

THE INFLUENCE OF STRUCTURE, SUBSTANCE AND CULTURE TO THE FOREST LAW ENFORCEMENT IN INDONESIA

Dr. I Gusti Ayu Ketut Rachmi Handayani

Faculty of Law

Sebelas Maret University Surakarta, Jl. Ir. Sutami No. 36 A Surakarta, Indonesia

Email: ayu_igk@yahoo.com Tel: +628156705773

ABSTRACT

Images of environmental law enforcement, particularly the forestry law in anticipation of the impact of climate change in Indonesia is still not good. Some of the obstacles and barriers in particular the enforcement of forest laws as a contributor to climate change impacts is bad substance of the law, the legal structure and legal culture that needs to be done to reform the three aspects. One concept that forest management must be understood by the various stakeholders, especially the decentralization of forest management is based on the Watershed (DAS), a cross-border region their area and even the city of the province, so that the maintenance and management certainly can not be divided and broken fragmented according to administrative boundaries. Given the ecological and socio-cultural functions, it is necessary coherence commitment, vision and mission of all stakeholders associated with the system of forest management, especially central and local government, including indigenous peoples. The role of the central government can not slip away, especially related to global forest conservation. Similarly, if it is associated with the ability of the region in terms of human resources, and infrastructure facilities and access to information and technology, local governments still need the support and assistance from the central government.

Keywords: Structure, Substance, Culture, Forest Law.

INTRODUCTION

Forest resources in Indonesia contains a huge potential to be developed as a source of funding. Forests are public goods. Public goods are goods that do not have a counter (non-rivalry) in consumption and / or benefits can not be separated (non-excludable). The huge potential, based on the fact that Indonesia is known as a country that has the 3rd largest lowland tropical forests in the world, after Saire and Brazil. Indonesia's forest ecosystems ranging from lowland tropical forest and upland forest to peat swamp, freshwater swamp and mangrove forest (mangrove), while those countries Indonesia is 10 (ten) countries with the largest forest in the world.

Forest protection and forest areas is an activity that is very important and because of the fact that major forest destruction in Indonesia has been entered on a scale that is very alarming and therefore very appropriate if the government is paying attention to forest protection. Forest protection stipulated in Law No. 41 of 1999 on Forestry and PP. No. 45 of 2004 on the Protection of Forests. Forest protection is an integral part of forest management. This in Article 2 PP. No. 45 of 2004 states that forest protection is a part of the forest management activities paragraph 1. Forest protection activities referred to in paragraph (1) conducted in forest areas in the form of units or unit Production Forest Management (KPHP).

Forest Protection is a part from Environmental Protection. Right to environment is a fundamental right. On the other hand right to development is also one. Here the right to sustainable development cannot be single out (Raghav Sharma, 2008). Environmental issue very important in this decade because environmental destruction very massive. In the Feminist perspective told that "working on the margins of development policy and institutions, feminists have found themselves entering into the sustainable development debate in order to bring these other concerns to the debate now thriving among the newly emerging ecocracy of the international development community (Wendy Harcourt, 1994).

Law enforcement (law enforcement) in operation is not a stand-alone thing but related to different aspects / factors. Law enforcement is not only related to the law itself, but also with humans, both in law enforcement and the community. In the discussion about law enforcement can not be separated from the concept Lawrence Meir Friedman Ahmad Ali was quoted as saying about the three elements of the system of Law (Three Elements of Legal System) (Friedman in Ahmad Ali, 2002). Three elements Law system consists of:

- a. Structure of Law (Legal Structure)
- b. Substance Law (Legal Substance)
- c. Culture Law (Legal Culture)

LEGAL STRUCTURE

In Indonesia, when talking about the structure of the legal system, including the structure or institutions that determine law enforcement, such as police, including in the case of forestry forest police, prosecutors and courts. The structure described as a machine. In terms of forest management that can be managed by the provincial government, city and county, the leading sector

in the field of forestry in the area is the Forest Service. Therefore, investigators and police forestry plays an important role in law enforcement.

According to the provisions of Law No. 32 of 2004 on Regional Government, known for three (3) principles of governance in the region, namely the principle of decentralization, deconcentration, and the principle tasks. Principles of Decentralization means the transfer of government authority by the government to the autonomous regions in the framework of the Unitary Republic of Indonesia. Principle Deconcentration is the delegation of authority from the Government to the Governor as representatives of the government and / or the center in the area, while the principle Tasks are assigned to local government and village, and from the area to the village to carry out certain tasks, along with funding, advice and infrastructure and human resources to the implementation of mandatory reporting and accountable to those who appointed him.

According to the Company Law No. 32 of 2004 on Regional Government there is some principle of local autonomy is used as a guide in the establishment and operation of autonomous regions, namely:

- a. Implementation aspects of democracy, justice, equality and diversity and the potential of the Region;
- b. The implementation of regional autonomy based on autonomy, real and responsible;
- c. Wide implementation of regional autonomy and placed intact on the Regency and City, while the Provincial is a limited autonomy;
- d. The implementation of regional autonomy should be in accordance with the state constitution guaranteed a harmonious relationship between central and local government as well as between regions;
- e. The implementation of regional autonomy should further enhance the independence of the Autonomous Region.

Factors affecting law enforcement is also related to human resources, facilities or amenities law enforcement officers in carrying out their duties. Law enforcement requires human resources, facilities or adequate facilities both in terms of quantity and quality. The lack of quantity and low quality of human resources, as well as the limited means or facilities owned by local governments (in this case the investigators), police, prosecutors, and courts can certainly hamper law enforcement.

LEGAL SUBSTANCE

The substance of the law is the rules, norms and behavior patterns of real people who are in the legal system, which when in Indonesia is a legal substance of the product by the legislature, including the court's decision. The substance is what is done and produced by the machine.

To achieve the goals that have been selected and confirmed, so it can be realized in the community needed some means. One is the law of the various forms of legislation that exists. Thus the "law Effectively legitimates policy" or in other words "proper attention to the use of law in public policy formulation and implementation requires an awareness of the conditions under roomates law as effective". The development of society is characterized by the changes, and the law as a means that can be used to make changes in society. The role of law is increasingly important as a means to realize the government's policies. Law is a set of tools for the realization of government policy. (Lawrence, Friedman, 1986).

Seidman, said that policy makers have only one tool he can use to influence the activities of stakeholders, is the rule that he has made. The law provides legitimacy for implementing government policy and the legislation has proved that he is one of the tools to implement the policy (Seidman, 1987). In order to organize and direct the public in accordance with the desired destination, then the use of policy instruments As with the law has an important meaning. The law is a norm that directs people to achieve your goals and circumstances by not ignoring the reality world. Therefore, the law is mainly made with full awareness by the state and used to achieve a particular goal (Sudikno Mertokusumo, 2001).

The law is generally interpreted as the overall regulatory or kaedah in life together, the overall effect on behavior in a life together that its implementation can be enforced by a sanction.

Various notions of law suggests that the law has many dimensions that are difficult to put together, considering each dimension has a different method. Broadly speaking, understanding the law can be grouped into three (3) basic understanding (Satjipto Rahardjo, 1980): first, the law is seen as a collection or abstract value, the second law is seen as a system of abstract rules; Third, law is understood as a means / tool to organize society.

The legal basis function (Hoebel, in Esmi Warasih, 2005) as follows:

1. Establish the relationships between the members of society, by showing the types of behavior what is permitted and what is prohibited.
2. Determine the distribution of power and specify who may use force and who should obey them and also pick the sanctions are appropriate and effective.
3. Completing the dispute
4. Maintain the ability of communities to adapt to the conditions of life are changed, that is by reformulating the essential relationships between community members.

In addition, the law requires that citizens behave in accordance with the expectations of society or serve as a social control that is by looking at the law as a mechanism of social control that are common.

With regard to the substance of the laws governing forest management in Indonesia PP. 2 of 2008 which set the compensation value of mining in protection forests and production forests received a negative response from the observer Environment. This Regulation governs the granting of mining in protected forests and production forests. PP is very detrimental to people living around the forest. Arif Ahmad (2008) stated in his report that the presence of foreign mining companies in Indonesia are often displays of suffering and destitution. Areal contract mining work in the hundreds of thousands of acres, displacing social and economic activities of local communities. Evictions were legalized by the state. Millions of people were driven from their communal land, so there are mining companies. One example is an experienced visible in Riau Sakai tribe. They were expelled after PT Chevron Pacific Indonesia (PT CPI) to build oil and gas empire over their customary territory. This is partly due to takeover of land sold by the Sakai, most taken for granted with very low compensation or no compensation. However, above all it is actually rooted in the failure of the state to protect citizens Sakai as native citizens. The presence of gold mining companies in Kalimantan, East Kalimantan, North Sulawesi, NTB, and other province local communities have put mine traditionally had suddenly turned into looters status in their own land.

LEGAL CULTURE

Legal culture is a human attitude toward the law and legal system, beliefs, judgments and expectations of the legal community. So in other words, culture is the atmosphere mind site and social forces that determine how the law was used, or even misused including by law enforcement itself. Legal culture is anything or anyone who decides to turn on and turn off the engine and determine how the machines are used.

Law of the abstract is in a static state and not powerless in the absence of human action. The law seems to do something and hence the mutual interaction of behavior and human action. The law itself can not act. Operation of law in society depends on human action. The provisions of the law often can not be implemented due to human action.

Conceptually core and meaning of the rule of law lies in harmonizing the activities that span the hierarchy of values in the context steady and manifest and attitudes act as the final stage of the value chain elaboration to create, maintain and sustain social peace alive. The conception that has basic physiology requires further explanation so that it becomes concrete. Soerjono Soekanto (1986) further explained that more concrete translation occurs in the form of context law, which may contain errands, prohibition or permissibility. In the specific actions, a legal context then serve as guidelines or benchmarks for the behavior or attitude of acts that are considered inappropriate or that it should be. Behavior or attitudes act was intended to create, and maintain peace requires. Thus implementation of law enforcement conceptually.

The complete, Soerjono Soekanto (1986) suggests factors affecting law enforcement are as follows:

1. Factor of its own laws, and new legislation;
2. Factor of Law Enforcement, the parties that form and apply the law;
3. Factor means or facilities to support law enforcement;
4. Community factors, the environment in which the law is valid and defined;
5. Cultural factors, as a result of the work, creativity and flavors based on human initiative in the social life.

Forest destruction in Indonesia is almost certainly 70 to 80 percent is a result of human activity. Therefore, the PP. 45 of 2004 on the protection of forests has been set on the man as one of causation of damage to the forest. Forest protection is the responsibility of GOI and local government as the implementing duty of the State to organize, protect and prosperous society.

CONCLUSION

Based on the above it can be concluded enforcement in the forestry sector in Indonesia, affected by structural factors or law enforcement personnel (police, forest police, investigators, prosecutors, judges, lawyers); substance (matter) contained in Law No. 41 Of 1999 on Forestry and legal culture that developed in Indonesian society. Government each year to evaluate the damage to forests and forest areas, whether done as deliberate or accidental. To address the prevention of forest destruction good security is required of law enforcement officers, regulation and legal culture.

REFERENCES

- Ali, Achmad. (2002). *Keterpurukan Hukum di Indonesia (Penyebab dan Solusinya)*. Jakarta: Ghalia, Indonesia, p.7.
- Arif, Ahmad. (2008). *Manfaat Hutan, Kuasa Tambang dan Rakyat Yang Terusir*, Jakarta: Kompas, hal. 40.
- Esmi Warasih. (2005). *Pranata Hukum: Sebuah Telaah Sosiologis*, Semarang: PT Suryandaru Utama.
- Friedman, Lawrence. (1986). *Legal Culture and The Welfare State*, in Gunther Teubner. *Dilemmas of Law in the Welfare State*. New York: Waiter de Gruyter & Co.
- Friedman, Lawrence. (1986). *The Legal System: A Social Science Perspective*, New York: Russel Sage Foundation.
- Raghav Sharma. (2008). *Green Courts in India: Strengthening Environmental Governance*, 4/1 Law, *Environment and Development Journal*, p. 55.
- Satjipto, Rahardjo. (1980). *Hukum dan Masyarakat*, Angkasa Bandung.
- Seidman, Robert B. (1987). *The State, Law and Development*, ST. Martin's Press, New York.

- Soerjono, Soekanto. (1986). *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali Press, Indonesia, p. 3.
- Sudikno, Mertokusumo. (2001). *Mengenal Hukum: Suatu Pengantar*, Yogyakarta: Liberty, Indonesia.
- Wendy Harcourt (ed). (1994). *Feminist Perspectives on Sustainable Development*. Society for International Development, p. 255.

Regulation:

Law No. 41 of 1999 About Forestry

Law No. 32 of 2004 About Local Government

PP No. 45 of 2004 About Protection of Forest