

IMPLEMENTATION OF ACT NO 32 OF 2009 ON ENVIRONMENTAL MANAGEMENT

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ABSTRACT

Good and healthy environment is a fundamental right of every citizen of Indonesia. The advances in science and technology of man have a lot to bring their welfare. However, it seems that this prosperity is obtained with risk to the threat of their existence as living organism. Therefore, it is necessary to develop the sustainable development environmentally based on integrated and comprehensive National Policies taking into account the needs of the present and future generations. The problems in this research were: (1) How were the law enforcements against environmental pollutions ? (2) What constraints were faced in the implementation of the law enforcement against environmental pollution ? Environmental pollution is not just a problem of Indonesia, but it has become inter-state, regional and global problems. Pollution and destruction of the environment is also more widespread and sometimes across national borders in the form of river water pollution, air emissions, forest fires, oil pollution at sea and so on. For example, the case of Forest Fires in Borneo with its smoke easily spread to neighboring countries, such as Malaysia, Singapore, the Philippines and Brunei.

Keywords: Implementation, Environmental Management

A. Introduction

Good and healthy environment is a fundamental right of every citizen of Indonesia as stipulated in Article 28 H of the 1945 Constitution of the Republic of Indonesia. Indonesian Environment is a gift and grace of God Almighty to the people and nation of Indonesia, a space for life in all aspects, and its spell is in accordance with the Archipelago Concept in order to utilize the natural resources for the welfare of the public as stated in the 1945 Constitution and to achieve happiness in life based on Pancasila. Therefore, it is necessary to have sustainable development environmentally based on the integrated and comprehensive National Policy taking into account the needs of the present and future generations.

Such underlying principle shows that the development that should be performed by a country includes all aspects of community life. The effect of economic development is not limited to the social aspect but also includes other aspects, such as legal, defense and security, cultural, and environmental aspects. In the development, not only the interests of the state and/ or the wider community which have the priority and play active roles, but the individual human is also required to be involved and play active roles in it.

The nature of the environment is determined by a variety of factors. First, by the type and number of each type of the environmental elements. Second, the relationship or interaction among the elements in the environment. Third, the behaviors or conditions of the environment; for example, a city with active and hard working people is a different environment from a similar one with but the relaxed and lazy people. Similarly, an area with a sloping land and lush environments is different from that with sloping land and eroded. Fourth, non-material factors such as temperature, light and noise.¹

The advances in science and technology of men has a lot to bring their welfare. However, it seems that this prosperity is obtained with risk to the threat of their existence as a living organism. This can happen due to the development problems that have received less attention in the planning and implementation. Besides, their economic considerations result in polluted and damaged environment.

Environmental pollution is not just a problem of Indonesia but has also become the problem of inter-state, regional and global. Pollution and destruction of the environment is also more widespread, sometimes across national borders, in the form of river water pollution, air emissions, forest fires, oil pollution at sea and so on. For example, the case of Forest Fires in Borneo with its smoke that easily spread to neighboring countries, such as Malaysia, Singapore, the Philippines and Brunei.

The problem of environmental pollution is very complex and interesting to study from the aspect of the environmental law enforcement in Indonesia. It is an accurate instrument to prevent pollution and environmental destruction. Therefore, the

¹ Otto Soemarwoto, *Indonesia Dalam Kancah Isu Global (Indonesia In the arena of Global Issues)*, Gramedia, Jakarta, p. 50-51.

writer wanted to recognize in depth on the environmental pollution and destruction in the research thesis entitled " Law Enforcement Against Environmental Pollution".

The problems in this research were: (1) How were the law enforcements against environmental pollutions? (2) What constraints were faced in the implementation of the law enforcement against environmental pollution?

B. Discussion

1. Definition of environment

The definition of environment in Article 1 paragraph 1 of Act No. 32 of 2009² mentions that environment is a space unity with all things, powers, and states of living creatures including humans and their behaviors affecting the lives, well-being, and survival of other living creatures.

According to Otto Soemarwoto, the nature of the environment is determined by a variety of factors; first, by the type and number of each type of the environmental elements; second, the relationships and interactions among the elements in the environment; third, the behaviors or conditions of the environment; fourth, the non-material factors such as temperature, light and noise. 2) In article 1 paragraph 1 of Act No. 32 of 2009, the definition of the environment can be summarized as the following elements:

In this Act, the definitions are:

- a. Environment is a space unity with all things, powers, states, and living creatures, including humans and their behaviors, which affect the nature, sustainability of livelihood, and welfare of human beings and other living creatures.
- b. Environmental protection and management is a systematic and integrated effort made to preserve the environment and to prevent the pollution and/ or damage to the environment that includes planning, utilization, control, maintenance, supervision, and law enforcement.
- c. Sustainable development is a conscious and planned effort that combines the aspects of environment, social, and economic into development strategies to ensure the environmental integrity and safety, capability, welfare, and quality of life of the present and future generations.
- d. The planning for the protection and management of the environment, hereinafter abbreviated RPPLH, is a written plan that includes the potential, environmental issues, and the protection and management within a certain period of time.
- e. Ecosystem is the order of environmental elements which is the comprehensive and influencing unity in establishing the balance, stability, and productivity of the environment.
- f. The preservation of environmental functions is a series of efforts to maintain the sustainability of carrying capacity and environmental carrying capacity.

2. Environmental pollution and damage

The dangers that constantly threaten environment preservation from time to time are "pollution" and environmental damage. The sustainability of ecosystem in an environment can be disrupted because of pollution and environmental destruction. People often confounds the definition of pollution and environmental destruction when there is a difference between the two.

Environmental pollution is the incoming or inclusion of living things, energy, substances and/or other components into the environment by human activities so that the quality decreases to a certain level which causes the environment not to be able to function as intended (Article 1, paragraph 14). In other hand, the standard criteria of environmental damage is the limit of the changes in the physical, chemical and / or biological properties of the environment which can be tolerated by the environment to be able to keep preserve its function (Article 1, paragraph 15).

The difference is indeed not too principled because everyone who performs the destruction to an environment also pollutes and vice versa. The difference lies only in the intensity of the action committed to the environment and consequently the levels accepted by the environment due to such actions.

3. Public participation in environmental management

In Chapter IX of Act No. 32 of 2009, it regulates the rights, obligations and participation of the community. Article 70 states that "Any person has the same rights as broad as possible to play the active roles in environmental protection and management. Any person has the right to environmental protection with regard to the role in environmental management. Any person has the right to participate in the management of the environment in accordance with the laws and regulations.

According to Hienhard Steiger et al, the subjective right is the most widespread forms of individual protection. Such rights give to those with a legitimate claim to ask for their interests for good and healthy environment to be respected. It is a demand that can be supported by legal procedures through legal protection by the courts and their officers.

The roles of the community can be:

- a. social supervision;

² Act No. 32 of 2009, Ibid.

- b. provision of advice, opinions, suggestions, objections and complaints; and/ or
- c. delivery of information and/ or reports.

The roles of the community are performed to:

- a. raise awareness in the management and protection of the environment;
- b. improve independence, community empowerment, and partnerships;
- c. develop community capacity and initiative;
- d. foster community responsiveness to social supervision; and
- e. develop and maintain the culture and local wisdom in order to conserve the environment.

The provisions indicate the necessity of the participation of each person as a member of society in environmental management so that the programs in the field of environmental capability preservation which is harmonious and balanced can be managed properly. Thus, people are not only encouraged to participate in the implementation phase, but they are also given a chance to develop and express their opinion.

Besides, the public access to decision-making and information as a human right procedural is a prerequisite for the realization of substantive human rights such as the right to development and the right to healthy environment (including the right to life and the right to have adequate health status). The presence of the rights of public participation and information (popular participation) has long been guaranteed in the international human rights instruments and the protection of the environment. Article 70 letter e states that the role of society is needed to develop and maintain the culture and local wisdom in order to conserve the environment.

"Everyone is obliged to preserve the function of the environment and prevent and mitigate pollution and environmental destruction." Everyone who runs business and/ or activity must provide true and accurate information about environmental management. The elucidation of this article suggests the duty of every person referred to in this paragraph shall not be separated from his position as a member of society that reflects the dignity human as individual and social being. This obligation implies that every person plays a role in the efforts to preserve the environment, for example, the participation in developing the culture of clean environment, counseling, and guidance activities in the environmental field. In paragraph (2), the true and accurate information is intended to assess the compliance of those responsible for business and / or activity to the statutory provisions.

Independence and empowerment are the prerequisites to foster the community, as the actors, in environmental management together with the government and other development actors. "Improving community capacity and initiative for the effectiveness of the role of society in environmental management". Improved community responsiveness will decrease and possibly have negative impacts. It will also increase the speed of information transfer regarding environmental issues so that they can be followed up.

This provision gives the possibility of anyone's duty which is inseparable from his position as a member of society that reflects human dignity as individuals and social beings. This obligation implies that every person plays a role in the efforts to preserve the environment, for example, the participation in developing the culture of clean environment, counseling, and guidance activities in the environmental field as well as the obligation to obtain correct and accurate information in environmental management.

The right to a healthy and good environment is related to the obligation to protect the environment. This means that the environment with its resources is shared wealth that can be used by any person which must be maintained for the sake of society and future generations. Thus, environmental protection and its natural resources has a dual purpose: to serve the interests as a whole and serve the interests of individuals.

The provisions in Act No. 32 of 2009 demonstrate the need for the participation of each person as a member of society in environmental management. According to Hardjosoemantri, when it is expected that the programs in the field of environment conservation work well, when the actions of environmental protection is taken for the public interest, and when the public is expected to receive and obey such measures, the public should be given the opportunity to develop and express their opinion.

The limitations of public participation is also due to incomplete legislation that can be used as a basis for developing public participation in all phases of development. Most of the existing laws places people's participation in a marginal position, just as a data source, the object of development, or the parties held their sacrifice in the form of money, land or labor for the sake of development.

The government can create a good climate in order that the participation happens to the maximum and positive. One of the creations of good climate can be performed by creating a variety of laws, both at the central and regional levels. The presence of various laws and regulations in essence stimulates greater participation of community in implementing development. However, there are still certain limitations that cause public participation can not be maximized and positive. The limitations may come from the community or other parties who did not want it, either socio-politically or economically.

4. Environmental law enforcement in indonesia

The law enforcement is related to the ability of the officers and the ability of citizens to the applicable laws, which include 3 (three) legal fields, namely administrative, civil, and criminal. Thus, the enforcement of environmental law is an attempt to achieve the compliance to the regulations and requirements of legal provisions that apply in general and individual through supervision and implementation (the threat of administrative means, civil, and criminal).³

The enforcement of environmental laws with comprehensive meanings that covers preventive and repressive ones is suitable with the conditions in Indonesia with the government elements who participate actively to raise the legal awareness of the community.⁴ Furthermore, the environmental law enforcement conducted preventive and repressive is in accordance with its nature and effectiveness. Preventive law enforcement is an active supervision performed for the compliance against the laws without direct incidents involving concrete events which give rise to the suspicion that a law has been violated. The instruments for preventive law enforcement are education, monitoring, and supervisory use of authority. Thus, the primary law enforcers are the officials / officers of local government with the authorities to prevent environmental pollution.

Repressive law enforcement is conducted in the case of the acts that violate laws. Criminal prosecution usually follows violation of law, and it does not negate the effect of the violation. To avoid criminal prosecution repeatedly, the violators/ polluters must stop the situation.⁵

In addition, Hamzah also believes that the enforcers of environmental law must also acquire various classical legal fields such as government law (administrative), civil law, criminal law, tax law, land law, institutional law, and international law (public or private).

Environmental law enforcement is also much more complicated than other cases because, as stated earlier, environmental law occupies the intersections of various classical legal opinions. The administrative law enforcement process will be different from the civil and criminal law enforcement process.

Hamzah suggests that the Environmental Agency should submit their matter to the discussion forum as mentioned earlier. However, if the recipient of the report considers that the violation can still be repaired or restored by administrative force (*bestuursdwang*), it can be passed on to issue a permit (by local governments) to be addressed by compliant only (negotiation, information, advice, and so forth), or strict action, for example, the removal of permit.

C. Conclusions

Members of community, both individuals and groups, and Non-Governmental Organizations (NGOs) such as environmental organizations or victims of pollution or environmental damage may also directly bring the issue to the discussion forum. They can also complain directly to the enforcers of criminal law, namely the police (with the direction of prosecutors). NGOs or environment organizations, when choosing the way through civil law primarily the prosecution against legal violation, can apply their own lawsuit to the civil judge on behalf of society (*algemeen belang, maatschappelijk belang*). When they cannot afford the costs of case, under Article 25 of Presidential Decree No. 55 of 1991, they may continue to the prosecutors who will sue in civil law on behalf of public interest or the interests of the community.

In addition, members of society, victims, NGOs, environmental organizations, and anyone can make a criminal report to the police. Anyone finding out a crime shall report to the investigator. Police can request the direction from prosecutor technically and juridically. This way is clearly in criminal law. However, prosecutors can still complete based on the principle of opportunity, both conditionally and unconditionally.

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³ Ninik.Suparni, *Pelestarian Pengelolaan dan Penegakan Hukum Lingkungan (Conservation, Management and Enforcement of Environmental Law)*. Jakarta: Sinar Grafika, 1994, p. 160.

⁴ Andi Hamzah, *Peneakan Hukum Lingkungan (Environmental Law Enforcement)*. Sinar Grafika Jakarta, 2005, p. 49.

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