

Conference Paper

Environmental Policy Based on Community Support System

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Abstract.

This study aims to: 1) Describe Indonesia's current environmental policy; 2) Describe the environmental policy of the Community Support System. This research is normative legal research with a statutory approach and a Community Support System concept approach. Indonesia's environmental policies after the enactment of the Job Creation Law have reduced the participation of the community in obtaining a good and healthy living environment, as evidenced by the failure of the community's right to sue and community involvement only for those who have a direct impact. Therefore, Indonesia's environmental policy needs to restore the role of community fiber as a community support system as a manifestation of the right to a good and healthy environment.

Keywords: environmental policy, community support system

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1. INTRODUCTION

The environment provides natural resources that support human and animal life around the world. Environmental pollution has a negative impact on human life, considering that the environment is the main source of all world socio-economic activities, consisting of natural habitats, plants, and animals that make humanity's irreplaceable heritage.[1] All of this is related to human behavior that places Nature as a commodity that is exploited regardless of the carrying capacity of the environment that can be degraded.[2] Therefore, there is no doubt that the problem of environmental protection and management is a fairly big problem today because the consequences of the damage caused are no less dangerous than weapons of mass destruction.

Indonesia's efforts to deal with environmental conflicts began when the government began taking action to enforce environmental law. This law was abolished for the first time in 15 years, starting with the enactment of Law No. 4 of 1982 regarding

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the basic provisions for environmental management that incorporates the principles of environmental management that guide the national environmental legal system. Nothing suitable for achieving the desired sustainable development has been adopted. Environmental management law. Issue 4 of 1982 was replaced by Law No. 4. Law No. 23 of 1997 was later replaced by Law No. 32 of 2009 to adapt to the times to create sustainable development.

So far, government policies in the environmental sector have always been identical with the issuance of environmental permits. The environmental permit is a preventive measure in environmental protection and management in the context of controlling environmental impacts and can be used as an instrument to prevent environmental damage and/or pollution. Environmental permit is a requirement to obtain a business and/or activity permit, so that a business and/or activity may not operate before it has an environmental permit issued by the government, both the central government and regional governments. Environmental permits can be issued if an activity and/or business already has an AMDAL (Environmental Impact Analysis) and UKL-UPL (Environmental Management Efforts and Environmental Monitoring Efforts).[3]

If this is not so regulated, the subsequent consequences will exacerbate the process of environmental destruction in the form of environmental damage and pollution. However, since the enactment of Employment Creation Act No. 11 in 2020, the government has actually taken the opposite action instead of strengthening its efforts to protect and manage lives. Some provisions that weaken the obligation to protect and manage life include the abolition of the environmental permit obligation clause and the right to sue the state administrative court or PTUN if a company or official obtains an environmental permit issuance permit without AMDAL. Includes the abolition of.[4]

In an effort to protect the environment, it is necessary to intervene in a protection program from the government. What is no less important is how to revitalize the role of various religious social institutions, the participation of secondary groups in society, and the involvement of groups who are aware of the right to a good and healthy environment, which can be called the Community Support System approach.

2. METHODOLOGY/ MATERIALS

This writing is based on a normative legal investigation conducted with a doctrinal approach. The nature of the research in this survey is more descriptive because it aims to clearly explain various things related to the subject of the survey. Since this study is also a scientific study from the results of a literature search, the data sources for

this study are in the form of legal documents, law, literature, and scientific journals. Normative juridical research also examines legal products in the form of regulations while still looking at the reality that is happening in society and related to problems.[5]

3. RESULTS AND DISCUSSIONS

3.1. Environmental Policy Based on Community Support System

Supported by a global awareness of the importance of protecting the environment from pollution and destruction, environmental policies are formulated in the form of public laws and regulations. After so many laws and regulations have been officially enacted, most of these regulations have proved to be ineffective in preventing environmental pollution and degradation. This dissatisfaction is widespread in many countries and calls for strengthening the legal framework for environmental policy in the Constitution as a higher law.[6] Indonesia itself, regulations regarding environmental protection are stated in the 1945 Constitution of the Republic of Indonesia concerning powers after the fourth amendment in 2002, namely the improvement of the status of the environment in relation to human rights guaranteed by the constitution. The affirmation of this can be found in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The right to a good and healthy environment and good health services is a human right. Therefore, the 1945 Constitution of the Republic of Indonesia is very pro-environmental, so it is often called the Green Constitution. Indonesia has enacted a law to protect the environment, Law No. 32 of 2009 on Environmental Protection and Management. Law No. 32 of 2009 contains the concept of sustainable and environmentally sound development in the context of economic development. The basis for the enactment of Law No. 32 of 2009 also refers to the Constitution of the Republic of Indonesia in 1945. It is important to include national economic development because environmental issues in the future will be more complex and full of investment interests. Environmental licensing policies and investment interests are highlighted by many parties, are considered to have a big role in causing the environmental crisis in this country. [7]

Law No. 32 of 2009 gives the government a wide range of powers. In this case, the Minister will carry out all authority in the field of environmental protection and management, as well as coordination with other authorities. Active in supporting the benefits of environmental sustainability and the principles of sustainable development for the prosperity of all Indonesian people, in order to achieve what is envisioned by the Constitution of the Republic of Indonesia in 1945. Synergy. In Article 3 of Law No. 32 of

2009, environmental protection and management protects the nation from pollution and / or damage to the environment, ensuring safety, health, human life, survival of living organisms, and ecosystems. Environment. Achieve environmental functions, achieve harmony, harmony, ecological balance, ensure the realization of justice for current and future generations, ensure the realization and protection of environmental rights as part of human rights, Manage the wise use of natural resources, achieve sustainable development, and anticipate environmental problems.

In environmental management, we treat the law as a means of realizing our interests. As a developing discipline, most of the materials on environmental law are part of administrative law (*administratiefrecht*). Environmental law also includes aspects of civil, criminal, tax, international and regional law and cannot be assigned to traditional law (public and private law). The contents of the Environmental Law are discussed in the Environmental Administrative Law, the Environmental Civil Code, and the Environmental Criminal Law. The criminal code is considered the ultimate remedy. In short, criminal law should be seen as a last resort to improve human behavior. The term ultimate salvation was first used by the Dutch Minister of Justice, Mr. Moderman. [8]

Enforcement of environmental law as regulated in Law no. 32 of 2009 is a regulation regarding the settlement of environmental disputes through administrative law, civil law, and criminal law criminal.

Law Number 32 of 2009 concerning Environmental Management, law enforcement in the environmental field can be classified into 3 (three) categories, namely : 1). Enforcement of Environmental law in relation to Administrative Law / State Administration; 2). Enforcement of Environmental Law in relation to Civil Law; 3). Enforcement of Environmental Law in relation to Criminal Law.

So far, the government has given administrative sanctions which are a legal remedy that must be considered a preventive activity, therefore administrative sanctions need to be taken in order to enforce environmental law. Besides other sanctions that can be applied such as criminal sanctions. Efforts to enforce administrative sanctions by the government in a strict and consistent manner in accordance with existing authorities will have an impact on law enforcement, in the context of preserving environmental functions. In this regard, the enforcement of administrative sanctions is at the forefront of environmental law enforcement (*primum remedium*). If administrative sanctions are deemed ineffective, then criminal sanctions are used as the ultimate weapon (*ultimum remedium*).

This means that criminal law enforcement activities against an environmental crime can only be started if: 1). The competent authorities have imposed administrative sanctions and have taken action against violators by imposing such an administrative sanction, but have not been able to stop the violations that have occurred, or 2). Between the company that committed the violation and the community who became victims of the violation, efforts have been made to resolve the dispute through alternative mechanisms outside the court in the form of deliberation / peace / negotiation / mediation, but efforts have been made to a dead end, and or litigation through civil courts. but these efforts are also ineffective, only environmental criminal law enforcement instruments can be used.[9]

The second instrument that is imposed after administrative sanctions are ignored by perpetrators of environmental violators or crimes is the user of civil and criminal instruments, these two legal sanction instruments are usually used in parallel or independently. The application of criminal sanctions may occur because the holder of control over the application of the instrument of criminal sanctions is law enforcement officers in this case the Civil Service Investigators (PPNS) who are at the central level in this case at the State Ministry of the Environment or Regional Environmental Agencies and Indonesian Police Investigators. Special to certain officials of government agencies responsible for environmental management, in addition to investigators of the State Police of the Republic of Indonesia, under or under Article 32, Article 40 (1) of the 2009 Act. Authority shall be given. As an investigator. Within the meaning of the applicable code in the Criminal Procedure.

While the application of civil instruments is usually carried out by the government as well as the community and organizations concerned with the environment that have the right to file a lawsuit as regulated in the provisions of Article 37, Article 38 and Article 39 of Law Number 32 of 2009 the mechanism can be by filing an ordinary civil lawsuit individually or individually. In class action (representative). Meanwhile, for legal standing lawsuits based on the assumption that NGOs are guardians of the environment (Stone; 1972). This theory gives legal rights to natural objects. In the event of environmental damage or pollution, NGOs can act as guardians to represent the interests of environmental conservation.[10]

The Job Creation Act regulates some provisions that undermine the protection and enforcement of environmental law. These provisions regulate issues in the field of administrative law: environmental permits, civil law on strict liability, and criminal law on criminal sanctions. The Job Creation Act removes, amends, and establishes new

rules related to business permits to comply with Law No. 32 of 2009 on Environmental Protection and Management.[11]

Furthermore, regarding the Judicial Review, the arguments used as the reason for the judicial review in the Constitutional Court of Law no 11of 2002 concerning the environment, it is stated that the environment is the life of many people, the right to life and is a human right (HAM) These rights have been regulated in Article 33 Paragraphs (3) and (4) of the 1945 Constitution; Article 28 H of the 1945 Constitution; Article 33 Paragraph (3) of the 1945 Constitution which states "Earth, water and the wealth contained therein shall be controlled by the state and used as much as possible for the prosperity of the people"; Article 33 Paragraph (4) of the 1945 Constitution states "The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, and independence and by maintaining a balance of progress and national unity" Article 28 H Paragraph (1) of the 1945 Constitution states "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and have the right to obtain health services"

The existence of Law Number 32 of 2009 concerning Environmental Protection and Management is one of the efforts to protect the environment by not ignoring the will of development to achieve controlled, planned, and sustainable development [11]. Policy making has an important function of a government. Broadly speaking, the stages in the formulation of the policy consist of the formulation of problems that are made to solve problems that exist in society, then the existence of a policy agenda as an inventory of public problems that will enter the policy agenda, then the selection of alternative policies to solve problems after the problems. The public has been well defined and included in the policy agenda, the last is the determination of policies so that they have binding legal force.

Environmental policies after the enactment of the Job Creation Act have reduced community participation in various aspects, one of which is the role of involving communities, both directly and indirectly affected, in the process of issuing environmental permits, which have been limited to communities directly affected by the environment. Environmentalists and organizations involved in environmental advocacy cannot directly participate in assisting the community.[12]

This is where the role of the community as a community support system is realized through actions to develop institutional capacity, productivity, and independence of community groups, including developing public awareness to build self-reliance, independence, and participation. This role is generally carried out by means of education

and training, organizing and mobilizing the community. On a practical level, the role of civil society is very much needed to help educate the community so that they can understand environmental advocacy well. Mansour Fakhri in Praja provides an analysis of the role of civil society that can be implemented in environmental advocacy which requires mapping the civil society paradigm which is divided into three types, namely; 1) Paradigms of conformism, reformism and transformism. In the conformism paradigm, civil society performs their work based on charitable assistance, and works as an organization that adapts to the existing system and structure. In this paradigm, civil society can build a consultative relationship with the government. Next in 2). Paradigm of reformism, the main spirit of civil society with a reformist view is the need for people's participation in development that the backwardness of the majority of the people is caused by something wrong with the mentality and values of the people. Civil society activities are manifested in efforts to motivate people to participate in development. In contrast to the paradigms of conformism and reformism, 3). The transformative paradigm feels more radical because it sees the socio-economic and political structural conditions as a result of state coercion so that civil society activities are more active in pressing the government regarding cases of policy deviations.[13]

The role of civil society in environmental advocacy by building collaboration with the government based on the reformism paradigm is considered more effective, seeing the current needs of the community require capacity building, empowerment and defense of their rights to obtain assurance of a good and healthy environment.[14]

4. CONCLUSION AND RECOMMENDATION

Indonesia issued laws to protect the environment namely Law Number 32 of 2009 concerning environmental protection and management. In Law No. 32 of 2009 includes the concept of sustainable development and environmentally sound in the context of economic development. The substance of environmental law gives rise to fields in administrative environmental law, civil environmental law, and criminal environmental law. However since the enactment of the Job Creation Act, there have been drastic changes in law enforcement, namely removing, changing, and establishing new rules related to the administration of environmental permits and abolition of the PT UN mechanism, in the field of civil law regarding absolute responsibility and the field of criminal law concerning criminal sanctions. Not only that the provisions in Law Number 32 of 2009 concerning environmental Protection and Management regarding the role of the community have been reduced from previously being able to be involved in the

process of issuing environmental permits which were only limited by the people who were directly affected, while those who were not directly affected included observer organizations environment is not involves.

5. Recommendation

The government needs to restore the role of civil society and environmental watchdog organizations in advocating for the community as an effort to protect the right to a good and healthy environment as regulated by Law Number 32 of 2009 concerning Environmental Protection and Management prior to the enactment of the Act. Number 11 of 2020 concerning Job Creation.

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