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by Cita Yustisia Serfiyani

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The Government's Lawsuit Rights On The Environment Disputes In Indonesia

ARI PURWADI, CITA YUSTISIA SERFIYANI*, SUHANDI
Lecturer at Faculty of Law, Universitas Wijaya Kusuma Surabaya

Abstract : *In the perspective of environmental protection efforts, environmental disputes occur between those who want to use natural resources to meet economic interests and those who have interests or obligations to protect the environment and natural resources. Normatively, environmental dispute resolution based on the provisions of civil law includes adjudication and non-adjudication. In order to resolving environmental disputes through adjudication of government claims. The government's right to sue is carried out by the Ministry of Environment and Forestry for cases in environmental damage, forest and land fires. The Ministry of Environment and Forestry in the 2015-2017 period won 70% of cases of forest and land fires and won 66.67% of cases of environmental damage. This research use normative method with statute approach, case approach and conceptual approach to researching and find : (1) the essence of natural environment disputes, (2) how the government's legal right to resolve environmental disputes also role of central government and / or regional government.*

Keywords : *claim rights, government, environmental disputes.*

1. Introduction

In an attempt to fulfil the needs of life, humans depend on natural resources in the form of land, water, air, and others. The natural resources have limitations both in quality and quantity, as well as limitations according to time and space. In these circumstances, it is necessary to manage natural resources in a good and wise manner. Pollution and damage to the environment result in social burdens must be borne by the community and government. There is a tendency to increase the risk of pollution and environmental damage that causes the structure and basic functions of ecosystems to be damaged. Maintaining the sustainability of environmental functions is in the public interest, so that responsibility, openness, and the role of business people and community members are required to maintain and enhance the environmental.

*Corresponding author : citayustisiaserfiyani@gmail.com

As time goes by, Indonesia's forests has disappeared, forests that were once fertile are now non-existent due to deforestation. Deforestation in the perspective of forestry science is defined as a state of loss of forest cover and its attributes that have an impact on the loss of structure and function of the forest itself (Barri, et.al., 2018). Deforestation is a permanent change from forested to non-forested areas caused by human activities. In the perspective of norms, it has been regulated in Regulation of the Minister of Forestry of Republic of Indonesia Number P.30/Menhut-II/2009 on the Implementation Procedures of Reducing Emissions from Deforestation and Forest Degradation. In 2016, North Sumatra, East Kalimantan and North Maluku had 9 million hectares of natural forest. In the period of 2013-2016, the natural forest area was reduced by 718 thousand hectares. Its means that they losses 240 thousand hectares of natural forest each year simultaneously (Barri et al., 2018). Deforestation caused environmental disasters such as floods, landslides, drought, loss of animal habitats, and difficulties in reducing emissions that have an impact on climate change.

Forest degradation and deforestation may trigger environmental disputes. Environmental pollution and damage is a result of human activities both intentional and unintentional. The factor of public interest is always related to the problem of pollution and environmental destruction because these environmental cases involve all people who become affected victims. Although in its development there are other interests not only to protect the environment, but also for the economic growth and capital accumulation (capitalism) so that the supply of industrial raw materials is guaranteed so that economic growth continues. Based on the background description above, the legal issues are formulated as follows:

1. What is the essence of natural environment disputes ?
2. How is the government's legal right to resolve environmental disputes?

2. Theoretical Framework & Research Development

The close relationship between the environment and humans causes human life to be very determined by its activity by the surrounding environment (Mina, 2016). According to March Priyanta, so far development activities have tended to be

carried out unplanned and unsustainable in the perspective of the environment and spatial planning so that it has had an impact on the ⁶ quality and function of the environment including natural resources in it decreasing (Priyatna, 2015).

A dispute is a situation that occurs when there is a party that is injured by another party, where the party who feels aggrieved conveys this dissatisfaction to another (LS Bacow, 2013). Disputes occur because of contractual relationships between the parties or without contractual relationships. There is a choice of solution, i.e. : 1. Accept or not make a claim (lumping if); ¹⁶ 2. Avoidance; 3. Coercion; 4. Negotiation; 5. Mediation; 6. Arbitration; 7. adjudication.

The state will act as a mediator of the tensions that occur. The state must exert political power and political instruments that must be deliberately designed to minimize the environmental impact of industrial activities. According to Petr Šauer et.al., regulations are deemed necessary to protect the public interest in particular to control direct threats to the health and environment of the community. Environmental protection is an important social issue related to the allocation of large social resources, this allocation is strongly influenced by the implementation of various environmental policies. Thus, the formulation and enforcement of policies become an important task for lawyers and policymakers (Šauer, et.al., 2012).

⁸ 3. Research Method

The research method used in this study is the normative method. Normative research methods are studies that study document studies, namely using a variety of secondary data such as laws and regulations, court decisions, legal theories, and can be in the form of opinions of scholars. Therefore, this study uses three types of approaches namely the statute approach.

4. Results & Discussion

4.1 The Essence of Natural Environment Disputes

Policy recommendation report from University of Leiden and BAPPENAS in 2011 stated that the category of environmental disputes in Indonesia includes:1.

environmental disputes related to environmental protection; 2, environmental disputes related to the utilization of natural resources; dan 3. environmental disputes as a result of environmental pollution or damage. In general, environmental disputes occurred because there are parties who feel that their access to these resources is impeded regardless of their purpose for utilizing these resources. environmental disputes relating to efforts to protect the environment occur between those who wish to utilize natural resources to meet economic interests against those who have concerns and obligations to protect the environment and natural resources. Environmental disputes caused by pollution or damaging destruction occur between the polluter/destroyer and the party who is the victim of pollution/destruction.

Economic activities have caused the impact of environmental exploitation, starting from agricultural and hunting activities thousands years ago to nowadays. Economic activities have aggravated the environment such as logging and deforestation, mining activities that damage the environment, pollution that causes environmental damage, industrial pollutants in the waters. Pollution and serious environmental damage not only have an impact on nature, biodiversity but also on society and people. Communities must bear the impact of environmental risks that are destroyed, reduced welfare, health problems, even lives. Victims of pollution and environmental damage bear karma, not those who cause it. Comprehensive regulations play an effective role in countering the negative impact of economic growth on the environment. For example, when pollution limits have been established, pollution reduction methods are applied through the imposition of additional costs by companies, even though this situation does create a conflict between private economic interests and public interests. Environmental regulations by the Government cause tension or conflict between people who do business for profit with people with the aim to protecting the environment.

Environmental disputes can be categorized into private interest disputes and public interest disputes. Disputes over private interests are compilation of damage and pollution of the environment that occurs against the rights of individuals or groups of people in certain locations. Public interest disputes occur. Complications of important

issues that damage and pollute. In practice, private interests and public interests overlap in a dispute. Public interest disputes and private interest disputes have their respective goals and solutions which differ in character. In each case, the dominant character of the public or private environmental dispute can usually be determined according to the character of the plaintiff. If the claimant is an individual or group that has suffered direct and personal losses due to pollution or environmental damage, then the claim can be considered as a personal interest. Conversely, if the plaintiff is an organization that represents the public interest in environmental preservation or the government, then the claim is a public interest dispute. Separating the objectives of private and public interests in environmental disputes will help in the next stage of examining cases in assessing the effectiveness of each dispute resolution process.

4.2 Government Lawsuit for Settlement of Environmental Disputes

Based on Act No. 32 of 2009 on Environmental Protection and Management (hereinafter referred as Act No. 32 of 2009), environmental disputes are disputes between two or more parties arising from activities that have potential and/or impact on the environment. While the environmental impact is the effect of changes in the environment caused by a business and/or activity. Chapter XIII of this regulation states the settlement of environmental disputes from Article 84 to Article 93.

The settlement of environmental cases can be resolved through the court or non litigation. The settlement of environmental disputes through the court is carried out by filing a lawsuit. The right to sue can be exercised by everyone who is harmed, can also be sued by the government and local government (Fitriyeni, 2010). Dispute resolution through court refers to the instrument approach i.e. administrative law, civil law, and criminal law. These approaches are the main instruments in environmental law enforcement. Civil environmental law aims to provide legal protection for victims of environmental pollution or damage by submitting an environmental dispute in public courts to obtain compensation. The settlement of environmental disputes is defined as a lawsuit for compensation in the field of civil environmental law by victims of pollution and/or environmental destruction.

Lawsuit is a claim for rights made by a party that feels disadvantaged by another party. This claim arises when there is a dispute between them in a civil dispute, so that those who feel aggrieved by th others who destroy the environment can filing a lawsuit in court. The settlement of environmental disputes based on civil law provisions includes settlement of environmental disputes. Lawsuit through a court can only be reached if a dispute has been resolved by non-litigation and has been declared unsuccessful by one party. This is intended to prevent conflicting decisions.

The Government and Regional ³Government's Lawsuit Regulations are regulated in Article 90 of the Act No. 32 of 2009 which states that the central government and regional governments responsible for the environment and they have ³an authority to submit compensation claims and certain actions against businesses or activities that cause pollution or damage to the environment. In the explanation of the article, it is explained that the right to sue can be applied to environmental losses. Certain actions are to prevent and control ³pollution and/or damage and the restoration of environmental functions to ensure that negative impacts on the environment will not occur. The government's right to sue only for losses ³due to pollution and environmental damage that is not into personal property. Lawsuit, if interpreted to the contrary, can only be applied to losses caused by pollution and / or environmental damage to state property (Abubakar, 2019).

The government's right to sue are based on the doctrine of public trust, which is based on the principle of state sovereignty and the doctrine of "parens patriae" about the role of government in protecting state sovereignty. Lawsuit against PT. Kalista Alam (Defendant) for cases of forest fires that occurred in the plantation area belonging to the defendant. The decision stated that the defendant was obliged to pay a compensation fee of 114.3 billion rupiahs and a recovery fee of 251.7 billion rupiahs. The government's right to sue is based on an environmental perspective, that is an expanded interpretation of the legal interest to demand (standing) so it is not only limited by the interests of losses that are usually experienced individually as in the case of civil disputes in general, but also includes wider interests.

In the case of the environment, the parties related to the occurrence of environmental losses can file a lawsuit against actions/activities of pollution / environmental damage (Mubin, et.al., 2017). The paradigm of environmental law enforcement has shifted to the perspective of natural resources as an object, so that it is contained by the government's interest to make efforts to protect the environment (Syarif, 2018). In the environmental management system, the state holds control of all-natural resources, in other words, the state through the government was regulates, controls and develops all things related to environmental management (Galigo, 2016). The government's lawsuit has been utilized by the Ministry of Environment and Forestry for the period of 2015-2017 with details of achievements as follows :

Table 1.

Settlement of Environmental Civil Lawsuit Through Court

(source : <http:gakkum.menlhk.go.id>)

Settlement of Environmental Civil Lawsuit Through Court			Typology	
			Forest and land fires	Deforestation
Companies	13	3 types of cases : • 70 % of cases won by KLHK • 30% of other cases are still in the trial process and is being processed at the district court level Case status : • 8 cases won by KLHK (61 %) • 2 cases are still in trial (15 %) • 3 cases are still being processed at the appellate level (23%)	10 companies 70% of cases won by KLHK and 50% have permanent legal force : - PT Kalista Alam (PTKA), - PT Bumi Mekar Hijau (PT BMH), - PT Waimusi Agroindah (PTWA), - PT BMH - PT WA Another 30% of cases are still being processed in court	3 companies 66.67% of cases were won by KLHK (PT Selat Nasik Indokwarsa (PT SNI), PTMerbau Pelalawan Lestari (PT MPL)), meanwhile 33.33% others are still in court
Total Inkracht	(Rp) 16.930.641.	Based on court decisions that have been inkracht: PT KA, PT SNI, PT MPL, PT BMH, and PT WA		

<i>Van Gewijisde</i>	886.560,- (16,9 T)	<ul style="list-style-type: none"> ▪ Based on the agreement, the money has been deposited to the 2017 State Treasury in the amount of Rp. 5,377,385,333 based on an agreement with PT Selat Nasik Indokwarsa (PT SNI) in the amount of Rp. 32,264,312,000 or 0.19%
Potential Non-Tax State Revenue	(Rp) 47.711.347. 897.160,- (47,7 T)	<ul style="list-style-type: none"> ▪ Based on Lawsuit registered in the PN up to 2017: Rp. 47,711,347,897,160. - ▪ Based on court decisions that have been inkracht up to 2017: Rp.16,930,641,886,560 or 35.49% ▪ Based on court decisions that are still in trial until 2017: Rp. 1,568,856,233,528 or 8.59%

Settlement of environmental disputes through courts using the government's lawsuit *cq* the Ministry of Environment and Forestry during 2015-2017 is quite significant, they won 70% of cases of forest and land fires and won 66.67% of cases of environmental damage. Court decisions that have permanent legal force have become one of the sources of the non-tax state revenue up to 16.9 trillion rupiahs.

5. Conclusion, Implication and Limitation

5.1 Conclusion

Indonesia *cq* the Ministry of Environment and Forestry has used their right to sue for types of environmental destruction disputes as well as forest and land fire disputes. The results of the application of the government's lawsuit are significant although there are still many cases that must be fought again in court.

5.2 Implication and Limitation

The government can use his right to sue if there are businesses or activities that damage the environment. The legal interest of the central and / or regional government in filing a civil suit is very important because it is to strengthen the government's position in filing a lawsuit in court (*standi in judicio*), as well as aiming to restore the quality of the environment that has been polluted and/or damaged. This is a consequence of the active role of the government in carrying out public welfare.

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