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ENVIRONMENTAL MANAGEMENT AND LAW ENFORCEMENT

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Abstract

So many problems related to the environment that arise and are increasingly complex. The problem is due to the development process that tends to ignore environmental aspects. Currently in the era of autonomy, more and more complex environmental problems are found, even though this should not have happened. Various efforts to manage the environment can be started by preventing, repairing damage and pollution and restoring a quality environment. However, this cannot be realized in real terms if it does not get support from the policies, programs and a series of activities that involve an appropriate environmental management support system. The existence of an environmental law system is intended to achieve environmental justice for the community. Enforcement of environmental law must be implemented immediately in the form of prevention, supervision, protection, management, application of strict regulations, settlement of environmental disputes and providing severe sanctions for anyone who violates the provisions of the Act. Enforcement of environmental law not only provides strict sanctions but also takes preventive measures before environmental destruction and pollution occurs. This paper intends to review Environmental Law Enforcement and policies in environmental management.

Keywords: law system, environmental management, environmental damage.

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Introduction

Technology and industry that are developing rapidly have had a positive and negative impact on human life. These developments also support the realization of development. According to Mardikaningsih & Arifin (2021), the increasing population also has an impact on the implementation of industrialization. In addition, according to Darmawan (2018) various consequences will definitely be faced when advancing the economy. The consequences are the increasing number of raw materials and industrial waste in the form of quality or quantity (Mardikaningsih, 2015). This of course can pollute and damage the environment (air, soil, water). This happens more often due to human activities. Seeing these conditions certainly results in the emergence of an environment that is not harmonious and balanced (Djaelani, 2021). According to Padma (2018), industrialization is due to a comparison that comes from the manufacturing industry and the service industry.

Soemarwoto (2004) explains that several efforts to manage the environment such as trying to prevent, repair damage and pollution and restore a quality environment require several policy sets, various programs and activities that must implement an environmental management support system that also contributes to support these efforts. The main thing is the system and institutions as well as the support of quality human resources involved (Retnowati & Putra, 2021). Legal instruments are needed along with legislation. Overall, this will support environmental management and development implementation (Fisher, 2018).

The central government gives authority to local governments to manage the environment, carry out local initiatives in policy design, build relationships for interdependence between regions, and develop regional approaches. This authority is in accordance with Law 32 of 2004 concerning Regional Government and Government Regulation Number 25 of 2000 concerning Government Authorities and Provincial Authorities as Autonomous Regions in the environmental sector.

Application of Law no. 32 of 2004 in accordance with PP No. 25 of 2000, Environmental Management is devoted to regional policies, therefore national environmental policies are clearly included in the PROPENAS program (National Development Program) which is none other than the development of natural resources and the environment.

The implementation of environmental laws and regulations turns out to have weaknesses in terms of law enforcement. This can be observed from the growing development of national development that is oriented to the welfare of the community in order to increase but is not supported by complying with regulations. Development actors tend not to pay attention to regulations that should be complied with, even though these regulations function to help smooth the implementation and management of their business, especially those related to the social and environmental fields so as not to cause environmental problems in the future. Thus, the quality of the environment needs to be improved in various ways, such as by developing legal instruments, improving the legal system, as well as compliance and law enforcement, especially alternative instruments (Supriadi, 2008). In addition, it is necessary to restore the environment as a form of development activities such as environmental protection and management that is carried out in a sustainable manner.

Efforts to shape the environment are focused on the entire unitary space that involves all things and behaviors that determine the conditions for the survival of life and the welfare of living things (Hardjosoemantri, 2012). These efforts can be in the form of policies for structuring, developing, maintaining, monitoring and controlling the environment. As time goes by the quality of environmental conditions is increasingly worrying, this is due to indifference when making decisions and tends to ignore environmental sustainability, resulting in the emergence of pollution and environmental damage. Conditions like this eventually gave rise to several conflicts (social conflicts and environmental conflicts).

With various problems that occur, of course, the environment needs legal instruments that can provide protection as regulated in Law No. 4 of 1982. However, in reality the implementation of various provisions on law enforcement as stated in the Environmental Law has been carried out several times. changes with the aim of facilitating the application of provisions relating to environmental law enforcement. The change started from Law No. 4 of 1982 was replaced by Law No. 23 of 1997 which contained Environmental Management and it turned out that it had to be changed again to Law 32 number of 2009 which deals with Environmental Protection and Management. Therefore, in order for the environment to obtain guarantees in terms of protection, a law is needed that regulates it.

In its implementation, this Law is further regulated in implementing regulations, for example sectoral legislation. Regarding environmental management, it requires cooperation, coordination, and integration from various sectors from departments and non-departmental government institutions whose duties and responsibilities to the environment have been regulated according to Law Number 23 of 2014 concerning Regional Government, Law no. 41 of 1999 concerning Forestry, Law no. 1 of 2011 which regulates Housing and Settlements, Law no. 7 of 2004, concerning Water Resources, Law no. 26 of 2007 concerning Spatial Planning and continued with further arrangements with Government Regulations, Presidential Decrees, Ministerial Decrees, Regional Regulations and Governor Decrees. In Indonesia itself, policies regarding Environmental Management have been regulated in central and local government regulations. At the central government level, various kinds of legislation have been issued, ranging from Ministerial Decrees, Ministerial Regulations, Presidential Decrees, Government Regulations to Laws. As an answer to the problem of environmental management policies, the government issued Law Number 23 of 1997 which was improved through the issuance of Law Number 32 of 2009 concerning Environmental Protection and Management. The issuance of Law no. 32 of 2009 seems to be aimed at further strengthening aspects of planning and enforcing environmental laws, which can be seen from the structure of the law which is more dominant in regulating aspects of planning and law enforcement. However, there is a significant gap in Law no. 32 of 2009, namely the absence of articles and paragraphs that mention the commitment of stakeholders to slow down, stop and reverse the direction of the rate of environmental destruction (Renggong, 2018).

The complexity and dynamics of environmental empowerment also require the stages of targeted planning and management that have a vision of building various aspects such as economic, socio-cultural, and environmental that form harmony. In its implementation, of course, there is involvement from various parties and the provisions cannot be changed for environmental law management. Thus, the involvement and willingness of various parties, supervision and legal arrangements that are indeed implemented according to regulations can be a common force to realize wise environmental management so that future development goals

are actually implemented in the field and not just a discourse. In fact, there are still events that are not as expected. This shows that events in the field can be tangible evidence that the quality of the environment has decreased from time to time.

The problems as described previously ultimately affect the level of success of environmental law enforcement and how the problems of environmental management in Indonesia and environmental management law policies in Indonesia.

Method

The research conducted is juridical normative, namely by analyzing the problem through the legal norms contained in the laws and regulations in Indonesia. This study is included in the type of doctrinal law study because what is studied is legal doctrine, principles and legal rules of environmental management.

The typology of this research is descriptive analysis which intends to describe and analyze the actual conditions regarding legal developments related to environmental protection and management through library research. It emphasizes on secondary data sources.

Result and Discussion

Environmental Law Enforcement

Environmental law provisions are said to have been effective and achieve their objectives when the aspects of law enforcement are running well. Enforcement of environmental law is the most important part of environmental law itself, because through law enforcement it can be seen the level of compliance of the community and business actors in implementing applicable provisions and policies (licensing) through monitoring instruments and the application of administrative sanctions, criminal sanctions and civil sanctions.

Environmental law enforcement in Indonesia includes compliance and enforcement consisting of administrative law, criminal law and civil law. However, although environmental law as a genus is a separate branch of science, the bulk of its substance is a branch of administrative law. Likewise, in terms of environmental law enforcement, administrative

law is one of the dominant dynamics, which contains rules of authority, orders, prohibitions, permits and dispensations. These rules bind the government to regulate compliance and enforcement of environmental laws, as well as bind the community and/or business actors to protect and maintain the environment.

Nurlinda (2016) explains that the enforcement of administrative environmental law is included in the administrative law section in a country. Enforcement of administrative environmental law substantially includes supervision of the environment (as regulated in Article 71 to Article 75 UU-PPLH) and the application of administrative sanctions (as regulated in Article 76 to Article 83 UUPPLH). Provisions in the enforcement of administrative environmental law in UU-PPLH are followed up with the Minister of Environment Regulation No. 2 of 2013 concerning Guidelines for the Implementation of Administrative Sanctions in the field of Environmental Protection and Management. Supervision and licensing are two administrative environment law enforcement instruments that have a preventive nature, while the imposition of sanctions is an administrative law enforcement instrument that is repressive.

In the implementation of applicable law, these instruments cannot be clearly and convincingly distinguished. Repressive sanctions can be applied on condition that preventive supervision and licensing are available. Administrative sanctions need to be applied so that the impact of the violation can be stopped or restore environmental conditions as before. Therefore, strictly speaking, administrative sanctions have a major role when enforcing environmental law as a whole. Preventive elements are considered more important when compared to repressive elements, taking into account the consequences of damage or environmental pollution.

Environmental law enforcement is more dominantly in the hands of the government, but with various developments, the burden of environmental law enforcement can no longer be given to the government alone. The role of the community in supervising and enforcing environmental law itself is very necessary (Akib, 2014).

The provisions of Article 70 of UU-PPLH need to be further elaborated and elaborated, on how the community can play an active role as broadly as possible in environmental protection and management efforts, or how social monitoring mechanisms are implemented, etc.

These things need to be explained in more detail considering the basic differences between UU-PPLH 2009 and Law no. 23 of 1997 concerning Environmental Management is that the 2009 UU-PPLH prioritizes the principles of transparency, participation, accountability and justice.

The role of the community as part of the monitoring instrument is that the enforcement of environmental law has not yet created a deterrent effect. This is partly due to the weak transparency of supervision in law enforcement, for example in terms of structuring business actors where their activities/businesses have an impact on the decline in environmental quality (Rangkuti, 1996). Until now, the government has not been able to provide a database that is easily accessible to the public to monitor the issuance of permits that have been granted to every entrepreneur, especially those that have the potential to have a large and important impact on the environment. This is a major concern because so far the witnesses given to environmental law violators do not pay attention to social or further legal aspects. One of the expected sanctions is to build a community and social environment in areas where the environment was previously damaged or polluted. It aims to increase public awareness about the importance of protecting the environment.

The problem of violating environmental rules is a moral/ethical problem. Therefore, preventive enforcement can be built by non-juridical instruments (education, economy, culture, etc.). In essence, the role of the community, especially in areas that are vulnerable to environmental damage and/or pollution, needs to be empowered.

Apart from administrative law instruments, there are also criminal law and civil law instruments (both inside and outside the court) in environmental law enforcement. If administrative environmental law enforcement is a preventive compliance effort, then criminal and civil environmental law enforcement is repressive in the sense that an act has occurred that has resulted in environmental loss and/or damage. Civil environmental disputes arise because of disputes due to the existence or suspicion of environmental impacts. The dispute resolution mechanism can be through the courts (litigation) or out of court (non-litigation). The problem that often arises in this case is the problem of proof. When having to prove elements of error (fault), negligence (negligence),

carelessness (careless), intentionality (intentionality), elements against the law (tort) or damage (damages); The problem of the burden of proof is not easy, especially as it relates to scientific evidence. In the case of air pollution, for example, it is not easy to determine which pollutant source is the most dangerous for the plaintiff. In the realm of criminal law, environmental offenses are not only limited to criminal provisions formulated in the provisions of the PPLH Law, but also include criminal provisions formulated in other laws and regulations as long as the formulation is intended to protect the environment as a whole or parts of it. its parts, including those related to natural resource management (Forestry Law, Forest Destruction Prevention and Eradication Law, Spatial Planning Law, Biological Natural Resources and Ecosystem Conservation Law, Mineral and Coal Mining Law, Plantation Law, Oil and Gas Law, Industry Law, etc.).

The implementation of criminal law instruments in environmental law enforcement needs to be observed by placing them in a legal system for environmental law enforcement, because otherwise it will reduce the element of legal certainty itself. Article 97 of the PPLH Law states that environmental crimes as regulated in the PPLH Law are qualified as criminal offenses. This qualification shows that the application of environmental criminal sanctions is a last resort (ultimum remedium), after other legal sanctions are deemed unfair in their enforcement. However, the PPLH Law contains its own debate regarding the application of criminal sanctions as the ultimum remedium.

In the General Elucidation number 6 UU-PPLH it is emphasized that environmental criminal law enforcement still pays attention to the ultimum remedium principle which requires the application of criminal law enforcement as a last resort, but this principle only applies to certain formal criminal acts, namely violations of waste water quality standards, emissions and disturbances. . This means that in an argumentum a contrario, apart from the criminal offenses, the ultimum remedium legal principle does not apply and at the same time the premium remedium legal principle can apply. If one examines the body articles in the PPLH Law, there are no provisions that state any environmental offenses that can apply criminal rules, either as a premium or as an ultimum remedium. This is different from the previous Environmental Management Law

which emphasized that the enforcement of criminal provisions still pays attention to the principle of subsidiarity, without distinguishing the qualifications of the crime; meaning that the enforcement of criminal environmental law still pays attention to the principle of subsidiarity, namely criminal law is used as a last resort (Rahmadi, 2012).

So far, the implementation of criminal law on environmental violations has only been applied selectively. This happens because criminal penalties are considered unable to have an impact or improvement on an environment that has been polluted and even damaged.

The key word in the use of criminal law instruments in environmental law cases is the competence of law enforcers to understand the theory of legal interpretation that is in line with the rule of law with the dynamics of the new law. Ecological principles must be properly understood. This will assist the process of establishing and enforcing environmental laws that take into account responsive and futuristic indicators.

Currently, Indonesia's environmental policy for the long term refers to Law no. 27 of 2007 concerning the National Long-Term Development Plan (RPJP) in the next 20 years in various aspects/sectors of development as an effort to spread and achieve national goals as stated in the Preamble to the 1945 Constitution. As for Indonesia's long-term mission related to the environment there is in the Vision and Mission of National Development 2005-2025, in point 6, namely: "Realizing a beautiful and sustainable Indonesia". In the context of realizing a beautiful and sustainable Indonesia, the targets and directions of environmental development are outlined in the 2005-2025 RPJP in accordance with Law no. 27 of 2007 concerning the RPJP has been determined by the government.

Policies in environmental management

Enforcement of environmental law in Indonesia faces considerable challenges, especially when it is associated with government policies in managing natural resources. Management in this case includes aspects of control and utilization, especially related to aspects of control and utilization in the sectors of land, forestry, plantations, mineral and coal mining, oil and gas mining and so on. The control and utilization of these sectors to support development (economic) activities often creates environmental problems.

According to Nurlinda (2016), improving natural resource and environmental governance must start with the transparency and integrity of natural resource management itself. Transparency begins with the licensing process, as a preventive instrument in environmental law enforcement. Licensing issues, which have recently become the door for corruption in the natural resources sector, need special attention related to the implementation of environmental criminal law principles, not merely the rules of criminal law as a genus. To support it, the policy of one forest thematic map needs to be implemented. Thus, the capacity of environmental law enforcement can be increased. Actions to prevent and improve the environment that have been polluted are more focused on reducing the impact caused by forest fires. In addition, fast and effective action is needed so that forest fires do not occur in a wider area. Likewise, the restoration of environmental quality caused by mining activities. It is necessary to strengthen regulations, especially in the form of local regulations governing unconventional mining because unconventional mining has become the biggest contributor to land and forest damage.

Thus, in relation to environmental law enforcement, the rules contained in the regulations are quite qualified. It's just that the seriousness of the government, including local governments, is needed to implement various compliance instruments more intensively.

Conclusion

So many problems related to the environment related to development. In the future, environmental problems that arise will be more complex, given the increasingly limited availability of natural resources and the declining quality of natural resources themselves. Enforcement of environmental law must be implemented immediately in the form of prevention, supervision, protection, management, application of strict regulations, settlement of environmental disputes and imposing severe sanctions for anyone who violates the provisions of the law. This is the true meaning of environmental law enforcement, not only providing strict sanctions but also taking preventive measures before environmental destruction and pollution occurs. If the enforcement of environmental law is really carried out to the fullest, it will create environmental justice for the community

where the community will get their rights to the environment, especially to get the right to enjoy an environment free from pollution and the right to participate and be involved in matters concerning the environment. an activity that will have an impact on the surrounding environment.

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