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Urgency of Law Enforcement in the Field of Conservation of Living Natural Resources and Ecosystems

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Abstract

Environmental law as a branch of legal science today plays an important role. Why not, human life and survival naturally and naturally will be largely determined by the upholding of laws in the field of the environment. One of the impacts of human selfishness and greed for the environment is the depletion of living natural resources and their ecosystems without regard to environmental balance and ecological principles. The method used in this study is a normative research type using primary, secondary, and tertiary legal sources. The nature of explanatory research with a dogmatic and theoretical approach. Analysis of legal issues material uses deductive-inductive analysis techniques on legal issues that are the target of analysis through legal reasoning and argumentation. Researchers found that to support the implementation and enforcement of laws in the field of conservation of living natural resources and their ecosystems, cross-sectoral coordinative mechanisms in an integrated and stimulating manner are more activated. The frequency between related sectoral agencies is increased to reduce law violations in the field of conservation of living natural resources and their ecosystems.

Keywords: *Law Enforcement, Natural Resources, Conservation*

Abstrak

Hukum lingkungan sebagai satu cabang ilmu hukum dalam zaman sekarang yang memegang peranan penting. Betapa tidak, kelangsungan hidup dan kehidupan manusia secara wajar dan kodrati, akan banyak ditentukan oleh tegaknya hukum dibidang lingkungan hidup. Salah satu dampak dari sifat egois dan keserakahan manusia terhadap lingkungan ialah dengan terkurasnya sumber daya alam hayati dan ekosistemnya tanpa memperhatikan keseimbangan lingkungan dan kaidah-kaidah ekologis. Metode yang digunakan dalam penelitian ini ialah tipe penelitian normatif dengan menggunakan sumber bahan hukum primer, skunder dan tersier. Sifat penelitian eksplanatif dengan pendekatan dogmatik dan teoritik. Analisis bahan isu hukum menggunakan teknik analisis deduktif induktif terhadap isu-isu hukum yang menjadi sasaran analisis melalui penalaran dan argumentasi hukum. Peneliti menemukan untuk menunjang pelaksanaan dan penegakan hukum dibidang konservasi sumber daya alam hayati dan ekosistemnya, maka mekanisme kordinatif lintas sektoral secara terpadu dan stimulan lebih diaktifkan. Frekuensi antara instansi sektoral terkait ditingkatkan guna mengurangi pelanggaran hukum dibidang konservasi sumber daya alam hayati dan ekosistemnya.

Kata kunci: *Penegakan Hukum, Sumber Daya Alam, Konservasi*

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Introduction

Biological and non-biological natural resources are environmental elements that are very important for the survival of the Indonesian nation. The importance of natural resources is explicitly mentioned in Article 33 paragraph (3) of the 1945 Constitution: "The earth, water and natural resources contained therein shall be used for the greatest prosperity of the people." In this regard, the environment is a necessity that must be preserved, because it is an absolute condition for the continuation of the life order of the state, nation, and people. That is why the

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sustainability of the country's life is determined whether or not the environment can support it, so that environmental law has a very fundamental position in terms of the sustainability of the life of the state, nation and people.

The broad scope of environmental law shows that the importance of environmental law regulation in the life of mankind. Humans will not achieve their life goals if the environment in which they live is damaged or polluted. The purpose of human life is the goal of the state, which is an essential element of the realization of the welfare of the people (welfare state). In this regard, in Indonesia, environmental law in its legal arrangements includes public law and private law because it has different characteristics from other legal arrangements. The essential difference, that the nature of environmental law includes four categories, namely:

- a. Regulate or prescribe actions that are potentially harmful to the environment.
- b. Encourage the use of preferred (environmentally friendly) technologies in development.
- c. Determine the information needed to make decisions in environmental management.
- d. Determine compensation for losses suffered by others.

Law enforcement is a very essential variable in the process of working law in people's lives. Law is a powerful instrument to realize order in the life of society, (Afandi 1994: 4) is needed to prevent the emergence of dangers that can disturb the community so that every member of society feels safe and peaceful because they get legal protection.

According to Soerjono Soekanto (Soekanto, 1993: 3), that conceptually, that the essence and meaning of law enforcement lies in the activities of harmonizing the relationship of values outlined in the rules and attitudes of action as a series of final stage value elaboration, to create, maintain and maintain peaceful living relationships.

To carry out the function of law as a social control maximally in the life of society, much depends on various specific conditions. Where these conditions according to Fuller (Efendy, et al 1991; 81) are as follows:

- a. Laws take the form of rules and are permanent, so they are not temporary rules.
- b. The law must be known to exist and its contents must be clear to the citizens whose interests are regulated by the law.
- c. Retroactive application of legal regulations should be avoided.
- d. Public understanding of the law must be sufficient.

- e. There should be no conflict between one rule of law and another.
- f. The formation of the law must heed the ability of the citizens to comply with the law.
- g. Changes that are too fast in the law need to be avoided so that citizens have definite criteria for their social activities in society.
- h. There must be a correlation between the law and the implementation of the law.

In addition to the legal function as social control, as above, there is also a legal function as a means of social engineering. The function of law as a social engineer is very important in the current era of development and modernization, considering the problems that arise in the present are increasingly complex. Law as a means of social engineering (social engineering) according to Satjipto Raharjo (Raharjo, 1983: 146), is the conscious use of law to create a social order as aspired, or to make the desired changes.

In the context of implementing the function of law as a social engineer (social engineering), it clearly includes environmental conservation, conservation of biological natural resources and ecosystems, including law enforcement. In this field, it is hoped that an orderly community life system will be created and aware of the need to create behavior that is oriented towards environmental conservation, natural resources, biology, and ecosystems for the benefit of present and future generations.

Research Problems

Based on the background of the above problems, this article focuses on discussing: what is the urgency of law enforcement in the field of conservation of biological natural resources and ecosystems?

Research Methods

The method used in this research is normative research using primary, secondary, and tertiary legal sources. The nature of the research is explanatory with a dogmatic and theoretical approach. Analysis of legal issues using deductive-inductive analysis techniques on legal issues that are the target of analysis through legal reasoning and argumentation.

Discussion

1. The urgency of implementing law enforcement in the field of environment

The urgency of implementing law enforcement in the field of environment, according to Mochtar (Kusumaatmadja; 1997: 14), that law enforcement must be carried out thoroughly by instilling understanding in the wider community about the importance of the human environment for the survival of a prosperous life.

Law enforcement in the field of environment, in the issue of conservation of biological natural resources and ecosystems, is an activity that directs the realization of legal functions in this field as stated by Siahaan (Siahaan. 1987: 213), that the dimension of human interaction with the natural environment, clearly requires rules or norms. Rules or norms that are seen as a form of law, function as an environmental interactional basis for every human activity. The purpose and function of law here is to create a harmonious environmental balance. Concrete steps by law to create environmental harmony must be seen through its function:

1. As a basis for interacting with the environment,
2. As a means of control over every interaction with the environment,
3. As a means of interactional order between humans and other humans in relation to environmental life,
4. As a means of change towards a harmonious environment according to the direction created.

It is simply recognized that in order to uphold the law in the field of environment, the issue of biological natural resources and ecosystems is closely related to various fields. According to Joko Sudibyo (Sudibyo, 1992: 85), law enforcement in the environment is closely related to various aspects that are quite complex, with the aim of maintaining and creating an environment that can be enjoyed by every human being in a broad sense, without disturbing the environment itself.

In line with the opinion of Joko Sudibyo, A Hamzah (Hamzah, 1995: 71), argues that in environmental law enforcement it is necessary to know that environmental regulations have two sides. The first side is the rule or norm, while the other side is an instrument which is a tool to maintain, control and enforce the rule.

There are three main instruments of environmental law enforcement, namely:

1. Administrative instruments,
2. Civil instruments,
3. Criminal Instruments.

The level of compliance with the three areas of law above (civil, criminal and administrative), Ninik Suparni (Suparni, 1992: 161), divides preventive and repressive law enforcement according to the nature of its effectiveness. Preventive law enforcement means that active supervision is carried out on compliance with regulations without direct events concerning concrete events that give rise to the suspicion that legal regulations have been violated. Therefore, the instruments for preventive law enforcement are counseling, monitoring and the use of supervisory authority. Meanwhile, repressive law enforcement is carried out in the event of acts that violate regulations. Criminal prosecution generally always follows the violation of regulations and usually cannot eliminate the consequences of the violation.

In every implementation of law enforcement, optimal results are always expected in the form of effectiveness. To achieve the level of effectiveness of law enforcement, it is closely tied to the state and quality of the law enforcement apparatus itself. In this regard, Mochtar Kusumaatmadja (Kusumaatmadja, 1972: 14) argues that the effectiveness of legal regulation of human environmental issues cannot be separated from the state of the administrative apparatus and law enforcement officers as an infrastructure for the effectiveness of legal implementation in the reality of daily life.

The above opinion is also reinforced by Harun M.Husein in Andi Purnawati and Irmawaty Ambo (Ambo, 2018: 97), that in environmental law enforcement efforts, human factors as implementers (law enforcement factors) will shape the success of law enforcement more than the legal factors themselves. However good and complete the law is, its effectiveness is determined by the implementing factor and its implementation.

Analyzing the above view, the human factor as a law enforcement officer is the central point in the process of implementing law enforcement in the environmental sector. In a law enforcer, there should be a wise and wise exemplary nature that is able to inspire citizens to obey the applicable laws. That is why according to Soerjono Soekanto (Soekanto, 1982: 243) placing exemplary legal officials as one of the important factors in the implementation of law enforcement. According to Soerjono Soekanto, there are at least two factors that are important in enforcing the rule of law, namely the exemplary legal officials and the level of perfection of the monitoring mechanism for the implementation of regulations which includes means of communication and regulatory institutions.

The above opinion is reinforced by Wahyu Afandi (Afandi, 1984: 4), that public compliance with the law is determined by the nature of law enforcement in applying and implementing the law. Public compliance with the law will run

wisely, if law enforcement is able to realize its authority by living the essence of legal understanding as a tool to support the creation of legal order. Law enforcers must be exemplary in the application of the law, because law enforcement's legal compliance with the law is a barometer for community compliance. In addition to the factors mentioned above, the supervision factor and the application of legal witnesses in environmental law enforcement also play an important role, this is stated by (Suparni; 1982; 461), that environmental law enforcement is an effort to achieve obedience to the rules and requirements in the provisions of laws that apply generally and individually, through supervision and application of administrative, civil and criminal means.

The point raised by Niniek Suparni also applies to law enforcement in the field of conservation of biological natural resources and ecosystems, given that this field is an integral part of environmental law, which is why Hardjasoemantri (Hardjasoemantri, 1983; 461) states that law enforcement in the field of conservation of biological natural resources and ecosystems is carried out through three legal channels, namely administrative law, civil law and criminal law.

2. Law Enforcement Through 3 Pathways

The logical consequence of the application of three legal channels (administrative, civil and criminal), automatically gives birth to three types of legal sanctions, namely administrative sanctions, civil sanctions and criminal sanctions. In applying the three types of sanctions above effectively for each violation is the main key that really determines the effectiveness of legal pressure in the field of environment, in this case the conservation of biological natural resources and their ecosystems. The application of these sanctions is highly dependent on the support of law enforcement officials. This is in line with the opinion of Niniek Suparni (Suparni, 1991; 162) that a very important thing is the support of law enforcers when it comes to action or imposition of sanctions against violators of environmental regulations. There must be a program of who will be subject to administrative sanctions, civil sanctions and criminal sanctions. This needs to be emphasized because the community is tired of the words will be dealt with. Whatever sanctions are imposed, the most important thing is that the sanctions have been imposed, and if this has happened, at least the impact will be very widespread for the community, because the existence of sanctions will signal that the existing regulations are not just written on paper or bluff.

The difficulty that occurs according to Niniek Suparni in Andi Purnawati, Irmawaty Ambo (Ambo, 2018: 137) is that in each case there must be a choice and selection of which aspects of administrative, civil and criminal aspects are the most

effective means of enforcing environmental law. Even the difficulties mentioned above are more broadly stated by A. Hamzah in Andi Purnawati, Irmawaty Ambo (Ambo, 2018: 140), that environmental law including modern law is very complicated, multifaceted ranging from civil law, especially regarding unlawful acts (Article 1365 KUHPer) and contract law, constitutional law regarding the organization of state agencies and authority in implementing and enforcing environmental law, state administrative law, especially regarding licensing and supervision, criminal law in forcing compliance with environmental law. Even related to tax law because how also violations of environmental law have an economic motive, namely seeking maximum profit and minimum costs.

Hardjasoemantri (Hardjasoemantri, 1993:146) emphasizes that the application of civil and criminal provisions in the field of biological conservation by law enforcement officials needs to be a concern is the lack of understanding of the various aspects of this conservation by law enforcement officials. The final impact will lead to inappropriate handling of cases in court, which in turn results in unsatisfactory decisions from the point of view of environmental protection and awareness.

According to A. Hamzah ¹ (Hamzah, 1995: 87) there is no specialization in this field, where there are no special environmental prosecutors, no special environmental police, let alone special patrols that continuously monitor the environment as in the Netherlands. Recognize three legal instruments in environmental law enforcement, namely through administrative law instruments, civil law and criminal law. Law enforcement through these three legal instruments is a repressive effort that needs to be carried out effectively, consequently and consistently against perpetrators of environmental pollution and damage. Administrative law is public law, which regulates the relationship between the state and its citizens.

Administrative law is the law that regulates the relationship between the government and its citizens or the law that regulates the relationship between government organs. According to Philip M. Hadjon, administrative law is a juridical instrument for the authorities to actively engage with society, and on the other hand administrative law is a law that allows members of the public to influence the authorities and provide protection to the authorities (Hadjon, 2002, 27)

Furthermore, according to Philip M. Hadjon, administrative law regulates the means for the authorities to regulate and control society, regulates the ways in which citizens participate in the process of regulation and control, legal protection and establishes fundamental norms for the authorities for good governance. Thus,

administrative law in organizing society and in relation to it uses legal means, for example by establishing certain prohibitive decisions or by issuing licenses, and the administrative power always monitors that the permit is used and obeyed.

In environmental management, administrative law can be utilized, because Law No. 32/2009 on Environmental Protection and Management gives broad authority to the Minister to carry out all governmental authorities in the field of environmental protection and management and coordinate with other agencies. In addition, the Government also gives very broad authority to Regional Governments in carrying out environmental protection and management.

According to Martina, the government's duty is to provide services to the community before carrying out life activities to achieve a just and prosperous society. Government services to the community are in accordance with the objectives of environmental management in an efficient and effective manner. This is one of the functions of government functions (administrative law) in environmental management. Given that environmental management is carried out by the government, environmental law is largely administrative law (*bestuursrecht*). Administrative law relating to environmental management can then be called environmental administrative law. Environmental administrative law can be formed by the central government and also environmental administrative law originating from local governments. Authority in administrative law has an important position, so that government authority in this regard is considered as (Oscar, 1995)

The ability to implement positive law can thus create legal relations between the government and its citizens. With existing laws and regulations, it can provide a basis and authority for administrative officials to issue administrative decisions by carrying out various functions and one of them is to protect (preventive) and enforce laws and regulations including laws and regulations in the environmental sector. The administrative decision which is the authority of the government is in the form of licensing to conduct business and/or activities by including requirements that must be obeyed by the licensee, for example licensing relating to environmental impact analysis (AMDAL), discharge water quality standards and others including supervision and administrative sanctions if the requirements are violated. As an effort to have been granted a permit to carry out a business and/or activity, according to Siti Sundari, the need for environmental law enforcement in administrative law as an effort to achieve compliance with the rules and requirements in the provisions that are generally and individually applicable through supervision and application (threat) of sanctions. Thus, licensing is one form of implementation (Rangkuti & Wijoyo, 1996)

Regulatory and control functions are owned by the government towards activities carried out by the community. Therefore, one of the government functions in the field of guidance and control is the function of granting permits to certain communities or legal entities (corporate organizations) which is an administrative control mechanism that must be carried out. The consequence of the permit that has been granted to the licensee in environmental law enforcement in administrative law is in the form of administrative sanctions for those who violate the prohibitions or requirements specified in the granting of the permit. Sanctions are a very important tool in law enforcement, because there is no point in including obligations or prohibitions in legislation, if these rules cannot be enforced by the government in the event of a violation. Administrative sanctions are applied by government officials who are preventive in nature and the target of imposing administrative sanctions is actions that violate applicable legal provisions.

Administrative sanctions have an instrumental function in controlling prohibited acts, namely the prevention and control of acts aimed at providing protection to the interests safeguarded by the provisions they violate. Enforcement of environmental law through civil law instruments, and civil law is private law which is different from administrative law which is public law, so civil law is the law that regulates civil law relationships and the consequences of civil actions or actions between one person and another or between one person and several people (legal entities). Civil relations can be any civil act or action and any civil act or action can cause suffering or loss to the other party, then the party who causes harm to the other party must be able to compensate for the loss caused by his actions, either due to unlawful acts or due to default in the agreement. As a result of unlawful acts or defaults in the agreement there is a loss, so it must pay compensation, so here the focus of civil law sanctions is the demand for payment of compensation.

In relation to environmental management, civil law, which is private law, regulates legal relations in fulfilling individual interests. The interests in question are realized in a civil action or legal action. As is known that acts of pollution and environmental destruction are acts that result in damage and pollution of the environment. Pollution and destruction that always threaten the preservation of environmental functions that need to be prevented and overcome, so there needs to be an effort to prevent and overcome the occurrence of environmental pollution and destruction. With the occurrence of pollution and destruction, there will be parties harmed by pollution and destruction, and the harmed parties can be individuals and communities. The occurrence of environmental pollution and

destruction means that there has been a civil dispute in the environment. Settlement of civil disputes in the environment can be pursued through the court or outside the court.

Settlement of civil disputes in the environment can be pursued through the court and outside the court is explained in General Elucidation point 5 of the second paragraph of Law No. 32/2009 which states: "... the provisions of civil law include environmental dispute resolution outside the court and within the court. Settlement of environmental disputes in court includes class actions, the right to sue environmental organizations, or the right to sue the government. Through these methods, it is hoped that in addition to creating a deterrent effect, it will also increase the awareness of all stakeholders about the importance of environmental protection and management for present and future generations."

Dispute resolution through court and out-of-court dispute resolution, that every community has various ways to obtain or resolve environmental disputes or conflicts that they are facing. In environmental management, environmental disputes often occur which are civil matters between two or more parties. This occurs because of the existence or suspected existence of pollution and/or destruction of the environment. In this case an environmental dispute occurs, so that the parties to the dispute can choose to resolve the dispute either through the court or out of court. Settlement of disputes outside the court can be pursued through mediation or arbitration institutions as alternative dispute resolution. Settlement of environmental disputes through the court is through the process of filing a lawsuit to the court according to civil procedural law.

Environmental law enforcement through criminal law instruments as specified in the general explanation point 6 of Law No. 32/2009 which states: "Criminal law enforcement in this Law introduces a minimum sentence in addition to the maximum, expansion of evidence, punishment for violations of quality standards, integrated criminal law enforcement, and regulation of corporate criminal acts. Environmental criminal law enforcement still pays attention to the *ultimum remedium* principle which requires the application of criminal law enforcement as a last resort after the application of administrative law enforcement is considered unsuccessful. The application of the *ultimum remedium* principle only applies to certain formal criminal offenses, namely criminalization of violations of wastewater quality standards, emissions, and disturbances". According to Moeljatno, criminal law, which is part of the overall law in force in a country that organizes basic rules to determine the rules of which actions may not be carried out with threats for those who violate them, determine when and in what cases the prohibition is violated and subject to sanctions, and determine in

what way the imposition of punishment can be carried out if the person suspected of having violated the prohibition. (Moeljatno, 1993).

Criminal acts threatened in Law No. 32/2009 are acts that according to the Law are threatened with criminal sanctions for anyone who commits the prohibited acts. Likewise, the criminal prohibition is aimed at the act, while the criminal threat is aimed at the person who caused the incident, so between the prohibition and the criminal threat there must be a close relationship, between the incident and the criminal threat there must be a close relationship, between the incident and the person who caused the incident there must be a close relationship as well. Such are the criminal provisions in Law No. 32/2009, although this Law is an Umbrella Act, the criminal provisions still exist on the grounds that law enforcement in Indonesia will not be separated from criminal law instruments. Therefore, in enforcing environmental law it is also necessary through criminal law, so that Law No. 32/2009 contains complete criminal provisions. In enforcing environmental law through criminal law instruments, there is an application of the *ultimum remedium* principle.

Although the *ultimum remedium* principle is applied very limitedly to certain formal criminal offenses, namely punishment for violations of wastewater quality standards, emissions and disturbances, the author does not agree with the existence of the *ultimum remedium* principle, because in anticipating environmental pollution and destruction it is not necessary that criminal law can be applied later if administrative law instruments and civil law are considered unsuccessful in overcoming environmental pollution and destruction. Whether or not other legal instruments are successful, criminal law can be used. Therefore, in the event of environmental pollution and destruction, environmental law enforcement through the three legal instruments can be used simultaneously, without having to wait for other legal instruments to be successful or unsuccessful in overcoming environmental pollution and destruction. Therefore, the application of criminal law without having to wait for the process of other legal instruments, so that criminal law instruments can be applied if the evidence and elements of environmental crime have been fulfilled. Law enforcement officials (in this case the police) can immediately carry out investigative actions to determine environmental crimes and look for evidence and present the suspect without having to wait for the law enforcement process through other legal instruments to succeed or not.

Conclusion

Strengthening environmental law enforcement through Law No. 32/2009 on Environmental Protection and Management on the principles of environmental protection and management and Law No. 5 of 1990 on the Conservation of Biological Resources and their Ecosystems based on good governance because in every process of formulating and implementing instruments for preventing pollution and environmental damage and overcoming which requires integrating aspects of transparency, participation, accountability and justice. Environmental law enforcement is not only carried out by law enforcement officials, but also all elements of society can support efforts to strengthen law enforcement. The strengthening of law enforcement in Law No.32/2009 and Law No.5 of 1990 is intended to realize a good, clean and free government from KKN, so that environmental management which is one of government management can be carried out with aspects of transparency, participation, accountability and justice for the community.

Suggestion

To support the implementation and enforcement of laws in the field of conservation of biological natural resources and their ecosystems, cross-sectoral coordinative mechanisms in an integrated and stimulant manner are further activated. The frequency of implementation of integrated operational activities between relevant sectoral agencies is further increased to reduce the frequency of law violations in the field of conservation of biological natural resources and their ecosystems.

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