

Environmental Law Enforcement In Law Number 32 of 2009 Concerning Environmental Protection and Management

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ABSTRACT

Everyone is part of society who has the same rights, obligations and roles in environmental management. The foundation of the constitution has also provided guarantees listed in Article 28H paragraph (1) of the Constitution of the Republic of Indonesia. The involvement and role of the community was then reaffirmed in Law no. 32 of 2009 concerning the Protection and Management of the Environment, in Article 70. There are several aspects of law enforcement carried out in the environmental field. Law enforcement in the environmental field can be classified into 3 (three) categories, namely Administrative or State Administration environmental law enforcement, Civil environmental law enforcement and Criminal environmental law enforcement. Even though the Government has issued regulations regarding environmental law enforcement that have been planned in a directed manner, there are still many obstacles and obstacles encountered in implementation in the field. Obstacles and obstacles in enforcing environmental law in Indonesia are due to the government's lack of attention to problems that arise in society regarding enforcing environmental law related to the lack of outreach to the public regarding environmental law, not to mention the lack of awareness from the public of the importance of environmental management, as well as a legal culture that is still poor in budget management for the environmental sector.

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Introduction

By carrying out good and correct management of natural resources, it can be one of the ways to achieve people's welfare and prosperity. Thus, current development must be carried out to the fullest extent, namely the utilization of sufficient natural resources for the present generation but also by paying attention to its impact on the environment, and how it will be sustainable for future generations. This also implies the ultimate goal of natural resource management. Every human being is a component of society that should have equal rights, obligations and roles in terms of environmental management. Besides this, the constitutional basis also provides guarantees in Article 28H paragraph

(1) of the Constitution of the Republic of Indonesia "That everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to get a good and healthy environment and has the right to obtain health services" (Sodikin, 2021). Our existence as part of society plays a very effective role in contributing to controlling the existing environmental management. This has also been confirmed in Law no. 32 of 2009 concerning the Protection and Management of the Environment (UUPPLH), which is contained in Article 70. All existing efforts need to be made in order to uphold the law regarding environmental issues which are currently being underestimated. There are several ways that can be done in terms of law enforcement in the environmental field. Among other things, there are 3 (three) categories, namely Enforcement of environmental law in Administrative or State Administration, Enforcement of Civil environmental law and Criminal enforcement of environmental law (Permadhi, 2019).

Administrative Environmental Law Enforcement which is the supervision and application of administrative sanctions contained in Law Number 32 of 2009 concerning Environmental Protection and Management has been regulated in Articles 76 - 83. In the provisions contained in Law Number 32 of 2009 concerning Protection and Management of the environment. In addition, the aspect of civil law is also an aspect of enforcing environmental law, as mentioned earlier (Wahanisa & Adiyatma, 2021). If there is pollution and environmental damage, then of course there will be victims as a result of the pollution and destruction. In the sense that there are parties who are harmed, and these parties can be individuals, communities or countries. Enforcement of environmental law in a civil manner is defined as a way of settling environmental disputes through a court or out of court as stipulated in Law Number 32 of 2009 concerning the Protection and Management of the Environment in Chapter XIII Articles 84 to Article 93. Provisions The provisions listed are intended to maintain and protect the civil rights of the parties to the dispute (Fadhilah et al., 2022).

Apart from civil law, law enforcement in the environment can also be carried out through criminal law. Matters related to criminal acts and sanctions in the Special Criminal Law in the environmental field have been regulated in the provisions of the Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management (Rangkuti, 2020). This is intended, among other things, to be able to determine whether an act of pollution or damage to the environment can be punished or not, it is necessary to formulate "environmental delict (environmental pollution)" based on the "principle of legality" which has been written in Article 1 paragraph (1) of the Indonesian Criminal Code. Criminal Code (KUHP).

The formulation of the problem in this study is How is environmental law enforcement in environmental management based on Law No. 32 of 2009? And what are the obstacles arising from enforcing environmental law in order to achieve justice in the environment? While the purpose of this study is to find out how environmental law enforcement is in environmental management based on Law No. 32 of 2009 and to find out what obstacles arise from enforcing environmental law in order to achieve justice in the environment (Situmeang, 2019).

Research Methods

In this paper the author uses a research method, namely the method of library research. This research method is carried out by examining several written works such as manuscripts, journals, or articles. In addition, the author also cites several statutory provisions and regulations that are still related to the topic of the problem being

researched. As for the data collection method that the author uses in writing, among others, is through secondary data collected by the author from various sources that have been obtained through library research by reviewing and studying reference materials. This research has a qualitative approach in which the writer hopes to produce meaningful descriptions of writing, as well as observable behavior (Sugiyono., 2017).

Results and Discussions

A. Environmental law enforcement in environmental management is based on Law No. 32 of 2009

Enforcement of environmental law in the context of controlling environmental pollution can be distinguished in three aspects: (i) enforcement of administrative environmental law by government officials, (ii) enforcement of criminal environmental law through judicial procedures, and (iii) enforcement of civil environmental law through litigation or non-litigation. Enforcement of environmental law in the context of controlling environmental pollution means utilizing available legal means in the field of administrative, criminal and civil environmental law enforcement (environmental dispute resolution) to carry out legal protection in order to ensure the quality of a sustainable clean and healthy environment. Enforcement of environmental law is closely related to the ability of the apparatus and compliance of citizens with laws and regulations (Sood, 2021).

Administrative environmental law enforcement aims to stop environmental pollution directly at its source in accordance with the principles of supervision and application of administrative sanctions. The general legal basis for supervision as a means of enforcing administrative environmental law in controlling (environmental) pollution in Indonesia is Article 71-75 of the PPLH Law. Mastery of environmental pollution control methods and techniques among administrative environmental law enforcement officials is still limited. The application of administrative sanctions is a follow-up consequence of supervisory measures Administrative sanctions have an "instrumental function": control of prohibited acts and consist of:

- a. Government coercion or coercive action;
- b. forced money;
- c. Closure of place of business;
- d. Termination of company machinery activities;
- e. Revocation of permits through the process of: reprimand, government coercion, closure and forced money.

Articles 76-83 of the PPLH Law regulate four types of administrative sanctions: written warning, government coercion, freezing of environmental permits, or revocation of environmental permits. Against business entities that violate emission quality standards and other environmental requirements. The stipulation of this sanction cannot be less than the economic value that has been enjoyed by the violator as long as it does not comply with the environmental licensing requirements. as a follow-up to the supervision carried out by the Ministry of Forestry. The PTUN Law is the legal basis for filing administrative lawsuits over licensing KTUNs which are considered "onrechtmatig" and can cause environmental pollution. Starting from Article 53 paragraph (1) and Article 1 point 4 of the Administrative Court Law: an environmental permit can be sued in the Administrative Court which contains a demand (petitum) so that the disputed KTUN (environmental permit) is declared null and void with the aim of

stopping environmental pollution of the principle of “abatement at the source”. the shortcomings and weaknesses, the legal process of the two cases is an appreciative step towards the existence and function of the Administrative Court.

To determine whether an act that pollutes (or damages) the environment can be punished requires the formulation of "environmental delict (environmental pollution)" based on the "principle of legality" contained in Article 1 paragraph (1) of the Criminal Code (KUHP). The problem of the formulation of environmental offenses for environmental pollution can be solved by understanding the juridical understanding of environmental (environmental) pollution and the formulation of criminal sanctions. Referring to Articles 97-120 of the PPLH Law, it is known: the subject who bears criminal responsibility is "everyone" (both individuals and legal entities). The formulation of environmental offenses has two basic elements: "acts" and "consequences". These two elements can be used as a guideline for qualifying environmental pollution as a "material offense" or "formal offense". The main points in this criminal law are set forth in laws which more or less have a role in carrying out social engineering, namely those which include the formulation of criminal acts, criminal liability, and sanctions (sanctions) both criminal and orderly. , environmental law also contains the goal of community renewal (social engineering). Law as a social engineering tool is very important in environmental law (Parsaulian, 2020).

Enforcement of environmental law through civil law channels in Indonesia is not liked because of the protracted process in court because almost all civil cases are sought by the highest court for cassation and even proceed to review. After a decision is made, it is often difficult to implement it. According to the provisions of Article 84 UUPPLH, environmental (civil) disputes can be resolved through court or out of court based on the voluntary choice of the parties concerned. If the effort outside the chosen court is not successful then one or the parties can take the court route. Environmental enforcement through a civil lawsuit approach is carried out because the plaintiff not only suffers material losses but can also be harmed by damage to the environment around where he lives. If a lawsuit is filed by the government through the Ministry of Environment and Forestry (KLHK), then its development leads to a system of proof that applies the concept of strict liability so that the KLHK as the plaintiff no longer needs to prove the existence of the defendant's fault (Erwin, 2015). However, not all of these decisions are followed by punishments to restore the environment that has been damaged and/or polluted, Article 88 UUPPLH regulates absolute responsibility for everyone whose actions, businesses and/or activities use B3, produce and/or manage B3 waste, and/or which poses a serious threat to the environment are absolutely responsible for the loss that occurs without the need to prove an element of guilt. Settlement of environmental disputes through civil law instruments, according to Mas Achmad Santosa, that in order to determine whether a person or legal entity is responsible for losses caused by pollution or environmental damage, the plaintiff is required to prove the existence of pollution, as well as the link between the pollution and the losses suffered. Proving means giving certainty to the judge about the truth of the disputed concrete event (Wahid & SH, 2018).

B. Obstacles arising from enforcing environmental law in order to achieve justice in the environment

Even though the Government has issued regulations regarding environmental law enforcement that have been planned in a directed manner, there are still many obstacles and obstacles encountered in implementation in the field. Obstacles and obstacles in

enforcing environmental law in Indonesia are due to the government's lack of attention to problems that arise in society regarding enforcing environmental law related to the lack of outreach to the public regarding environmental law, not to mention the lack of awareness from the public of the importance of environmental management, as well as a legal culture that is still poor in budget management for the environmental sector. Another source quoted from Andi Hamzah in his book entitled *Enforcement of Environmental Law* states that there are obstacles or obstacles to enforcing environmental law in Indonesia, including:

1. Obstacles that are natural in nature, Indonesia's large population and spread over several islands as well as various tribes and cultures show different legal perceptions, especially regarding the environment.
2. Public awareness of the law and culture about the importance of preserving the environment is still low, this constraint is felt in the enforcement of Indonesian environmental law. For this reason, it is very necessary to provide extensive legal information and counseling. Legal regulations regarding the management of environmental problems are incomplete, especially pollution problems.

Enforcement of environmental law by using civil law means has also often been constrained by difficulties in proving. Proving environmental cases requires high levels of human and technological resources, so that the settlement of environmental cases becomes complicated, expensive and takes a long time. In the handling of environmental civil cases, legal issues are often found that are not covered by existing laws or regulations. This is because evidence in pollution cases is often characterized by its distinctive characteristics, including:

1. Causes are not always from a single source, but come from various sources.
2. Involve other scientific disciplines and demand the involvement of experts outside the law as expert witnesses.

Conclusion

Environmental law enforcement in Indonesia is regulated in Law Number 32 of 2009 concerning Environmental Protection and Management. The means of enforcing this law provide three kinds of aspects of environmental law enforcement, namely administrative law enforcement, civil instruments, and criminal acts in the environment.

As well as the obstacles and obstacles encountered in enforcing environmental law in Indonesia due to the legal factors themselves, law enforcement factors that are still weak in dealing with environmental problems, factors of facilities/facilities, society, and natural obstacles.

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