ENVIRONMENTAL LAW RESOLUTION THROUGH CIVIL LAW ASPECTS IN INDONESIA

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ABSTRACT

The process of enforcing environmental law through civil procedures is regulated in Chapter XIII Articles 84 to 93. The civil aspects included in the articles consist of the environmental law resolution through court (litigation) with the methods of arbitrage, mediation, negotiation, and conciliation or out-of-court (non-litigation) by means of absolute responsibility, class action or group representative lawsuits, and the right to sue environmental organizations. In this case, they can be chosen based on the voluntary choice of the parties to the dispute.

Keywords*:* Enforcement, Environmental Law, Civil Law

BACKGROUND

National Development is a series of activities that cover the entire life of the nation's people and the state to carry out the tasks as mandated in the 1945 Constitution; "protecting the entire nation and all of Indonesia's blood, advancing general welfare, making the life of the nation intelligent, and implementing world order based on independence, eternal peace and social justice of the state".[1] Efforts to improve the quality of Indonesia's human resources are still a very difficult task. The low-quality index and competition of Indonesian people shows low survival ability associated with global challenges and dynamics.[2]

Environmental law enforcement can also be implemented through civil law. This way in Indonesia is less popular because of the protracted process in court. Almost all civil cases are pursued to the highest court for cassation because the losing parties are always dissatisfied. In fact, there is a tendency for people to deliberately stall for time by always using legal action. Even if there is little reason, it usually goes to judicial review. Once a decision is made, it is often difficult to implement.[3] Environmental (civil) disputes can be pursued through court or out-of-court based on the voluntary choice of the parties concerned. If the chosen out-of-court efforts are unsuccessful, one or the parties can take the court route. A lawsuit through court can only be pursued if the chosen effort to resolve the dispute out-of-court is declared unsuccessful by one or the parties to the dispute.[4]

Efforts to resolve environmental problems that occur in Indonesia are by ensuring legal certainty in law enforcement. Environmental law enforcement is an effort to achieve compliance with regulations and requirements in legal provisions that apply generally and individually through administrative, civil and criminal supervisions and implementations.[5]

Government policy regulations in enforcing environmental law were actualized with the promulgation of the first regulations governing the environment, namely Law Number 4 of 1982 concerning Basic Provisions for Environmental Management (KPPLH), which was later replaced by Law Number 23 of 1997 concerning Environmental Management (UUPLH), which was subsequently replaced by Law Number 32 of 2009 concerning the Environmental Protection and Management Law (UUPPLH).[6]

The Environmental Protection and Management Law (UUPPLH) is a mandate from the provisions of the 1945 Constitution, issued through a national legislation program stating that a good and healthy environment is a right that is carried out jointly by the Government and the DPR (the People Representative Council), as an effort to create justice for current and future generations through an integrated system in the form of a national policy for environmental protection and management which must be implemented in a principled and consistent manner from the center to the regions. Environmental protection and

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[1] Afrinel Okwita, *"Wacana Dan Ketidakmeratan Pembangunan di Indonesia (Discourse and Inequality of Development in Indonesia)", Jurnal Cahaya Pendidikan*, 2 (2): 229-241 December 2016 ISSN: 1460-4747, p. 230.

[2] Iwan Nugroho, *" Nilai-Nilai Pancasila sebagai Falsafah Pandangan Hidup Bangsa untuk Peningkatan Kualitas Sumber Daya Manusia dan Pembangunan Lingkungan Hidup (Pancasila Values as a Philosophy of the Nation's Way of Life to Improve the Quality of Human Resources and Environmental Development)", Jurnal Konstitusi*, Vol. III, No. 2, November 2020, p. 108.

[3] Andi Hamzah, Penegakan Hukum Lingkungan (Environmental Law Enforcement), Jakarta: Sinar Grafika, 2005, p. 89.

[4] Article 84 of Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH)

[5] Komang Trie Krisnsari, I Ketut Mertha, 2013, "Implementation of Law Number 32 of 2009 concerning Environmental Protection and Management in Environmental Law Enforcement Efforts in Indonesia", Vol. 01, No. 03, May, 2013, p. 2, OJS Kertha Semaya http://ojs.unud.ac.id/index.php/kerthasemaya/article/view/5354/4103, accessed 16 July 21 at 20:32 Indonesian Western Time

[6] Tude Trisnajaya, Desak Putu Dewi Kasih, 2013, " Penerapan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup Dalam Upaya Penegakan Hukum Lingkungan Di Indonesia (Implementation of Environmental Law Enforcement Related to Air Pollution in Denpasar City After the Issuance of the Bali Governor Regulation Number 8 of 2007 and Efforts to Overcome It", Vol. 01, No. 09, September, 2013, p. 2, OJS Kertha Semaya, http://ojs.unud.ac.id/index.php/kerthasemaya/article/view/6716/5122, accessed 17 July 2021 at 21:01 WIB (the Indonesian Western Time).

management according to Law Number 32 of 2009 concerning Environmental Protection and Management (UU 32/2009) is carried out to preserve environmental functions and to prevent environmental pollution and/or damage.[7]

Environmental law enforcement can also be applied through civil law. This method in Indonesia is less popular due to the protracted process in the courts because almost all civil cases are pursued to the highest court for cassation and even proceed to judicial review. Once a decision had been made, it was often difficult to implement. According to Article 84 of UUPPLH, environmental (civil) disputes can be pursued through court or out-of-court based on the voluntary choice of the parties concerned. If the chosen out-of-court efforts are unsuccessful, one or the parties can take the court way. Article 88 of UUPPLH regulates absolute responsibility (strict liability) for every person whose actions, businesses, and/or activities use B3 (Hazardous and Toxic Waste), produce and/or manage B3 waste, and/or who pose a serious threat to the environment are absolutely responsible for losses which occurs without the need to prove the element of error. In the explanation of Article 88 of UUPPLH, the meaning of absolute responsibility or strict liability is explained that the element of fault does not need to be proven by the plaintiff as a basis for payment of compensation. The provisions of this paragraph constitute the *lex specialis* in lawsuits regarding unlawful acts in general.[8] According to UUPPLH, the representatives authorized to submit claims for compensation for environmental pollution and/or damage are the Center and Regional Governments, Communities and Environmental Organizations.

Based on the description above, the object of this research is that environmental law is a functional aspect that contains aspects of administrative, civil, and criminal laws. Environmental law enforcement can be seen through civil law aspects although in Indonesia, in particular, administrative and criminal law aspects are more often used in enforcing environmental law. From the civil law aspect, environmental dispute resolution can be carried out through 2 (two) ways; out-of-court and in-court processes.

PROBLEM FORMULATION

Based on the background described above, the problem formulation is to recognize and understand how environmental law is enforced in Indonesia using the aspects of civil law through court and out-of-court.

RESEARCH METHODS

The research method used in this writing was the normative legal research method. Normative or library legal research methods are the methods used in legal research which are carried out by examining existing library materials.

DISCUSSION

Development of Environmental Dispute Resolution

Law enforcement is called *rechtshandhaving* in Dutch language. The definition of law enforcement is the process of making efforts to enforce or function real legal norms as the guidelines for behavior in traffic or legal relations in social and state life. The requirements for law enforcement need to consider legal principles; first, the law which meets the philosophical and juridical elements of an adequate law. Second, the law enforcement officers who have the task enforcing the law. Third, a society that is enforced must accept the law and be regulated well. Fourth, they are the supporting facilities and infrastructures. Therefore, in enforcing the law, the four conditions must be present. If one of them is not adequate, the law cannot be enforced.[9]

Law enforcement in Indonesia's environmental conditions can be interpreted broadly; it can include preventive and repressive aspects. Environmental law enforcement is very complicated because environmental law occupies a crossroads between various areas of classical law. Each field of legal science can be applied to overcome environmental violations, such as administrative, civil, criminal, tax, and international laws. The environmental law enforcement system in Indonesia is recognized through three legal aspects explained in the UUPPLH, such as the aspects of administrative, civil and criminal laws. Law enforcement for each aspect is different; the administrative aspect by administrative or government officials and the civil aspect by the injured party either individually or as a group or even the community or state in the name of the public interest. Meanwhile, the criminal aspect of prosecution is monopolized by the state with prosecutors as the personification of the state.[10]

Environmental law enforcement through civil law aspects

Civil law is a law that regulates legal relationships resulting from civil actions or acts between one person and another person or between one person and several people (legal entities). For every act or civil action that results in suffering or loss to another party, the person or persons must be able to compensate for the losses resulting from that action. The civil law aspect of environmental management is one aspect of environmental law enforcement. With the occurrence of environmental pollution and destruction,

[7] Article 1 number 1 of Law Number 32 of 2009 concerning Environmental Protection and Management (UU 32/2009).

[8] Andi Hamzah, Penegakan Hukum Lingkungan (Environmental Law Enforcement), Jakarta: Sinar Grafika, 2005, p. 89

[9] Sodikin, 2007, *Politik Hukum Penegakan Hukum Lingkungan (Legal Politics of Environmental Law Enforcement)*, Djangkat, Jakarta, p. 94.

[10] Andi Hamzah, 2005, Penegakan Hukum Lingkungan (*Environmental Law Enforcement)*, Sinar Grafika, Jakarta, p. 50.

there will be victims of pollution and destruction in the sense of being the injured party, and the injured party can be an individual, community, or state.

In the Environmental Management Protection Law, the process of enforcing environmental law through civil procedures is regulated in Chapters XIII from Articles 84 to 93. The civil aspects listed in these articles contain the resolution of environmental disputes which can be pursued through court (litigation) or out-of-court (non-litigation) based on the voluntary choice of the parties to the dispute. These provisions are intended to protect the civil rights of the parties to the dispute. Article 85 states that out-of-court dispute resolution is carried out to reach an agreement regarding the form and amount of compensation, recovery actions due to pollution or damage, certain actions to ensure that pollution or damage will not occur or recur, and the prevention of negative impacts on the environment. In resolving disputes out of court, neutral third-party services can be used to help resolve environmental disputes. The dispute resolution in this way is known as the Alternative Dispute Resolution (ADR). The ADR institutions are arbitration, mediation, negotiation and conciliation, which are currently widely used by industrialists in resolving environmental disputes in Indonesia, particularly in cooperation agreements between investors and the community when environmental pollution occurs.[11] In addition, the explanation of Article 86 states that the government and/or the community can establish institutions that provide free and impartial environmental dispute resolution services.

The environmental dispute resolution through the courts is regulated in the UUPPLH from Articles 87 to 92. Article 87 paragraph (1) states that every person responsible for a business and/or activity commits an unlawful act in the form of pollution and/or destruction of the environment which causes harm to people. others or the environment are obliged to pay compensation and/or take certain actions. Based on the provisions of Article 87 paragraph (1), in order for an environmental lawsuit to be filed to obtain compensation for damages, the following elements must be met: a) each person responsible for the business/activity; b) committing unlawful acts; c) in the form of environmental pollution or destruction; d) causing harm to other people or the environment; e) the person responsible for the activity pays compensation and/or takes certain actions. They are the basic references for filing an environmental lawsuit. It is also related to Civil Law as stated in several articles in the Civil Code (*KUHPerdata*), i.e.: Article 1365 of the Civil Code states that every unlawful act that brings harm to another person obliges the person who, because of his or her fault causing the loss, compensates for the loss; Article 1366 of the Civil Code states that every person is responsible not only for the losses caused by his actions, but also for the losses caused by negligence or carelessness; Article 1367 paragraph (3) of the Civil Code states that a lawsuit based on Article 1365 of the Civil Code must meet the following requirements: 1) fault (*schuld*); 2) loss (*schade*); 3) causal relationship (*causal verband*); 4) relativity (*relativeit*). The UUPPLH regulates absolute liability (strict liability) in Article 88 which states that every person whose actions, business and/or activities use B3 (Hazardous and Toxic Waste), produces and/or manages B3 waste, and/or who poses a serious threat to the environment has an absolute responsibility for the losses that occur without the need to prove the element of fault. By the principle of strict liability, it is intended as a principle of liability that views error as something that is irrelevant to question whether it actually exists or not.[12]

There is also a class action lawsuit mechanism to resolve environmental disputes involving large numbers of victims. Class action or in Indonesian known as a class representative lawsuit is a procedural procedure in a civil case that gives procedural rights to one or several people (in a small number) to act as plaintiffs to fight for the interests of the plaintiffs who are called class representatives, which at the same time represents the interests of many people (hundreds, thousands, hundreds of thousands, or millions) called class members who experience the same suffering or loss. It is regulated in Article 91, and Article 92 regulates the provisions and explanations regarding the right to sue environmental organizations.

CLOSING

Conclusion

Based on the description above, it can be concluded that law enforcement is a process of making efforts to enforce or function real legal norms as guidelines for behavior in traffic or legal relations in social and state life. The environmental law enforcement system in Indonesia is recognized through three legal aspects described in the Environmental Protection and Management Law (UUPPLH); the aspects of administrative, civil and criminal laws in which law enforcers and the law enforcement process for each aspect are different. The civil law aspect of environmental management is one aspect of environmental law enforcement.

The process of enforcing environmental law through civil procedures is regulated in the Chapter XIII from Articles 84 to 93. The civil aspects listed in these articles contain the resolution of environmental disputes which can be pursued through court (litigation) or out-of-court (non-litigation) by means of arbitrage, mediation, negotiation, and conciliation or out-of-court (non-litigation) methods by means of absolute responsibility, class action or group representative lawsuits, and the right to sue environmental organizations. This can be chosen based on the voluntary choice of the parties to the dispute.

In the environmental law enforcement system in Indonesia, environmental legislation is adequate, but law enforcement in Indonesia by agencies/agencies and law enforcement officers has not been carried out professionally and optimally. In order for environmental law enforcement in Indonesia to be optimal, it is expected that law enforcement agencies and officers will have moral capability and be professional in resolving environmental problems in accordance with laws and regulations that are directly related to environmental problems.

[11] Sodikin, 2007, Politik Hukum Penegakan Hukum Lingkungan (*Legal Politics of Environmental Law Enforcement)*, Djangkat, Jakarta, p. 110.

[12] E Saefullah Wiradipradja, 1989, Tanggungjawab Pengangkutan Dalam Hukum Pengangkutan Udara Internasional dan Nasional (*Carriage Responsibilities in International and National Air Transport Laws)*, Liberty, Yogyakarta, p. 35.

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