. The closer humans are placed in a situation with instant gratification, the more likely they are to prioritise that instant gratification over long-term goals.⁸⁸

According to Daniel Gilbert, a psychology professor from Harvard University, the human mind has adapted to respond to signs of immediate threat rather than relatively gradual and long-term threats. Such cognitive configuration is a common trait shared by other mammals. From an evolutionary perspective, the human brain is optimised to respond to natural conditions in the Pleistocene epoch, when humans spent more time chronologically compared to the current modern period.⁸⁹

The human environment has changed drastically since then, but some primitive cognitive configurations that were remnants of human evolution while navigating the ancient environment persist. According to Gilbert, there are four conditions of threat that trigger instant responses in the human brain:⁹⁰

1. The source of the threat is another human or organism rather than an inanimate object;
2. There is a moral component;
3. The threat is short-term rather than long-term;

⁸⁷ *Ibid.*

⁸⁸ 'Study: Brain Battles Itself over Short-Term Rewards, Long-Term Goals', Princeton University, 2004, <https://pr.princeton.edu/news/04/q4/1014-brain.htm>.

⁸⁹ 'Humans Wired to Respond to Short-Term Problems', NPR, 3 July 2006, <https://www.npr.org/templates/story/story.php?storyId=5530483>.

⁹⁰ *Ibid.*

4. The signs of threat are sudden rather than gradual.

None of these characteristics characterises ecological threats. This condition is exacerbated by the fact that environmental policies often limit some of the public's rights.⁹¹

Democratic societies cannot be relied on to adopt environmental policies that can truly solve environmental problems. At the individual level, prioritising short-term interests is a rational choice. Short-term choices are relatively easier to control and immediately impact an individual's well-being. However, at the societal level, such choices are irrational. This condition is also known as 'rational individual, irrational society' or 'tragedy of the commons.'⁹²

Ironically, activists and politicians focusing on environmental issues are relatively small in number and influence. On the other hand, these small groups represent a vast interest. Without solid support and pressure, there is no incentive for the government as a political entity to prioritise environmental issues.

Ideally, consistent exposure to environmental insights can raise environmental policy awareness. Ideally, the political party's function is to conduct political education on these topics. Realistically, political parties in Indonesia are incompetent in organising such efforts. Therefore, as a democratic country, environmental issues will be challenging, especially Indonesia as developing countries where social and economic issues are more popular and challenging for society to filter environmental policies.⁹³

This argument is the background of the concept of ecological authoritarianism or eco-authoritarianism. According to this concept, to achieve truly impactful environmental policies, restrictions that lead to violations of democratic principles and human rights must be tolerated. Democracy, based on the reasons mentioned earlier, is considered unable to preserve human survival on earth.⁹⁴

91 Humphrey, *Ecological Politics and Democratic Theory: The Challenge to The Deliberative Ideal*, 19.

92 *Ibid*, 13

93 *Ibid*.

94 Shahrar, 'Rejecting Eco-Authoritarianism, Again', 348-50.

Another justification for ecological authoritarianism is related to the scope of democracy itself. In a democratic state, not all issues are subject to democratic procedures.⁹⁵ In Indonesia, for example, democracy is supported by non-democratic institutions and procedures. The judiciary is not a democratic institution because the law must be applied fairly and impartially. The Indonesian Constitutional Court has the authority to annul legislative products formulated by the people's representatives, which is not democratic.

Some issues fundamentally cannot be managed democratically. Ironically, these undemocratic institutions can exist to protect democracy. Ecological authoritarianism argues that environmental destruction and overexploitation are essentially a form of violence because they can have damaging physical impacts on society, including mass deaths. These issues are not areas that can or should be managed democratically.

Furthermore, protecting the survival of society is a fundamental condition that allows for the existence of any democratic institution. Without society, or with a society that is destroyed, democracy cannot be maintained. Therefore, this lack of democracy can be justified as a protector of democracy, just as non-democratic institutions, such as the judicial, can protect the continuity of democracy.⁹⁶

The issue with authoritarianism is that not trusting the people is not a good reason to trust the state and government. Maintaining a rational scepticism towards those in power remains a relevant position. In a democratic system, the people are equipped with the ability to correct the state. Lord Acton's assertion that power tends to corrupt and absolute power corrupts absolutely is still relevant today and will likely continue to be so.

Ecological authoritarianism also faces serious questions: to what extent will the state control the lives of its citizens? Environmental issues penetrate deeply into all layers of society, even to the citizen's smallest choices. Will the state be present in every aspect of citizens' lives to ensure that they act environmentally friendly? Does society trust that all policies justified for

⁹⁵ Humphrey, *Ecological Politics and Democratic Theory: The Challenge to The Deliberative Ideal*, 14-6.

⁹⁶ *Ibid*, 11.

environmental preservation will have environmental motives?

Democracy exists to safeguard the public's primary weapon when dealing with the state. Democracy equips the public with the ability to correct the state's actions. This condition is threatened by authoritarian policies that violate human rights despite may not be truly motivated by environmental concerns. It appears that the reasons to maintain democracy are just as strong. Can the gap between democracy and the environment be bridged?

2. Reformulation Model of Environmental Personhood

The inherent feature of democracy, while also its shortcoming in addressing environmental issues, is the mechanism of 'constituency.' The term 'constituency' in this research is used loosely, referring not only to individuals represented by political officials, but also to members or components of a democratically-run state who have interests in how the state is managed.⁹⁷

These components or members of the state organisation who have interests deliver their interests through various democratic methods, which for simplicity's sake, will be referred to as 'participation,' where interests are advocated through various methods, either directly or indirectly.⁹⁸ In order to be taken into account, an interest must be considered as part of the democratic system. Something will receive less attention if it is not considered part of, or a member of, the 'democratic community.' Basically, many things will be overlooked by this mechanism.

The way to bridge the gap between the interest in protecting the environment while maintaining democratic principles is to put the environment on the same playing field as a traditional 'constituent.' If the rules of the democratic system emphasise 'membership,' then making the environment a member may be a viable option.

Granting legal personhood status must be seriously considered, as one of the principles of a democratic state is the availability of a forum that acts

97 This research avoided to use the term 'stakeholder' in order to emphasize the membership character of the term 'constituent,' whereas the term 'stakeholder' also generally includes external stakeholders who are outside the system.

98 For instance, Robert Dahl explained the democratic process into five criteria: effective participation, voting equality, enlightened understanding, control over the agenda, and inclusion. These five criteria are related to, or even instrumental towards, the participation process, see: Robert A. Dahl, *On Democracy* (New Haven: Yale University Press, 1998) 38.

as a platform for filing complaints when there are legal rights violations. It will result in more portion for ‘environmental narrative’ and rights on policies and the availability of a channel to file lawsuits when those rights are truly violated. Legal person status provides a basis for the environment to access this platform.

In practice, the environment will become a member of the democratic community that operates under the same rules as humans—its interests are represented, and violations of its rights can be reported. However, as previously discussed, the construction of environmental personhood poses several philosophical challenges that are difficult to meet. Nevertheless, this does not mean that there are no interests that can serve as a basis for granting such status.

Just as corporations do not have intrinsic interests but can still obtain rights for pragmatic interests, the environment can also be given the same status—though doing so would mean eliminating ecocentrism entirely in the concept of environmental personhood. The environment will be reconstructed as an artificial person rather than a natural person.

This theoretical framework provides a more coherent foundation and avoids confusion and risks arising from the incoherence and inadequacy of deep ecology as the basis for environmental personhood. Thus, ideas such as the green constitution can be maintained, and the concept of expanding state protection beyond the individual human can be realised by granting the environment legal or constitutional rights.⁹⁹

Environmental personhood can be viewed as an extension of human understanding of the complexity and our dependant position on the natural world, carried out within the realm of the law. Environmental personhood is a social choice that serves as a tool for regulating human behaviour in its environment.

The position of environmental personhood is comparable to the recognition of the personhood of entities such as companies. Companies or

⁹⁹ Douglas Torgerson, ‘Constituting Green Democracy: A Political Project’, *The Good Society* 17, no. 2 (2008): 20.

legal entities generally do not have subjective interests or intrinsic value, yet they can become legal persons. Imagine the complexity that would arise if companies were not constructed as legal entities.

In order to avoid such complexity, the law constructs a legal fiction of the corporation as a legal person, a social technology that engineers how people interact and think about such organisations. Corporate legal personhood is a legal fiction that treats the corporation as an individual with certain rights and duties under the law. This concept is used to simplify the complex reality of economic legal relationships, especially between collective organisations.¹⁰⁰

The idea of artificial personhood for corporations allows legal experts and legal systems to more easily manage issues related to contracts, property ownership, obligations, and other aspects of corporate governance. Such frameworks also function as a mental shortcut by pretending that the corporation is a unique separate entity. This social technology has succeeded in simplifying complex legal relationships that may occur.

If the law can do this for corporations or legal entities, why can't the same be applied to the environment? Similar to corporations, the relationship between humans and the natural world is very complex. When environmental destruction occurs, the impact will directly or indirectly affect humans, although it may not be immediate. Proving damages from environmental destruction can be difficult because too many variables are at play, making direct evidence difficult to obtain.

Those are exacerbated if such damage impacts can potentially affect future generations. Who will represent the rights of an entity that does not yet exist? Can legal experts navigate the complexity of the environmental crisis, which is, after all, a different field of study, namely ecology? Correctly understanding the relationship between humans and the environment can only be done by ecological experts, given the complexity of the relationships between variables.

Personifying the environment in the legal realm can be a social technology, a mental tool, to simplify how legal experts should view the relationship

100 Gordon, 'Environmental Personhood', 63-5.

between humans and the environment to support environmental sustainability. This social technology works by anthropomorphising the environment, much like how corporations are treated as anthropomorphic entities.

3. The Problem with Reformulation

One highly debated area within legal personhood discourse is the question of ‘what is the content of legal personhood?’ Leibniz believed that a legal person is a bearer of rights and duties,¹⁰¹ Steven Wise and John Austin believed that a legal person is a bearer of rights only,¹⁰² and John Chipman Gray believed that a legal person is a bearer of rights or duties.¹⁰³

The view that legal personhood is predominantly defined as a bearer of rights and duties has dominated Western legal discourse in the 19th and 20th centuries.¹⁰⁴ Similarly, the legal person is generally understood as the bearer of rights and duties in Indonesia.¹⁰⁵ Some experts, such as Utrecht, have argued otherwise by defining legal personhood solely as a bearer of rights without requiring duties.¹⁰⁶

If a legal person is defined as a bearer of rights and duties, then there is a loophole for an expert to assume that by providing balance and harmony, the environment has fulfilled its duties. This framework is problematic as it assumes an anthropocentric view that the environment ‘does’ this for humans or in a reciprocal relationship with humans.

The question then arises, is it possible to frame an artificial legal person that can bear rights without duties? Can this be conceptually justified? Is duty a necessary component of the concept of legal personhood?

At the institutional level, the institution of rights stands above the institution of duties and vice versa. For example, the right to life of person X only has meaning as long as it means that others (Y) cannot take X’s life,

101 Kurki, *A Theory of Legal Personhood*, 55

102 Kurki; Wesley Newcomb Hohfeld, ‘Some Fundamental Legal Conceptions as Applied in Judicial Reasoning’, *The Yale Law Journal* 23, no. 1 (1913): 16–59, <https://doi.org/10.2307/785533>.

103 Kurki, *A Theory of Legal Personhood*, 55

104 *Ibid.*

105 Dyah Hapsari Prananingrum, ‘TELAHAH TERHADAP ESENSI SUBJEK HUKUM: MANUSIA DAN BADAN HUKUM’, *Refleksi Hukum: Jurnal Ilmu Hukum* 8, no. 1 (8 April 2014): 73, <https://doi.org/10.24246/jrh.2014.v8.i1.p73-92>.

106 Utrecht, *Pengantar Dalam Hukum Indonesia*, (Jakarta, Universal, 1965) 234.

even if Y is capable and willing to do so. If X has the right to life, but on the other hand, Y can still take X's life, then X's right to life is meaningless. Rights without duties mean nothing, as rights can only be preserved with the existence of duties. Researchers believe that at the institutional level, rights and duties are interdependent. Rights will not exist without duties, which are the consequence of rights.

However, at the individual level, rights are not a reward for bearing duties, nor are duties a cost for exercising rights. Both are related, although not in a direct way. Rights generate duties, not for the one who has them, but for others. Duties are the implication of rights, not the bearer's rights, but the rights of other persons. Individually, the existence of entities with rights and no duties are logically feasible without jeopardising the coherence of the idea of legal personhood. The existence of entities with rights and no duties are justified as long as there are still rational agents imposed by duties emerges as consequence of granting rights to entities with rights but no duties at the institutional level.

That framework is not entirely new, as children and fetuses can have rights without duties. The rights of children and fetuses create duties for rational agents capable of bearing those duties, not for the children or fetuses themselves. The rights of children and fetuses also stand independently, not as a cost for fulfilling duties, because at the individual level, the relationship between rights and duties is not directly linked.

Another problem would rest on the question, "What is the proper form or means of recognising the environment as legal person?" Is it enough to just amending relevant environmental law? Do we need to amend the constitution as it is best to treat environmental rights as fundamental rights comparable to human rights? Or do we need an international agreement? This question, however, should be answered in its own in-depth research.

E. Conclusion

Legal personhood is a morally-shaped institutional fact. This concept is configured based on how humans organise values. However, the philosophical

assumptions of environmental personhood in deep ecology create problems that render the concept untenable, such as intrinsic value, non-anthropocentric epistemology, and environmental interests. Although this concept must be rejected, it does not mean that it cannot be salvaged. By reformulating the concept of environmental personhood based on artificial personhood, this research opens up opportunities for the concept to be defended.

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