

The Impact of Business Activities on the Fulfillment of Community Rights to a Good and Healthy Environment

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ABSTRACT--Fulfillment of the community rights to a good environment has been regulated in the basic constitution of the 1945 Constitution Article 28 letter h and Article 65 of Law No. 32 of 2009, from the provisions of the basic rights of the community cannot be negotiated by anyone. This study will analyze the impact of mining business activities and other business activities as well as the consistency of the application of the Basic Constitution and the fulfillment of community rights to a good and healthy environment. The analysis of this paper is using the case study method approach. The finding is that business actors both government-owned and private-owned companies in mining exploration and other business activities are not consistent with the observance of the basic constitution, and the community is always agitated in the middle of fighting for their right to fulfill good and healthy confusion.

Keywords: *impact of business activities, community rights, environment, good and healthy*

I. INTRODUCTION

As mandated in the 1945 Constitution of the Republic of Indonesia in Article 28 letter H paragraph (1) and revealed in Law No. 32 of 2009 in Article 65 paragraph (1) states that every person has the right to a good and healthy environment as part of human rights. This provision is a basic right for every human being to get a good and healthy environment, therefore in every process of development activities, the community has the right to access information, access to participation and access to justice. Even more so when economic development activities are estimated to have an impact, everyone has the right to submit proposals or objections on business plans or activities that can have an impact on the environment.

Starting around 1980 the economic development activities in Indonesia have experienced significant progress, especially in exploring non-renewable natural resources. Some areas from Papua to Nangro Aceh Darusalam and especially in the area of Java island such as Ajibarang Regency, Pemalang have just been inaugurated the construction of a cement factory, and will even follow in the Regency of Rembang, Starch for the construction of a cement factory, but the community

refused and even sued the State Administrative Court because the community was worried that the construction of the cement plant that took raw materials from the hill would damage the environmental conditions, especially water resources, but the results of the decision were rejected.

Public concern about the development process that will threaten the quality of the environment is reasonable, because the right to a good and healthy environment is the basic right of every human being guaranteed in the 1945 Constitution and the Environmental Management Protection Act. This was almost the same in 1988 when a protest by "Chico Mendes" of Brazilian citizens representing rubber tappers due to deforestation in the Amazon forest area.

In his request it was stated "we demand an Amazon development policy that serves the interests of rubber tappers and respects our rights. We do not accept Amazon's development policy in favor of big businessmen who use and slaughter workers and destroy forests "(National Council of Rubber Tapper Program at the Amazon Amazon Rubber Tapper, Brasilia, October 1985).[1]

But finally "Chico Mendes" was killed as a result of his struggle to be known internationally, as an activist of social justice because of his tenacity and struggle to save tropical forests.

We all know that the quality of the environment is increasingly decreasing, this is not caused by natural factors naturally, but rather by changing natural factors due to human actions in excessive development processes so that sometimes overriding environmental aspects that can result in direct or indirect impacts, then there must be concern of all stakeholders starting from individuals, communities, authorities (policy makers), the State, so that development continues and the environment is maintained in a sustainable manner.

Every development process including exploring natural resources should not cause unrest in the community and cause environmental damage, but development must be carried out in an open, planned manner by integrating environmental, social, and economic aspects of the community so as to provide benefits and welfare to the community rather than adversely affect the community. Therefore, as in the principle of the Law on Environmental Protection and Management, the state guarantees the use of natural

resources provide benefits for the welfare and quality of life of both current and future generations.

As an example due to the drilling process carried out by PT. Lapindo Brantas Inc. in Sidoarjo, East Java, known as the Lapindo disaster which for nine years still remains a problem for the people who ask for payment of compensation, as in the photo taken from Suara Merdeka Print Media Sunday, May 24, 2015). In the previous case the Lapindo Mudflow victims' community had filed a lawsuit to the Central Jakarta District Court represented by the Jakarta Indonesian Legal Aid Foundation as registered in Case No. 384/Pdt.G/2006/PN.JKT.PST, concerning civil liability against the law in environmental disputes but the verdict was rejected. This is the subject of this seminar.

II. FINDINGS AND DISCUSSION

1. *Main Issues In Environmental Disputes In Case Number 384/Pdt.G/2006/PN.Jkt.Pst[2]*

On May 29, 2006, there were widespread hot flashes around the Porong Sidoarjo District which were carried out by PT. Lapindo Brantas as the Defendant is also involved, due to oil and gas exploration activities in the Banjar Panji drilling well exploration area carried out by PT. Lapindo Brantas based on a production sharing contract or Production sharing contract between PT. Lapindo with the Ministry of Energy, Oil and Gas Resources R.I cq the Oil and Gas Implementing Agency has had a major impact on the environment and caused huge losses to the environment and the community.

These impacts and losses have been categorized as extraordinary impacts and losses because they have devastated the sustainability of the environment and people's livelihoods, including their human rights.

While there are legal obligations held by the Defendants (State cq. Government of Republic of Indonesia cq Ministry of Environmental Affairs, Ministry of Energy and Mineral Resources cq. Government Agency for Oil and Gas Cq. East Java Provincial Government cq. Governor of East Java Cq. Government of Sidoarjo Regency Cq. Sidoarjo Regent and PT Lapindo Brantas Inc.) as a State Operator and this obligation arises due to violation of community rights which also includes human rights due to incompetence and negligence in handling Lapindo mud, so that negligence and actions committed by Defendants and Participants must be contained legal liability, as well as the Defendants as state administrators have acted in accordance with their legal obligations.

That the late handling and seriousness of Defendant I (in this case the Government of R.I Cq. President R.I) is evident in the policies taken by Defendant I. Defendant I has just issued a National-scale policy in the form of Presidential Decree No. 13 of 2006 concerning the National Team for the Control of Mudflow in Sidoarjo on September 8, 2006.

Many incidents of violations of community rights that took place during the first 4 (four) months caused many conflicts amid panicked and confused communities,

falling victims, houses, rice fields, gardens and property are increasingly affected by mud, schools are so low that many children are neglected.

Defendant II (Minister of Energy and Oil and Gas Resources) responsible for carrying out supervision of the implementation of oil and gas business conducted by according (PT. Lapindo Brantas Inc.) did not carry out its duties properly. Likewise Defendant III (State Minister of the Environment) which is responsible for guaranteeing Environmental Management does not carry out its legal duties and obligations properly.

Defendant III did not immediately take effective action even though it was clearly evident that the widespread impact of the mudflow had made it dangerous for the environment. Defendant IV (Minister of Energy and Natural Resources Oil and Gas) has made a public lie by saying that the hot mudflow in the exploration area was the result of an earthquake. Public deception was carried out by accused IV during a hearing with the House of Representatives on 12 June 2006 and was widely covered by the mass media.

Defendant V and Defendant VI as the party responsible for supervising business activities conducted by accused accord also have neglected to carry out their obligations so that activities that triggered the occurrence of mudflow by accused accord can occur.

2. *About The Nature Of Against The Law And Acts Against The Law*

The Defendants and the Defendants' Acts are unlawful acts as regulated in Article 1365 jo. Article 1366 jo. Article 1367 paragraph (3) of the Civil Code.

Article 1365 Civil Code:

"Every act violates the law which brings loss to another person, obliging the person who because of his mistake to issue the loss, compensates for the loss".

Article 1366 Civil Code:

"Everyone is responsible not only for losses caused by his actions, but also for losses due to negligence or carelessness".

Article 1367 Civil Code:

"Employers and those who appoint others to represent their affairs, are responsible for the losses incurred by their servants or subordinates in carrying out the work for which they are used."

3. *Legal Obligations Also Defendant*

Based on Article 34 paragraph (1) of Law No. 23 of 1997 concerning Environmental Management is emphasized:

"every act that violates the law in the form of pollution and/or damage to the environment responsible for the business and/or activity to pay compensation and/or take certain actions".

Then Article 35 paragraph (1) of Law No. 23 of 1997 stated:

"The person in charge of a business and/or activity whose business and activities have a major and significant impact on the environment, which uses toxic hazardous materials, is absolutely responsible for the losses incurred, with the obligation to pay compensation directly and immediately at the time pollution and/or environmental damage."

4. Sentence

In the lawsuit filed by Lapindo Brantas mudflow victims, represented by the Indonesian Legal Aid Foundation (YLBHI), it turned out that the Panel of Judges at the Central Jakarta District Court rejected the Plaintiff's claim as a whole. One of the legal considerations in the verdict is "that the facts revealed at the trial due to the mudflow were that the community lost their homes, including furniture, rice fields, work, fear, violence, stress, bad smell, stomach ache, living in a shelter, children sleep mixed with parents, take a bath in line.

Whereas however the loss has been paid, handled by both Defendants (Government) and Co-Defendants (PT. Lapindo Brantas) as described in the panel of judges in "the element of legal consideration must be against the law apparently not fulfilled" then by taking over the Assembly's consideration the above elements cause harm not met.

While the element of error has been fulfilled by the legal element because "the facts in the trial have revealed that the Lapindo mudflow was caused by inadvertent drilling conducted by PT. Lapindo (Co-Defendant) because casing/protector has not been installed so a kick will occur then mudflows will occur. Furthermore, the element of cause and effect relationship was revealed in the facts at the trial due to negligence/caution.

Caution Also the Defendant (PT. Lapindo Brantas) who did the drilling had not yet been installed with the casing as a whole so that a kick occurred and then there was a mudflow resulting in the victim losing the house along with furniture, rice fields, work, smell, stomach ache, stress, fear, violence, then the element of cause and effect relationship has been declared fulfilled.

From the case above (in the Lapindo Mudflow case) why the Panel of Judges did not apply a system of absolute liability (strict liability) in environmental cases.

5. Rules/Analysis of Decisions

The Panel of Judges Needs to apply the Strict Liability system.

Judges in adjudicating every case must have a fair trial (based on an impartial trial) and based on the evidence revealed in the trial the validity must be tested.

In a normal civil suit the legal system used is liability based on fault (meaning responsibility based on mistakes) meaning, if someone who feels their rights are harmed or violated and filed a lawsuit to the Court, then he as the Plaintiff must be able to prove it.

Whereas in the environmental suit as regulated in Law No. 23 of 1997 amended by Law No. 32 of 2009 as Article 35 uses the Strict Liability system (absolute responsibility), known as the Polluter Pays Principle, or that the polluter pays the principle that as a polluter is absolutely responsible for losses suffered by others, the person who is harmed as a Plaintiff does not need to prove the lawsuit.

In the Strict Liability system, the Panel of Judges should make a breakthrough in deciding the Lapindo Brantas case, there are two things that can be used as consideration, namely:[3]

- a) Leaks that cause mud floods have a large and important impact on the environment;
- b) There are indications of hazardous and toxic substances contained in the mud flood.

Of these two things Pollutants (PT. Lapindo) should pay compensation to the affected people without the community having to file a lawsuit to the Court, but as we see in the picture above the people affected by the Lapindo mudflow are still protesting, because it has been nine years apparently compensation has not been paid.

Likewise, the People's lawsuit against PT. Lapindo if it is connected with the principle of state responsibility, the state prevents activities of utilizing natural resources that cause pollution and or environmental damage. This actually clearly has a legal basis that can be used by the Panel of Judges' consideration in making decisions in the case of PT. Lapindo Brantas.

Regarding the application of the elements against the law in the lawsuit PT. Lapindo is used as a basis against the law as in Article 1365 of the Civil Code. It seems that in an environmental suit there has never been a court in Indonesia that won a lawsuit against the law in favor of the sufferer.

In a tort action consisting of 4 (four) elements, namely:

- a) The nature of being against the law,
- b) An error,
- c) Loss
- d) Causal relationships

Of the four elements which if one element is not proven, then the action against the law must be declared not proven. This is in line with the lawsuit filed by the mud affected community in the drilling carried out by PT. Lapindo Brantas.

As was the legal consideration of the Panel of Judges in the Lapindo Brantas lawsuit decision regarding elements against its law and the element of loss was declared unproven (page 285 to 288).

This, according to the Author, is actually the application of an unlawful nature and the loss must be proven by the Plaintiff. If the Panel of Judges dare to make a breakthrough using the principle of Strict Liability, because in the provisions of Article 35, Article 42 paragraph (1), Article 65, 66 of Law 23 of 1997, it is clearly stated that the perpetrators of pollution are

absolutely responsible, but by the Assembly Judges the provisions of the article are set aside.

The Panel of Judges did not give justice to Lapindo mudflow victims at all, as justice theory put forward by Emanuel Kant and John Rawls is justice in the general sense, in addition to fairness.[4]

This means that justice seekers in filing a lawsuit to the Judges' Court in deciding cases are not only based on procedural justice, but are substantial, so that the meaning of justice for victims has been seen clearly, and clearly experienced by many victims. Furthermore, the element of Losses in the legal consideration of the Panel of Judges was also "rejected".

In the Panel of Judges' consideration regarding the element of loss, it was stated not proven on the grounds that the President had issued Presidential Decree No. 14 of 2007, the contents of which have been paid by the State and PT. Lapindo Brantas, this is very detrimental to the Plaintiff (the community affected by the mud victims) because it is proven that the compensation process has not yet been completed and in the process of providing compensation does not provide a sense of satisfaction to the community, because the community has lost property, lives, psychological burden which is still felt today. by them, so that the certainty of compensation cannot also be assessed in material terms.

III. CONCLUSION

The Panel of Judges in taking decisions on environmental disputes submitted by Lapindo Mudflow victims does not use the Strict Liability principle (principle of absolute responsibility) so that the Plaintiff must still prove his claim in the Court. In the principle of pollutants paying in granting compensation to sufferers still depends on the evidence submitted by the Plaintiff, so that the principle is not used as legal considerations by the judges.

REFERENCES

- [1] Aaron Sachs, *Ecological Justice Linking Human Rights and the Environment*, 1997, Jakarta, Sumber Agung Foundation and the Network of Christian Service Institutions in Indonesia, p. 1.
- [2] The summary of this issue is taken from the copy of the decision in the environmental dispute in the Central Jakarta District Court between YLBHI (Power of Attorney) as the Plaintiff against the State cq. Government of Cq. President and PT. Lapindo Brantas Inc. Et al, November 27, 2007.
- [3] Eko Pujiyono, *Flood Mud Flood Promises of Community Lawsuit in Lapindo Case*, Kompas Publisher, Jakarta, 2007, p. 213.
- [4] Abdullah, *Legal Considerations on Court Decisions*, published Post-graduate Sunan Giri, Surabaya, 2008, p.162.
- [5] Law No. 23 of 1997 concerning Environmental Management.