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COMPARISON OF ENVIRONMENTAL LAW ENFORCEMENT WITH CIVIL LAW AND ADMINISTRATIVE LAW

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ABSTRACT

Law No. 32/2009 is indeed better and more perfect when compared to the previous law, so it can be said that Law No. 32/2009 is perfect in terms of legal material regulating the environment. However, can law enforcement of this law be implemented properly, because so far there have been no government regulations or other implementing regulations, so that it will cause indecisiveness against perpetrators of environmental pollution and destruction. This is where the problem lies with the existence of Law No. 32/2009 in terms of its enforcement, so that it is a warning for law enforcement officials to carry out their obligations towards perpetrators of environmental pollution and destruction in accordance with the rules that have been clearly regulated in Law No. 32/2009. The type of legal research that the author uses in compiling this legal writing is the normative juridical research type. Environmental law enforcement can also be done through civil law. This path is not popular in Indonesia because of the protracted process in court. Almost all civil cases are attempted to the highest court for cassation because the losing parties are always dissatisfied. In fact, there is a tendency for people to deliberately delay time by always using legal efforts, even though it is unreasonable, it is usually continued with a judicial review. After the decision is made, it is still often difficult to implement. Indonesian society is in reality more familiar with its natural environment than the application of technology. The development of technology that manages natural resources must provide the greatest possible benefits for the welfare of the people, while still paying attention to its balance and sustainability so that it remains beneficial for future generations. By paying attention to the quality of nature, social, culture, and economy as a commodity of the local community that is subsystem. Only human actions make it seem as if they are able to control nature so that almost all living environments have been touched by human life. Environmental law enforcement can be carried out by imposing sanctions in the form of administrative sanctions.

Keywords:*Environmental Law, Civil Law, Administrative Law*

1. INTRODUCTION

Law (UU) No. 32/2009 concerning Environmental Protection and Management was recently enacted on October 3, 2009 as a replacement for the previous Law, namely Law No. 23/1997 concerning Environmental Management (Manik, 2018). Many things can be taken from the existence of Law No. 32/2009, especially in strengthening law enforcement, because Law No. 23/1997 in law enforcement has not received serious attention. The strengthening contained in Law No. 32/2009 is the principles of environmental protection and management based on good governance with law enforcement and enforcement that requires the integration of aspects of transparency, participation, accountability and justice (Budiati & Sikumbang, 2014). The word law enforcement is often heard by everyone, because the success of a law depends on its implementation and enforcement. Environmental law enforcement in Law No. 32/2009 has indeed received serious attention from the law makers. As a legal policy in the environmental sector (Hamzah, 2005).

Attention to the environment has recently received sharp attention, because the environment has become increasingly severe due to pollution and destruction caused by human actions or behavior (Wihardjo et al, 2021). Therefore, there is a strong will for the formulators of environmental laws, so that there is strengthening of law enforcement against the environment through Law No. 32/2009. The problem is what kind of law enforcement should be (Sodikin, 2010). Bagir Manan said that: the success of a law depends on its implementation and enforcement, if law enforcement does not run well, no matter how perfect the law is, it does not or does not provide meaning according to its purpose, law enforcement is a dynamicator of laws and regulations (Edorita, 2007).

Law enforcement and implementation of law in Indonesia are still far from perfect (Rambe & Sihombing) . The main weakness is not in the legal system and legal products, but in law enforcement. The public's expectations for obtaining legal guarantees and certainty are still very limited. Law enforcement and implementation of the law have not been carried out in accordance with the principles of justice and truth. Law No. 32/2009 is indeed better and more perfect when compared to the previous law, so it can be said that Law No. 32/2009 is perfect in terms of legal material regulating the environment. However, can law enforcement against this law be implemented properly, because so far there have been no government regulations or other implementing regulations, so that it will cause a lack of firmness against perpetrators of environmental pollution and destruction (Rambe et al, 2023). This is where the problem lies with the existence of Law No. 32/2009 in terms of its enforcement, so that it is a warning for law enforcement officials to carry out their obligations towards perpetrators of environmental pollution and destruction in accordance with the rules that have been clearly regulated in Law No. 32/2009 (Muhamad, 2008).

2. RESEARCH METHODE

The type of legal research that the author uses in compiling this legal writing is the type of normative legal research (Soekanto, 2010). Normative Legal Research is a research whose main focus in its study is based on positive legal rules or norms, normative legal research, with a literature study approach, this research is based on the analysis of legal norms, both law in the sense of legislation, Thus the object analyzed is the norm or principles of positive law. The meaning is research on legal principles using research to identify a problem (problem Identification) alone and research by providing solutions to problems. So, the determining element is the purpose of the legal research, and additional or supporting elements as outlined above (Soekanto, 2010).

3. RESULT AND ANALYSIS

CIVIL LAW ENFORCEMENT FROM AN ENVIRONMENTAL LAW PERSPECTIVE

Environmental law enforcement can also be done through civil law (Rambe et all). This method is not popular in Indonesia because of the protracted process in court. Almost all civil cases are tried to the highest court for cassation because the losing parties are always dissatisfied. In fact, there is a tendency for people to deliberately delay time by always using legal efforts, even though it is unreasonable, it is usually continued with a judicial review. After a decision is made, it is still often difficult to implement.

Environmental (civil) disputes can be resolved through the courts or outside the courts based on the voluntary choice of the parties concerned. If the chosen out-of-court efforts are unsuccessful, then one or both parties can take the court route. A lawsuit through the courts can only be taken if the chosen out-of-court dispute resolution efforts are declared unsuccessful by one or both parties to the dispute. Problems in environmental civil liability consist of unlawful acts as regulated in the provisions of Article 1365 of the Civil Code (KUHPerdata) and the application of the principle of strictliability (absolute responsibility) regulated in the provisions of Article 88 of the UUPPLH (Primharyadi, 2017).

In addition, it also regulates the calculation of compensation for environmental pollution and/or damage based on the Regulation of the Minister of State for the Environment Number 13 of 2011 concerning Compensation for Environmental Pollution and/or Damage (Permen KLH13/2011) as revoked by the Regulation of the Minister of Environment Number 7 of 2014 concerning Environmental Losses Due to Pollution and/or Environmental Damage (Permen KLH 7/2014). Article 88 of the UUPPLH regulates the absolute responsibility (strictliability) for every person whose actions, business, and/or activities use B3, produce and/or manage B3 waste, and/or which pose a serious threat to the environment are absolutely responsible for the losses that occur without the need to prove the element of fault. In the explanation of Article 88 of the UUPPLH, the definition of absolute responsibility is explained as follows:

> *"absolutely responsible" or strictliability is an element of fault that does not need to be proven by the plaintiff as a basis for payment of compensation. The provisions of this paragraph are lex specialis in lawsuits regarding unlawful acts in general. The amount of compensation that can be charged for pollution or destruction of the environment according to this Article can be determined up to a certain limit. What is meant by "up to a certain time limit" is if according to the stipulation of laws and regulations, insurance is required for the business and/or activity concerned or environmental funds are available. Arnold H. Loewy in the book Criminal Law provides information about strictliability as follows: (Absolute liability is applied without the need to first prove whether the defendant is proven guilty of committing an act prohibited by law and if it is proven by the defendant that he has made every effort to prevent the act, it is not a defense)".*

The provisions on absolute liability are new and deviate from the provisions of Article 1365 of the Civil Code or Burgerlijk Wetboek (BW) regarding unlawful acts (onrechtmatigedaad). It has been explained that activities or businesses that apply strictliability that use hazardous and toxic materials, if there is an act of damaging or polluting the environment outside of that, then the path that must be chosen is to turn to Article 1365 of the Civil Code regarding requirements, such as the existence of an error (schuld). The settlement of environmental disputes through civil law instruments, according to Mas Achmad Santosa, that to determine a person or legal entity is responsible for losses caused by environmental pollution or destruction, the plaintiff is required to prove the existence of pollution, as well as the connection between the pollution and the losses suffered.

Proving means providing certainty to the judge regarding the truth of the disputed concrete event. Environmental law enforcement using civil law means has often been hampered by difficulties in proving. Proving environmental cases requires high human resources and technology, so that the resolution of environmental cases becomes complicated, expensive and takes a long time. In handling environmental civil cases, legal problems are often found that are not covered by existing laws or provisions. This is because proof in pollution cases is often characterized by its unique characteristics, including:

a. The cause is not always from a single source, but comes from various sources (multisources).
b. Involving other disciplines and demanding
c. Often the effects suffered do not appear immediately, but rather some time later (long-period latency).

ADMINISTRATIVE LAW ENFORCEMENT FROM AN ENVIRONMENTAL LAW PERSPECTIVE

Administrative environmental law enforcement is basically related to the understanding of environmental law enforcement itself and administrative law because environmental law enforcement is closely related to the ability of the apparatus and the compliance of citizens with applicable regulations, which include three areas of law, namely administration, civil and criminal.

The use of administrative law in environmental law enforcement has two functions, namely preventive and repressive. Preventive in nature, namely related to permits granted by authorized officials to perpetrators of activities, and can also be in the form of providing information and advice. While the repressive nature is in the form of sanctions given by authorized officials to perpetrators or those responsible for activities to prevent and end violations.

Administrative law enforcement provides a means for citizens to channel their rights in filing lawsuits against government agencies. Administrative lawsuits can occur due to errors or mistakes in the process of issuing a State Administrative Decree that has a significant impact on the environment. Preventive administrative law enforcement begins with the process of granting permits to perpetrators of activities to the authority to carry out supervision as regulated in Articles 18, 22, 23, and 24 of the U.U.P.L.H. Meanwhile, the repressive nature is related to administrative sanctions that must be given to polluters as regulated in Article 25 to Article 27 of Law No. 23 of 1997. Certain violations against the environment can be subject to sanctions in the form of revocation of business and/or activity permits. The severity of violations of environmental regulations can vary, from violations of administrative requirements to violations that cause victims. Certain violations are violations by businesses and/or activities that are considered serious enough to require their business activities to be stopped, for example, there are residents whose health has been disturbed due to environmental pollution and/or destruction. The imposition of sanctions is aimed at the effectiveness of environmental law so that it is obeyed and complied with by the community. The sanctions are also a means or instrument for enforcing the law so that the objectives of the law are in accordance with reality.

Administrative law enforcement according to J. Ten Merge through 2 ways, namely supervision and administrative sanctions. Supervision if we look at the Environmental Management Law, supervision is carried out by 2 parties, namely the government and the community. The role of government supervision in the article is stated to be carried out by the Governor, Mayor or Regent. In article 71 number 2 it is also stated that this role can be delegated to authorized officials. The roles of officials who are given the authority are:

a. Conducting Monitoring;
b. Requesting Information;
c. Making Copies of Documents and/or;
d. Making Required Notes;
e. Entering Certain Places;
f. Taking Pictures;
g. Making Audio Visual Recordings;
h. Taking Samples;
i. Checking Equipment;
j. Checking Installations and/or Tools;
k. Transportation and/or;

l. Stopping Certain Violations;

While the role of the community according to article 70 is:

a. social supervision;
b. providing advice, opinions, proposals, objections, complaints; and/or
c. submission of information and/or reports.

Meanwhile, administrative sanctions according to article 76, the Regional Head (Governor, Mayor and Regent) can impose administrative sanctions on parties who commit violations. The sanctions given according to article 76 paragraph 2 are:

a. Written Warning;
b. Government Coercion;
c. Suspension of Environmental Permit; Or
d. Revocation of Environmental Permit.

4. CONCLUSION

Environmental law enforcement has different characteristics when compared to civil law enforcement and administrative law. In environmental law, environmental protection is more preventive and corrective in nature, with the aim of preserving nature and preventing environmental damage. Environmental law often involves administrative, criminal, and compensation sanctions, which aim not only to punish violators, but also to restore damage that has occurred. This is in contrast to civil law, which focuses more on resolving disputes between the parties involved, and administrative law, which aims to regulate the relationship between the government and the community through preventive regulations.

In civil law, law enforcement focuses more on resolving disputes between individuals or entities through lawsuits in court, with the aim of obtaining compensation for losses suffered. Civil law also functions as a tool to regulate the rights and obligations between the parties involved in the dispute, but does not directly target environmental restoration or protection. In contrast, administrative law plays a role in regulating government actions, granting permits, and imposing administrative sanctions for violations of environmental regulations set by the state.

Overall, the comparison between environmental law enforcement, civil law, and administrative law shows that although each has an important role, environmental law enforcement focuses more on protecting and restoring ecosystems. Environmental law enforcement combines elements of the other two legal systems, with a more comprehensive approach to environmental issues. Therefore, the use of a combination of the three legal mechanisms is essential to achieving environmental sustainability goals and ensuring compliance with existing regulations.

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