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Environmental Law Enforcement in Indonesia Through Civil Law: Between Justice and Legal Certainty

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Abstract

Enforcement of Environmental Law in Indonesia can be done in various ways. One way that can be done is to conduct a lawsuit in Civil Law to the competent court if the plaintiff suffers material or immaterial losses and suffers losses due to environmental damage around his area. There are various court decisions in the civil field, especially the new environmental scope. The new verdict can affect the growth and development of existing Environmental Law in Indonesia. If the plaintiff is the Ministry of Environment and Forestry who suffers material or immaterial losses, then the concept of proof in the judicial process can be called a strict liability suit. The problem written by the author in this journal is the enforcement of Environmental Law in Indonesia

through Civil Law. In this journal, the writer uses the normative and juridical writing method, which is a legal writing which is carried out by analyzing secondary legal materials or library materials to find a solution to a legal problem that arises and uses a problem approach based on the laws or general legal rules regarding Environmental Law enforcement in Indonesia through Civil Law and problem approaches that are based on a conceptual basis. The results of research conducted show that to enforce Environmental Law based on Civil Law in Indonesia, judges not only apply existing legal regulations, but judges must also apply other judicial matters so that existing Environmental Laws in Indonesia can experience progress and rapid development.

Keywords

Absolute Responsibility, Civil Law, Environmental Damage, Environmental Law Enforcement

I. Introduction

Enforcement of Environmental Law in Indonesia can be done through Civil Law. However, the enforcement of this Civil Law in the environment is not too much done by the people of Indonesia, because the civil litigation process usually takes a very long time. Almost all cases of environmental damage that have been resolved using this Civil Law have always been an appeal process carried out by the Plaintiff to the Defendant through the High Court.

This was due to the dissatisfaction experienced by the Plaintiffs. Thus, the final decision of the court is also difficult to implement.[1]

Cases of environmental damage can be resolved through court or outside the court based on the agreement of the parties to the dispute. If the path outside the court, such as mediation and conciliation efforts that have been made cannot resolve the environmental damage case, then the case can be resolved in the court. So that the lawsuit process to the court in a civil manner can only be carried out if the settlement of cases of environmental damage outside the court, such as mediation and conciliation efforts are declared unsuccessful and ineffective to resolve the case.[2]

Enforcement of Environmental Law through Civil Law has been experiencing disruptions and difficulties in the verification process. This is because the verification process in the case of environmental damage requires the ability of human resources and very high technological progress. So that this resulted in the settlement of cases of environmental damage in the civil field requiring large costs, complicated processes, and a long time. In the process of solving cases of environmental damage in a civil manner, there are often problems in the legal field that cannot be resolved by regulations other than existing laws or laws that govern the environment itself. This is because the verification process in the case of environmental damage has several distinctive characteristics, are as follows:[3]

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1 A. Hamzah, *Pelaksanaan Hukum Lingkungan di Indonesia,* Jakarta, Sinar Grafika, 2005, p. 90.

2 Article 85 of Law Number 32 of The Year 2009 About Environmental Protection and Management, retrieved from peraturan.bpk.go.id.

3 M. Santosa, *Pemerintahan yang Baik Dalam Hukum Lingkungan,* Jakarta, ICEL, 2001, p. 235.

a. Cases of damage to the environment not only result from a single source but can also be caused by multiple sources.
b. Cases of damage to the environment have links with other branches of science outside of legal science so that in the judicial process it is necessary to have other experts outside of legal science.
c. Cases of damage to the environment cannot occur at that moment but can occur by requiring a certain time interval.

The court judges in resolving cases of damage to the environment are expected to have a progressive attitude to be able to resolve cases of damage to the environment with a variety of scientific evidence. This is because every case of damage to the environment has a variety of unique and distinctive characteristics. Also, cases of damage to the environment can be classified as cases that have structural characteristics, namely a case where one party has unlimited access to natural resources while one of the other parties has limited access to natural resources.[4]

Based on the background described above, the authors formulated various problems as follows: (1) What are some ways that can be done to resolve cases of damage to the environment? (2) What are the reasons that cause compensation in the case of damage to the environment?

In writing this journal, a research method that is normative and juridical is used. Legal materials that can be used are legislation that can be used as main legal materials or main basic materials as well as in other legal materials, such as literature and also scientific works in the scope of Environmental Law. By way of secondary legal materials or supporting legal materials that have a function as

[4] A. Hamzah, *Op. Cit.,* p. 91.

a compliment and to supplement a journal, legal dictionaries, and also public dictionaries can provide explanations regarding enforcement of Environmental Laws in Indonesia through Civil Law relating to what is in this journal. Legal materials that have been collected and then analyzed descriptively and juridical which have the aim to provide a general description of an existing problem and then will be explained in detail and conclude an existing explanation that is expected to answer the formulation of the problems in this journal.[5]

II. Some ways that can be done to resolve cases of damage to the environment

The Government of Indonesia established and issued Law Number 32 of the Year 2009 concerning Management and Protection of the Environment with the aim of ensuring legal protection and legal certainty for every human right possessed by everyone to be able to feel the existence of a healthy and good environmental ecosystem. Law Number 32 of the Year 2009 consists of 17 chapters and 127 articles that regulate the management and protection of the environment in detail and detail. Besides, Law Number 32 of the Year 2009 has also regulated various principles of environmental management and protection which have been based on good governance which requires aspects of accountability, justice, participation, and transparency in the process of overcoming and enforcing the law. in the country of Indonesia.

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[5] S. Soekanto, *Dasar Penelitian Hukum*, Jakarta, Universitas Indonesia Press, 2007, p. 43.

Law Number 32 of the Year 2009 concerning Environmental Management and Protection was established and issued by the Government of Indonesia through a national legislation program with various objectives, such as to create a healthy and good environmental ecosystem which is a human right that is owned by everyone and to create a justice for present and future generations through a consistent and integrated environmental management and protection system from the regional environment to the central environment. According to the provisions of Article 1 paragraph (1) of Law Number 32 of the Year 2009 elucidates that the process of managing and protecting the environment must be carried out with various objectives, such as to prevent damage or pollution to the environment and to preserve the functions possessed by the environment.[6]

Enforcement of Environmental Law in Indonesia can be done through Civil Law. However, the enforcement of this Civil Law in the environment is not too much done by the people of Indonesia, because the civil litigation process usually takes a very long time. Also, civil cases usually have to be reviewed for the settlement of cases of damage to the environment. Thus, the final decision of the court is also difficult to implement.[7] According to the provisions of Article 84 Law Number 32 of the Year 2009 elucidates that problems or disputes in the environmental sector can be resolved through court or out of court channels based on the agreement of the disputing parties. If the dispute resolution outside the court is judged to have not succeeded in resolving a

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[6] Article 1 paragraph (1) of Law Number 32 of The Year 2009 About Environmental Protection and Management, retrieved from peraturan.bpk.go.id.

[7] A. Hamzah, *Op. Cit.,* p. 90.

dispute in the environmental field, then the dispute resolution through the court can be carried out immediately.

Based on the provisions contained in Article 85 from Law Number 32 of the Year 2009 about Environmental Protection and Management, it elucidates that cases of damage to the environment can be resolved using a court or out of court based on the agreement of the parties to the dispute. If the settlement of cases of damage to the environment by means out of court, such as mediation and conciliation efforts are unsuccessful and ineffective to resolve the case, then the case can be resolved using a court. Article 89 from Law Number 32 of the Year 2009 about Environmental Protection and Management elucidates that every person who carries out activities, actions, and businesses that can produce or cause hazardous and toxic material for the environmental ecosystem has a responsibility that is absolute loss and damage resulting from or caused. This does not require a proof process in court. While the definition of absolute responsibility is that the Plaintiff does not need to carry out a proof process in court to proceed with the claim of compensation to the Defendant because there is already an element of intentional or unintentional error from the Defendant. Existing provisions in Article 89 are a form of application of the principle of *lex specialis derogat legi generalis* regarding acts that are against the law in general.[8]

A claim against a problem or a dispute can occur because one party feels that the interests of his rights have been violated against the other party. The interests of rights that have been violated by one party can actually cause harm to the other party.

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[8] A. S. Keraf, *Etika Dalam Lingkungan Hidup,* Jakarta, Kompas Media Nusantara, 2010, p. 93.

The various losses that can be caused consist of losses in the form of damage or pollution to environmental ecosystems which are immaterial losses and losses in the form of money which are material losses. One party who feels that he has been harmed by the other party can file a civil claim for compensation to the competent court institution. This is in accordance with the provisions contained in Law Number 32 of the Year 2009 concerning Environmental Protection and Management elucidates that parties who have a right to sue against environmental ecosystems are parties who are victims of damage or pollution to environmental ecosystems.[9]

A legal expert named Sukanda Husin explained that two ways can be done to resolve cases of damage to the environment. First, cases of damage to the environment are resolved through a way to settle disputes outside the court. This method can be done through a mediation process and a conciliation process. The mediation process is a way to amicably resolve environmental damage through a negotiation process with the help of neutral and impartial third parties who are parties to the dispute and can cooperate with the parties to the dispute so that an agreement can be obtained binding and final,[10] while the conciliation process is a method carried out to resolve environmental damage peacefully through an organ that was previously created or an organ that was created based on a lot of parties for the environmental conflict.[11]

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[9] S. Husin, *Implementasi Hukum Lingkungan di Indonesia,* Jakarta, Sinar Grafika, 2009, p. 106.

[10] A. B. Djafar, *Penyelesaian Sengketa Bisnis Melalui Mediasi*, Jakarta, Fakultas Hukum Universitas Pancasila, 2011, p. 11.

[11] B. Mauna, *Hukum Internasional: Fungsi, Pengertian, dan Peranan Dalam Era Dinamika Global,* Bandung: PT. Alumni, 2015, p. 213.

Secondly, cases of damage to the environment that has been resolved using dispute resolution in court. This method can be done through the arbitration process and the court process. Arbitration is a way of resolving environmental damage through the submission of environmental damage to certain people who are experts in their respective fields and are selected freely by the parties experiencing the dispute to resolve environmental damage that has occurred,[12] while court is a way of resolving environmental damage with use rules and legal provisions made by court body national programs regularly.[13] So that the lawsuit process to the court in a civil manner can only be carried out if the settlement of cases of environmental damage outside the court, such as mediation and conciliation efforts are declared unsuccessful and ineffective to resolve the case.[14]

If the settlement of cases of damage to the environment by means outside the court is unsuccessful and is ineffective in resolving the case, then it can be resolved through the method in court. The claim process carried out by the Plaintiff to the court can be carried out if the settlement of cases of damage to the environment through an out of court method is unsuccessful. The various objectives of resolving environmental damage cases outside the court, are as follows:[15]

a. Determine the nominal amount of compensation.

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[12] *Ibid,* p. 214.

[13] B. Arumnadi, *Hukum Internasional*, Semarang, IKIP Semarang, 2001, p. 281.

[14] S. Husin, *Ibid.*

[15] Article 86 of Law Number 32 of The Year 2009 About Environmental Protection and Management, retrieved from peraturan.bpk.go.id.

b. Carrying out the process of recovering from environmental damage or pollution.
c. Conduct guaranteed process so that damage or pollution to the environment does not happen again.
d. Carry out process of preventing the consequences that are generated or caused by environmental damage or pollution.

III. The reasons that cause compensation in the case of damage to the environment

Damage or pollution to the environment is an act or action that can cause harm to the surrounding environment and other people and cause the perpetrators of the perpetrators who have damaged or polluted the environment to make certain amounts of compensation to the victims who suffered losses. Compensation is an absolute responsibility and must be carried out by the perpetrators of damage or pollution to the environment due to a certain number of losses experienced by victims of damage or pollution to the environment. In the Civil Law, this absolute responsibility can be called a responsibility based on an error. This is regulated in Article 1365 of the Civil Law which explains that any act that is unlawful and causes a certain amount of damage to another person, requires the person who has incurred a certain amount of loss to carry out the process of compensating others.[16]

The polluter who pays principle is a model of the demand for responsibility from the environmental polluter consisting of

[16] P. Haryadi, "Pengembangan Hukum Lingkungan Hidup Melalui Hukum Perdata", *Jurnal Konstitusi*, 14(1), 2017, p. 134.

the state, individual, or company to bear the compensation costs arising from damage or pollution to environmental ecosystems that occur as well as reduction of environmental ecosystem damage or pollution that has occurred.[17] A legal expert named E. J. Mishan explained that the polluter who pays principle can prevent or prevent someone from doing damage or pollution to the environment.[18] Then, along with the development of the times in this world, the polluter who pays principle began to be applied and developed in the Member Countries of Development and Economic Cooperation which essentially negotiated or agreed that the environmental polluter has an obligation to pay or bear the costs of prevention and prevention against environmental pollution. damage or pollution of environmental ecosystems that occur.[19]

In Law Number 32 of the Year 2009 about Environmental Protection and Management, this is explained that compensation must be carried out if someone has caused damage or pollution to the environment. Compensation must also be carried out to restore the condition of the environment that has been damaged or polluted. In Article 2 from Law Number 32 of the Year 2009 about Environmental Protection and Management principle is explained if someone has done damage or pollution to the environment, then that person is obliged to pay compensation that has been caused. The principle of obligation to pay compensation

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[17] B. N. Mamlyuk, "Analyzing The Polluter Pays Principle Through Economics and Laws", *South Eastern Environmental Law Journal*, 18(1), 2017, p. 281.

[18] S. S. Rangkuti, *Beban Pembuktian dan Tanggung Jawab Pencemar Pada Kasus Pencemaran,* Jakarta, Skrep dan Walhi, 2000, p. 17.

[19] P. Sands, *Principles from International Environmental Law,* Cambridge, Cambridge University Press, 2003, p. 282.

due to damage or pollution to the environment that has been caused is also regulated more specifically and in detail in Article 14 letter f, Article 42, and Article 43. This principle is translated into more specific principles. These include the principles of the existence of a guarantee fund as a result of the process of restoring the environment that has been damaged or polluted, the principle of the existence of a cost internalization of the environment that has been damaged or polluted, and the principle of paying taxes and levies to protect the environment from damage or pollution.[20]

The principle of responsibility based on the existence of an error makes it clear that responsibility is not possible without an error first. Responsibilities that are based on the existence of an error can be called as a torturous responsibility for the perpetrators who have caused damage or pollution to the environment.[21] Various objectives of the existence of compensation for damage or environmental pollution, are as follows:[22]

a. To carry out the recovery process of the environment that has suffered damage or pollution.
b. To fulfill the rights of someone who has been harmed as a result of damage or pollution to the environment.
c. To fulfill various rules and regulations that already exist in law as an obligation that must be implemented by good citizens.

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[20] M. Akib, *Politik Hukum Lingkungan: Pelaksanaan dan Penegakannya Dalam Produk Hukum Kewenangan Daerah,* Jakarta: Raja Grafindo Persada, 2013, p. 124.

[21] B. N. Mamlyuk, *Ibid.*

[22] Z. A. Fakrulloh, "Penegakan Hukum Sebagai Upaya Menegakkan Keadilan", *Jurnal Jurisprudence*, 2(1), 2015, pp. 24-25.

d. To provide legal sanctions for perpetrators who have caused damage or pollution to the environment.

In Article 87 and Article 88 of Law Number 32 of the Year 2009 concerning Environmental Protection and Management, it is explained that the concept of responsibility of the environmental polluter consists of the concept of responsibility based on mistakes and the concept of immediate responsibility. Article 87 explained that the form of responsibility carried out by environmental polluters is generally based on unlawful acts. Meanwhile, Article 88 explained that the form of responsibility carried out by environmental polluters is based on absolutes. According to the explanation of Article 88, absolute liability is a form of responsibility where the element of error that has occurred does not need to be proven by the plaintiff as the basis for the cost of compensation that has occurred. The amount of compensation costs given to environmental polluters must be determined until a certain time limit it is meaning that it must be determined in accordance with the insurance costs that are available in the environmental fund.[23]

The concept of immediate liability stems from the Common Law legal system which has been applied to the dispute between Fletcher and Rylands. In this dispute, a person is considered to have immediate responsibility if the person concerned has damaged or polluted the environmental ecosystem by using various very dangerous materials. In Indonesia, the immediate responsibility is only applied to certain environmental problems or disputes. The immediate responsibility and the

[23] L. Mulyati, "Hukum Ganti Rugi Terhadap Pencemaran Lingkungan Ditinjau Dari Undang-Undang Nomor 4 Tahun 1982", *Jurnal Hukum dan Pembangunan,* 23(5), 1993, p. 464.

reversed proof system should be applicable to the damage or pollution of the environmental ecosystem by industrial activities. Not the other way around, where the general public is the victim of damage or pollution to the environmental ecosystem, which proves that they have been harmed by industrial activities that can damage or pollute the environment in which they live. Thus, industrial activities that are suspected of having damaged or polluted the environmental ecosystem are given the obligation to provide evidence in the dispute resolution process that will be carried out.[24]

Environmental polluters have various responsibilities consisting of efforts to restore the environment and efforts to overcome the environment. The legal rules that regulate the anticipation of losses caused by activities in the industrial sector must be applied to the environmental law enforcement process in Indonesia. This is because the party in charge of activities in the industrial sector has a tendency to ignore various existing environmental requirements, which consist of requirements regarding environmental impact analysis, requirements regarding the operation and ownership of waste management units, and other environmental requirements. An example of damage or pollution to environmental ecosystems carried out by industrial activities is waste containing hazardous and toxic materials that are disposed of into people's residences and not disposed of to the waste management unit.[25]

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[24] M. Erwin, *Hukum Lingkungan Pada Sistem Kebijaksanaan Pembangunan Lingkungan Hidup,* Bandung, Refika Aditama, 2009, pp. 205-206.

[25] M. A. Santosa, *Penerapan Asas Tanggung Jawab Mutlak (Strict Liability) Pada Bidang Lingkungan Hidup,* Jakarta, ICEL, 1997, pp. 122-123.

IV. Conclusion

Two ways can be done to resolve cases of damage to the environment. First, cases of damage to the environment are resolved through a way to settle disputes outside the court. This method can be done through a mediation process and a conciliation process. The mediation process is a way to amicably resolve environmental damage through a negotiation process with the help of neutral and impartial third parties who are parties to the dispute and can cooperate with the parties to the dispute so that an agreement can be obtained binding and final, while the conciliation process is a method carried out to resolve environmental damage peacefully through an organ that was previously created or an organ that was created based on a lot of parties for the environmental conflict. Secondly, cases of damage to the environment that has been resolved using dispute resolution in court. This method can be done through the arbitration process and the court process. Arbitration is a way of resolving environmental damage through the submission of environmental damage to certain people who are experts in their respective fields and are selected freely by the parties experiencing the dispute to resolve an environmental damage that has occurred, while court is a way of resolving environmental damage with use rules and legal provisions made by court body national programs regularly. Compensation is an absolute responsibility and must be carried out by the perpetrators of damage or pollution to the environment due to a certain number of losses experienced by victims of damage or pollution to the environment. Various objectives of the existence of compensation for environmental damage or pollution,

include: carry out the recovery process of the environment that has suffered damage or pollution, fulfill the rights of someone who has been harmed as a result of damage or pollution to the environment, fulfill various rules and regulations that already exist in a law as an obligation that must be implemented by good citizens, and provide legal sanctions for perpetrators who have caused damage or pollution to the environment.

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