

Protection of the Right to a Good Environment and Healthy in Indonesia

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Abstract

Every country that recognizes itself as a legal state, has an obligation to provide fulfillment and protection of human rights to every citizen. The Human Rights, both of which are non-derogable and derogable nature, one of which is the right to a good environment and healthy. In Indonesia, the recognition of the right to a good environment and health have been stipulated in the applicable rules and enforcement procedures. This article will review how the recognition of the right to a good environment and healthy, as well as Enforcement in Indonesia.

Keywords: Rule of Law, Environmental Right, Law Enforcement

I. Introduction

The existence of the State in the conception of law and rule of law are two sides that can not be separated from one another. This is because a country whose cult system as a political subdivision of State law certainly can not be disassociated from the existence of the law in the administration of state and government in the country. State law is a state concept that has evolved from a few decades ago. This is evident from the existence of thought on the concepts of law state that has existed and evolved long before the concept of a constitutional state has composed and arranged like today.

Use of the term has been used state laws vary in different countries, both of which adheres to the legal system Civil Law and Common Law system. But basically, the nature and characteristics of the country that declared itself as a legal state Sagat is closely related to the recognition and protection of human rights (Adithiya Diar, 2012: 113). This is similar to that disclosed Joeniarto which states that a constitutional state, both developed by the countries of continental or countries of Anglo Saxon, has a "basic requirement" recognition, guarantee basic rights of man are respected (Joeniarto, 1968: 8).

In Indonesia, the setting that Indonesia is a country of law contained in Article 1 (3) of the Constitution of the Republic of Indonesia Year 1945 (1945), which regulates the state of Indonesia is a country of law. Asshiddiqie, "Indonesia idealized and aspired by the founding fathers as a constitutional state (Rechtsstaat/The Rule of Law)" (Asshiddiqie, 2009: 395). Thus, the logical consequence of Indonesia, which has declared itself as a state of law is the limitation of power by law, so that the basic rights of the people against the arbitrary actions of rulers.

One of people's basic rights that are universally recognized right to environment is good and healthy. Although the Universal Declaration of Human Rights 1948 (hereinafter UDHR 1948) does not explicitly regulate the right to environment is good and healthy, but the issue of environmental rights continue to roll over the human consciousness of the importance of environmental issues globally sustainable.

The right to a good environment and a healthy start to the lively discussion in conjunction with the right to development since the convening of United Nations Conference on the Human Environment in Stockholm Sweden in 1972 and was followed by the Summit of the Earth in Rio Janeiro Brazil in 1992 that talked about development and the environment, and the United Nations Conference on sustainable development in Johannesburg, South Africa in 2002 which resulted in commitments and conventions and action plans for the implementation of environmentally sustainable development.

Environmental rights are subjective rights of every person. These rights, according to Steiger Heinhart c.s., giving the owner a legitimate claim to request its interests will be a good and healthy environment was respected; a demand that can be supported by legal procedures, to the protection of the law by the courts and other devices. The suit has two distinct functions: first, related to the right to defend itself against outside interference cause harm to the environment; and secondly, in relation to the right to sue any action so that the environment can be preserved, restored or repaired (Hardjasoemantri, 1989: 128-129).

The recognition of environmental rights that legally through three international conferences mentioned above, of course, is the legal basis for each State Party to regulate such rights nationally and within a law to implement it in their respective jurisdiction. Therefore, this article will discuss how Protection the right to a good environment and healthy in Indonesia, as one of the countries party to the various conference-related environmental problems.

II. Discuss

A. Recognition of the Right to the Environment in Indonesia

Human rights and the environment have dependencies with one another. The state can provide protection against environmental regulation is also at the same time protect human rights, especially issues related to the right to life, right to health, disturbance of property rights through the provision of protection for the rural population. Thus, the environment and human rights are two things that are interconnected and mutually reinforcing between them. Recognizes that human rights means also protecting the environment and also can be used to achieve sustainable development (sustainable development) as one of Indonesia's development goals. This is because by recognizing and protecting human rights are the potential ways to protect the environment.

In Indonesia, the recognition of the right to a good environment and *sehattidak* separated from international influence. The recognition of the right to a good environment and healthy in several United Nation conferences as described above, has implications to the state party in the conference to recognize their right to a good environment and healthy, one of which is the Republic of Indonesia. The initial formation of the Indonesian national legal instruments concerning the right to a good environment and healthy, it has been stated in Article 28 of the Charter of Rights as an integral part of the provisions of the People's Consultative Assembly of the Republic of Indonesia Number XVII / MPR / 1998 on Human Rights. In this article stipulates that everyone is entitled to a good environment and healthy.

Furthermore, the existence of the right to a good environment and healthy is also stipulated in the constitution of the Republic of Indonesia after the second amendment. This was stated in Article 28H Paragraph (1) of the 1945 Constitution, which provides that, "Every person has the right to live physical and spiritual prosperity, reside and earn a good living environment and healthy and are entitled to health care". Recognition of the environmental rights stretcher, also in the same breath with *filosofisyang* value contained in the Law of the Republic of Indonesia Number 32 of 2009 on the Protection and Management of the Environment (hereinafter referred UUPPLH).

Long before the enactment UUPPLH in 2009, the right to a good environment and healthy also has many set in the positive law of Indonesia. In Articles 5 and 8 of the Act No. 23 Year 1997 about environmental management (hereinafter referred PLH) has expressly provides that: "Everyone has the same rights to good living environment and healthy", as well as in Article 3 of Law No. 39 1999 on Human Rights (hereinafter referred to as the Human Rights Act), states "the public is entitled to a better environment and healthier" Placement right to a good environment and a wide range of legislation healthy Indonesia, of course, have significance and intrinsic, ie as the rights of citizens should be guaranteed and protected by the State's existence.

The existence of environmental rights to living well and *sehattersebut*, in general have shown how important environmental component in supporting and fulfilling basic rights as the right to the environment associated with the achievement of the quality of human life. There are still so many policies are also directly related to the environment in Indonesia, such as Law No. 26 Year 2007 on Spatial Planning, Law No. 27 of 2007 on the management of coastal and small islands, and Law No. 10 of 2009 on Tourism. However it is regrettable, the recognition of the right to a good environment and healthy several Indonesian positive law, just as a symbol that can not be spelled out in concrete terms to still be given to citizens. As a result, policy recognition of the right to a good environment and the healthy unable to control environmental destruction in Indonesia.

Environmental damage in Indonesia are becoming more severe. The condition is directly threatening human life. The level of damage alampun increase the risk of natural disasters. The cause of environmental damage can be caused by two factors: the result of natural events and induced environmental human. Destruction can be defined as the process of deterioration or degradation (deterioration) environment. Environmental deterioration is characterized by loss of land resources, water, air, extinction of wild flora and fauna, and damage to ecosystems.

In the data that is accessed through the Ministry of Environment and Forests, indicators to measure the environmental damage can be done on a sector analysis of river pollution. The quality of river water used as environmental quality, pollution of the river that occurred in the period 2010 - 2014 shows the water quality conditions of the river are in the polluted status. Pollution of the river that today shows more diverse, and showed symptoms of serious environmental damage. Scarcity and difficulty getting clean water and proper wear a problem that often arises in various places every year. (Ministry of Environment and Forestry, 2014: 1)

Environmental damage direct impact to human life. In 2004, the High Level Threat Panel, Challenges and ChangeUnited Nation, incorporate environmental degradation as one of the top ten threats to humanity. World Risk Report released German Alliance for Development Works (Alliance), United Nations University Institute for Environment and Human Security (UNU-EHS) and The Nature Conservancy (TNC) in 2012 also stated that the environmental damage to be one of the important factors that determines the height lower risk of disaster in the region.

In fact the above, a variety of environmental problems that occur in Indonesia at this time, emerged as a result of the human desire to continue to grow and build a better life. Within the framework of human rights, the

desire is based on the right to development (the right to development). However, the construction done by the man, too many forget about the environment due to the enforcement of the rule of law is weak.

B. Law Enforcement on Environmental pollution in Indonesia

The term law enforcement in Indonesian brings us to the idea that law enforcement is always by force so that no one argues that law enforcement is only concerned with criminal law alone. Law enforcement has a very broad sense includes preventive and repressive aspects, suited to the conditions of Indonesian government elements actively participate in raising awareness of the public law (M. Daud Silalahi, 2001: 48-49). Conceptually, the essence and meaning of law enforcement lies in harmonizing relations activities that span the 'hierarchy of values in the rules that steady and attitude acts as a series of translation of the value of the final stage to create, maintain and sustain peace social life.

According Mertokusumo, if in law enforcement, which considered only the rule of law, then the other elements were sacrificed. Similarly, if the note is simply expediency, the rule of law and justice is sacrificed. Therefore, in the enforcement of environmental law these three elements, namely certainty, usefulness, and justice must be compromised. This means that all three should receive attention proportionally balanced in handling, although in practice they are not always easy to do. (Andi Hamzah, 2005: 66).

Enforcement of environmental laws is an important element in the effort to achieve the goal of the State of Indonesia in fulfilling the right to a good environment and health. Establishment law itself according Asshiddiqie is the process of doing an effort for the establishment or the functioning of legal norms significantly as a code of conduct in the past cross or legal relations in the society and state.

Enforcement of environmental law enforcement is quite complicated because of environmental law occupy the intersections between the various areas of the classical laws. Enforcement of environmental laws is the last link in the cycle setting environmental policy planning of the order as follows:

1. Legislation;
2. Determination of the standard;
3. The granting of licenses;
4. Application; and
5. Enforcing the law. (Andi Hamzah, 2005: 52)

In Indonesia, the regulations governing the protection of life set in UUPPLH. Within the regulation, there are three ways of law enforcement can be done for the protection of the environment, namely:

1. Law enforcement administration;

Administrative law enforcement in the field of environment, is basically concerned with the understanding of the environmental law enforcement itself as well as the administrative law enforcement of environmental law related to the ability of the apparatus and adherence citizens with regulations. Administrative law enforcement can be enforced by the easiness of environmental management, especially in finance, such as duty relief pollution prevention equipment and bank credit for the cost of environmental management, and so on. Refresif repression by the authorities against violations of environmental legislation administrative essentially aimed at ending the illegal situation directly.

Administrative law enforcement by J. Ten Merge through two ways, the way of supervision and administrative sanctions. If we see in the oversight PPLH Act, supervision performed by the two parties, ie the government and society. The role of government oversight in Article 71 mentioned conducted by the governor, mayor or regent. In Article 71 point 2 is also mentioned, that role can be delegated to an authorized official. As for the role of officials who authorized it is:

- a. monitoring;
- b. request information;
- c. make copies of documents and / or
- d. make the necessary records;
- e. entering certain places;
- f. shooting;
- g. making audio-visual recordings;
- h. taking samples;
- i. checking equipment;
- j. check the installation and / or tool
- k. transport; and / or
- l. stop certain violations.

While the role of the community in accordance with Article 70 which include social supervision, provision of advice, opinions, suggestions, objections and complaints; and / or delivery information and / or report. In relation to the role of the public, law enforcement administration provides a means for citizens to channel their rights in a lawsuit filed against government agencies. Administrative lawsuit may occur because of errors or mistakes in the process of issuing an administrative decision that has important implications for the

environment.

2. Enforcement of criminal law;

Criminal Law Enforcement is the action taken by the government in the form of legal acts related to violations of provisions stipulated penal provisions on criminal UUPPLH. Tindak introduced in UUPPLH also shared in a formal offense and offense materially. According Sukanda Husin (2009: 122) offense material and formal offense can didefensikan as follows:

- a. Dellig material (generic crime) is an unlawful act that causes pollution or environmental destruction need not require proof of violations of the rules of administrative law such offenses izin. Beberapa material highlighted in UUPPLH adjusted yenga several crimes related to the customs standards environmental pollution, namely:

- Article 105

Any person who imports the waste into the territory kesatua republic of Indonesia as referred to in Article 69 paragraph 1 letter c shall be punished with imprisonment for a minimum of four years and a maximum of twelve years and a fine of at least Rp 4,000,000,000 and Rp. 12,000,000,000.

- Article 106

Any person who imports B3 waste into the territory of the unitary republic of Indonesia as stipulated in Article 69 paragraph 1 letter d shall be punished with imprisonment for a minimum of five years and a maximum of fifteen years and a minimum fine of Rp 5 billion and Rp. 15,000,000,000.

- Article 107

Each orag that include B3 prohibited by legislation into the territory of the Republic of Indonesia as stipulated in article 69 paragraph 1, letter b shall be punished with imprisonment for a minimum of five years and a maximum of fifteen years and a fine of at least Rp 5,000,000,000 and most Rp. 15,000,000,000.

- Article 108

Everyone who do the burning land as referred to in Article 69 paragraph 1 letter h, shall be punished with imprisonment for a minimum of one year and a maximum of thirteen years and a minimum fine of Rp 3 billion and Rp. 10,000,000,000.

- b. Formal offense (specific crime) are unlawful act against the rules of administrative law, so to proving the occurrence of a formal offense is not required pollution or environmental destruction as a crime materially, but enough to PROVE a violation of administrative law.

Meanwhile, included in formal offense, a criminal act the which should be based on the administrative requirements of the companies or individuals that act and reasonably suspected of committing a crime against the environment can also be seen in Several Articles such as:

- Article 98

Any person deliberately perform acts that resulted in lampainya ambient air quality, water quality, sea water quality standard, or standard criteria of environmental damage, is liable to a term of imprisonment of three years and a maximum of ten years and a fine of at least Rp. 3,000,000,000 and most Rp.10.000.000.000.

- Article 102

Everyone who undertakes the management of B3 waste without a permit as stipulated in Article 59, paragraph 4, shall be punished with imprisonment for a minimum of one year and a maximum of three years and a fine of at least Rp. 1,000,000,000 and Rp. 3,000,000,000

In UUPPLH organized criminal liability issues for corporations, which in turn can be imposed on the ruling to realize the crime of environmental pollution, regardless of the occurrence of the crime together (vide Article 116 paragraph 2). Different settings can also be observed in the prosecutor's role is to coordinate with the responsible agency in the field of Environmental Protection and Management to carry out the execution in carrying out the additional criminal or disciplinary action (vide Article 119 and Article 120). Furthermore, to determine the steps to be taken in the instrument of criminal law is the need to pay attention first of all is the investigation. Investigation in environmental law set forth in Law No. 32 of 2009 on the Protection and Management of the Environment Article 94 and Article 95. As for the right to conduct the investigation are police officers and civil servants (investigators) in the government agency whose scope of duties and responsibilities in the field of environmental protection and management.

3. Enforcement of civil law.

in Outside the court, and court. Environmental dispute settlement in court includes class actions, environmental organizations legal standing, or the right to sue government. Through the way expected in addition to a deterrent effect will also raise awareness of all stakeholders of the importance of environmental protection and management for the life of the present generation and future.

In Law number 32 of 2009 the law enforcement process environment through civil procedure set out in Chapter XIII environmental dispute settlement Article 84 through Article 93. Under its terms environmental dispute settlement can be reached through the courts or out of court based on the voluntary choice of the parties

dispute. Dispute resolution outside the court does not apply to environmental crime hidup. If have been efforts to resolve environmental disputes out of court, the lawsuit through the courts can only be taken if it is declared unsuccessful attempts by one or both parties to the dispute. Dispute resolution outside the court held to reach an agreement on the form and amount of compensation or the certain measures to ensure will not happen or recurrence of negative impacts on the environment.

In REMEDY dispute out of court can use services of a third person either did not have decision-making authority to help resolve an environmental dispute. Government and community to set up agencies or service providers environmental dispute settlement that is both independent and impartial. Redress any unlawful act such as pollution or destruction of the environment which give rise to a loss on other people or the environment, requires that responsible business or activity to pay compensation and or perform certain actions.

Grace expired right to file a lawsuit to the court follows As with time stipulated in the civil procedural law applicable and is calculated from the time the victim knows or peruskan pollution and the environment. The provisions concerning the time limit expired shall not apply to pollution or environmental destruction caused by businesses and or activities that use hazardous and toxic materials.

In the implementation of environmental management responsibilities in accordance with a partnership, environmental organizations entitled to file a lawsuit for the sake of environment conservation hidup. Hak filed the lawsuit limited to a claim for the right to perform certain actions without any demand for compensation, unless the cost or real spending. Environmental organizations entitled to file a lawsuit if the requirements are met: a legal entity or foundation; the statute of the environmental organization stated clearly that the purpose of its establishment is in the interests of environmental functions; has been carrying out activities in accordance with its articles of association.

Of the three forms of environmental law enforcement in Indonesia, felt less able to keep the right to good and healthy environment in Indonesia able to be met. This is due to the following factors:

- Lack of socialization Related to Society of Environmental Law, making it difficult to raise the environmental consciousness that is good and healthy.
- The lack of human resources and law enforcement officials to address environmental pollution.
- The very strong culture of corruption, collusion and nepotism among companies engaged in the field of environment and government.

III. Conclusion

Based on the discussion, it can be concluded as follows:

1. Recognition of the right to a good environment and healthy in Indonesia has been awarded based on the rules that apply in accordance with the hierarchy of the application of these rules. The right to a good environment and health have been guaranteed oleh Indonesian constitution, and some Act hierarchically under the Constitution. So it is expected that the right to a good environment and healthy healthy and decent can be met by the State as policy makers in fulfilling the rights of citizens.
2. Enforcement of environmental law in maintaining the right to a good environment and healthy in Indonesia, there are three forms, namely the administration, under the criminal law, and the latter by using civil law. However in implementation still constrained by several factors, namely:
 - a. Lack of socialization Related to Society of Environmental Law, making it difficult to raise the environmental consciousness that is good and healthy.
 - b. The lack of human resources and law enforcement officials to address environmental pollution.
 - c. The very strong culture of corruption, collusion and nepotism among companies engaged in the field of environment and government.

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