

The Application of the Precautionary Principle in Industrial Forest Plantation Production Permit (Study of The Supreme Court Decision Number 460K/PDT/2016)

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ABSTRACT

Industrial Forests must have a utilization permit. Precautionary Principle requires the government in issuing permits to be cautious. In reality, permits issued are not carried out with precautionary principles. This research aims to know how the application of precautionary principle in Industrial forest plantation production permit and how the Decision of the Supreme Court No. 460K / PDT / 2016 in accommodating the principle. The research method is normative legal research with primary legal material which includes laws and secondary legal materials in the form of books. The results showed the government did not apply the precautionary principle, many of the permit issued did not have authority. In the verdict of the Supreme Court number 460K/PDT/2016, the regent who issued permit to PT Merbau Pelalawan Lestari violated the law, the area was given on productive land, and the Regent did not have the authority. The Supreme Court punished PT Merbau Pelalawan Lestari with compensation by paying damages for environmental damage from the business activities and canceled the decision of the High Court and the District Court applying precautionary principles because this principle prioritizes interests in the utilization and management of the environment. The government needs to increase supervision of the IUPHHK-HTI process so the damage can be avoided.

Keywords: Industrial Forest, Production Permit, Precautionary Principle

1. INTRODUCTION

One of the forest areas that widely used for forest utilization is the production forest that was built for Industrial Forest, so problems also often occur in this area. Analysis from Forest Watch Indonesia showed the occurrence of deforestation in the years 2009-2013 reach about 2.76 million hectares per year [1]. It is demonstrated that the use of forest production in Indonesia has not been reflected adherence to the principles of good forest management from the governance. The increasing number of deforestations resulted flora and fauna in the ecosystem become disturbed. Government in issuing permits in the area of forest sometimes misused but the companies as the perpetrators of the business in the utilization of the area of forest. One of the permits is

Industrial Forest Plantation Production Permit or IUPHHK-HTI (*Izin Usaha Pemanfaatan Hasil Hutan Kayu Hutan Tanaman Industri*) in Indonesia, permission is given to the wood companies that intend to carry out the logging of wood in a plantation area. The permission granted by the Minister of the Environment and Forest which require consideration of technical application for the permission by the Regent or the Mayor made a letter of recommendation by the Governor.

Forests have many important roles because it is a necessity primer on earth [2]. Based on Environmental Protection and Management Law (Law No. 32/2009), management and protection of the environment of life carried out by the

precautionary principle, so the entire activities should be done with caution [3], because the area of the forest has a functioning economy and function of ecological, once forests suffered damage or degradation, it was not able to be restored back. The procedure of licensing should be carried out with transparency and be accountable by the government as well as the holder of license without any practice of corruption and collusion bureaucracy in managing the area permits.

Examples of cases concerning IUPHHK-HTI is a case that involves the company PT Merbau Pelalawan Lestari (PT MPL), a company which is engaged in the field of forest wood. PT MPL obtained IUPHHK-HTI covering an area of 5.590 ha in Pelalawan Regency based on the Decree of the Pelalawan Regent. However, in reality PT MPL perform logging inside and outside of the permit area, it caused damage on the environment. Based on the examination by environment experts found felling timber in outer area of the permit and even the logging done in the protected forest about 1.873 ha. Permits should only be granted in the production forest that had not productive anymore as empty land, reeds, or bush thickets but permits are issued by the regent of Pelalawan are given in the productive area and also a protected forest. The other problem is the IUPHHK-HTI that were published by Regent Pelalawan are not invalid or contrary to law, because the Minister of Environment and Forestry who has the authorized issuing the utilization. The Governor such as Regent or Mayor are only allowed to make a recommendation not to give permission. The panel of judges in its discretion punished PT MPL based on the precautionary principle to pay compensation loss damages the environment and canceled the Decision of High Court and Decision of the District court before. Based on this case, the author is interested to analyze, determine and discuss clearer regarding the application of the precautionary principle in granting permission of Industrial Forest Plantation Production Permit.

2. FORMULATION OF THE PROBLEM

1. How the application of the precautionary principle in Industrial Forest Plantation Production Permit?
2. How decision the supreme court No. 460K/PDT/2016 accommodate the application of the precautionary principle

Industrial Forest Plantation Production Permit?

3. METHODOLOGY

Based on the title raised by the author, the type of research used is normative legal research. This paper is deductive-prescriptive with secondary legal material, especially about Environmental Protection and Management Law (Law No. 32/2009) and Government Regulation No. 3/2008.

4. RESULT

4.1 Application of The Precautionary Principle in Industrial Forest Plantation Production Permit

Based on Government Regulation No. 3/2008 concerning about preparation plan for management forests, as well as the utilization of forests, plantations are located in production forests, indicated to increase capacity and quality of production forest by applying a silvicultural system to meet industrial needs from forests products [4]. The system of silviculture is the technique of cultivating plants forest by way of selecting seed, do the replanting and harvest the crops that are grown on the area of industrial forest. [5]. The main objective of Industrial Plantation Forest development itself is to ensure the availability of raw materials, that is wood so it can always be available and not to run out. The development of Industrial Plantation Forest is to doing the preservation of the forest, as well as to perform the utilization and management of that kind can increase the growth of the economy country and the achievement levels of productivity so the level of prosperity and well being of the people also increasing. In carrying out the construction of the industrial plantation forest in terms of doing the management and utilization of the area, it required permission to do activities of production, permission to use industrial plantation forest is IUPHHK-HTI. This permit is to use to take advantage of the area in industrial forest, where the company doing construction to prioritize maintenance and planting back the area of the forest.

Precautionary principle is a principle from United Nations Conference on Environment and Development in Rio de Janeiro 1992. In this conference, the countries that participate agreed that the development can threaten the lives of living things for the future so the need for maintained and protection of environment of life for the development of sustainable. Precautionary principle ratified in regulatory legislation in Indonesia and is set in Article 2 Letter (f) of Law No.32/2009. The elements that are contained in the precautionary principle as follows: Uncertainty of risk, scientific assessment of risk, and potential for serious or irreversible damage.[6]

Uncertainty of risk, the purpose of this element about activity that has not been no evidence scientifically that already occurred damage. Uncertainty is not used as a basis for not acting in the conduct of prevention of damage that may occur. Scientific assessment of risk, aims to do the study about an activity utilization of forest that can disturb the environment as well as the ecosystem. Any impact and potential that may be caused damage can be prevented. Potential for serious or irreversible damage, the forest has a function which is important in supporting the life of all human, which if forests suffered damage, it will be damaged permanently, usability and function of the forest will be distracted and wont able to be returned to the state of the original purpose [7]. Precautionary principle applied in a situation that has the potential hazards or damage were deemed not damage permanent in a short time but it can turn into a serious damage or permanent for a long term as the consequences on activity that is seen is not harmful to the environment or society.

It is the government's responsibility as the formulator of public policy in deciding actions in response to an activity that will be carried out, namely in the form of granting permission to carry out an activity, in the formulation of policies public, the precautionary principle has the function among others as a basis for not delaying the action of the environment that is caused by the uncertainty of evidence scientifically, as a license to perform an action and the basis onset obligation to act. Precautionary

principle used a reference to the framers of the policy to perform actions against an activity that has the potential that is harmful to the environment and the ecosystem. The uncertainty of scientific evidence can not be used as an excuse for not taking an action that should be taken because of the uncertainty of scientific evidence. For that, every activity that will do the necessary permits are issued by the government in deciding to give permission to the perpetrators of the business or not. Precautionary principle raises an obligation to anyone to perform actions as an attempt to carry out protection and prevention. Precautionary principle as a principle in the legal environment makes reference or basis for the government in issuing licenses and supervision, for the company to do maintenance as well as for society in the conduct surveillance of the activities that is done by the perpetrators of the business. Each activity utilization of forests that do the necessary permits utilization. Licensing is an instrument for the administration of government in giving approval to open or to perform an action associated with the activities of the utilization and management of forestry so that the need for the precautionary principle by the government in issuing all kinds of permits utilization of forests include IUPHHK-HTI. Giving IUPHHK-HTI is an effort preventive measures controlling the impact of environment and the beginning of the government in applying the precautionary principle. IUPHHK-HTI which permission to use in order to take advantage of the region industrial forest plantation perpetrators of effort does not apply arbitrarily, the company attempt doing construction in industrial forest plantation to prioritize maintenance and planting back in the area of forest and obedient to the regulatory legislation which applies. Event management at industrial forest consists of the activities of cutting down trees, preserve the region were cut down by doing the planting back, up to marketing of wood which is a result of industrial forest. Activity is carried out by repeatedly in order to obtain the results of forest that high quality and maintain the sustainability of the area of forest. The main

objective of industrial forest itself is to ensure the availability of raw materials in this case is wood as raw material.

Applications for IUPHHK-HTI by business actors are required to complete a statement in form of a statement of commitment and a technical statement. The statement of commitment consists of an official report on the geographic coordinate area based on the area being applied for IUPHHK-HTI it contains the boundaries of the area for industrial forest. One of the statements of technical must be a recommendation of the governor where the recommendation that contains the composition or state region province on the area or region requested. IUPHHK-HTI area should be in the area of utilization of forest production. Application of the precautionary principle in fact has not been implemented in the policy IUPHHK-HTI. In many cases the permit has been issued without followed with the requirements and regulations. Based on the observation and analysis study of feasibility of the development of forest plants industrial various companies, until the year 2013 IUPHHK-HTI has spent about 10 million hectares, mainland Indonesia [8] and the realization from the planting until year 2013 about 430.614 ha. The low realization of planting resulted in the development of the construction of Industrial Forest plantation becomes slow that caused damage to the forest and the ecosystem in the form of deforestation. Deforestation that occurs in IUPHHK-HTI areas can not be separated from the responsibility of the Government; weak supervision has caused a number of IUPHHK-HTI areas to experience deforestation. IUPHHK-HTI supposed to be in the unproductive forest but still there are allocating development of industrial forest plantation in productive forest even in protected forest. The low level of supervision and control of the government on the company and the company who do not carry out their obligations to carry out maintenance of their license areas as IUPHHK-HTI holders indicate that there is no implementation or application of the precautionary principle by the government or the wood company as IUPHHK-HTI holders.

4.2 Decision the Supreme Court No. 460K/PDT/2016 Accommodate the Application of The Precautionary Principle in Industrial Forest Plantation Production Permit.

Based on the facts of the trial, PT MPL and Governments of Regions, the Regent in granting IUPHHK-HTI does not apply the precautionary principle because it has violated the law. It showed from policies or decisions were issued without permission are not followed by the requirements and the data is not complete and accurate that in accordance with the regulatory legislation. PT Merbau Pelalawan Lestari (PT MPL) as the wood company obtained an IUPHHK-HTI area of 5.590 ha issued by the regent of Pelalawan. The Department of Forestry province of Riau discovered vast area planned work is 7.466 ha, the difference of IUPHHK-HTI is about 1.873 ha. Felling forests that are conducted by PT MPL in IUPHHK-HTI or outside the area result in damage to the environment, which is based on the evidence in the trial. Evidence P-6 in the form of map before PT MPL did the production activities, evidence P-7 is a map of environmental damage caused by PT MPL and Evidence P-8 is a map of PT MPL in the function of forest area of Pelalawan Regency. Based on those evidences, that were made by the environment experts, based on the results of the verification field, seen the damage to the environment that occurred with the discovery of wood former logging and the uprooted and activities of utilization that do not do in the area of forest that is not productive.

PT MPL as IUPHHK-HTI holder does not carry out its obligations to maintain the forest area, they must be responsible for all the activities that occur in IUPHHK-HTI area, namely by carrying out obligations is to keep maintenance the area, and preserving and also protecting the IUPHHK-HTI area from damage. In fact, PT MPL did not execute the obligations of these. The IUPHHK-HTI that was given to PT MPL did not accordance with the law. Based on the evidence from the trial, Evidence P-2 in form of IUPHHK-HTI issued by the Regent of Pelalawan is legally flawed. Because after the release of

Government Regulations No. 34/2002, the Regent does not have the authority to issue IUPPHK-HTI or any kind of forest utilization permit. The authority over the issuance of IUPPHK-HTI rests with the Minister based on the recommendation of the governor, the regent only makes considerations to be given by the governor as a basis or reference for making recommendations. Because Regent of Pelalawan has no rightful and validity in issuing IUPPHK-HTI. It showed the Government of Regions, the Regent in issuing IUPPHK-HTI not apply the precautionary principle because permissions are granted contrary to the regulatory legislation which applies, as the regent was not authorized to publish IUPPHK-HTI, in other matter the area was located in the area of protected forest, which should be in the forest that are not productive.

The application of the precautionary principle is not carried out by the permit holder nor is it implemented by the government, in this case the regent, governor and the Riau Provincial Forestry Service. All of them are aware that the land that used for IUPPHK-HTI from PT MPL is the area of forest that is still productive and enter in the area of protected forest. It is demonstrated that not there is an attitude of precautionary principle from the government in issuing a decision or policy as still weak supervision to an activity seen from the violations were carried out by PT MPL is to carry out the logging of wild outside IUPPHK-HTI as well as in the area which resulted in damage to the area of licensing are given. In the precautionary principle, is not to proof scientifically not be used as a reference or basis for not doing something as an attempt prevention against damage to the environment of life, whereas in this care PT MPL clearly conscious of doing illegal logging. PT MPL did not replant the area and maintenance should be done by PT MPL. The government in this case allowed and even issued IUPPHK-HTI on productive land in protected forest areas.

Supreme Court punished PT MPL to pay compensation damages the environment of life to the country Rp16.244.574.805.000 which consists of losses due to damage that

happened inside and outside IUPPHK-HTI area. Calculating damages, the environment of life should consider the function of ecological and cost recovery of the environment due to the fact the forest has a role which is very important. Nature calculate losses due to damage to the environment is not equated with calculating damages in cases related to objects or rights of material because its value is measured by eye money, objects and rights of material that had become an object of trade in the community.

Decision of the Supreme Court No. 460K/PDT/2016 has accommodate the precautionary principle by punishing PT MPL to pay compensation damages. The Supreme Court in deciding the environment case apply precautionary principle because the precaution is not only applied to the initial licensing or in making a decision on activities by company but also the precautionary principle is also applied in the environmental court to punish and prosecute company that been doing damage to the forest.

5. CONCLUSION

1. Application of the precautionary principle in industrial forest plantation production permit has not been implemented by both the government and the company, seen from the lack of supervision and compliance with licensing by the government, such as issuance of IUPPHK-HTI should be done by the ministry of environment and forestry but the regent issued and published IUPPHK-HTI on productive forest that should be done in not productive forest. Weak supervision of the government against the wood company that do not carry out its obligations to maintenance by planting on IUPPHK-HTI, thus resulting in deforestation in industrial forest plantation. It is demonstrated the government or the company applied precautionary principle in maintaining environment in order to be spared from

destruction or pollution of the environment.

2. Decision of the Supreme Court No. 460K/PDT/2016 to accommodate the precautionary principle was to punish PT Merbau Pelalawan Lestari to pay compensation damages amount Rp16.244.574.805.000 as the cost of restoration of damage inside and outside IUPHHK-HTI area and cancelled the Decision of High Court Pekanbaru and Decision of District Court where previously did not punish PT Merbau Pelalawan Lestari to replace losses due to damage that occurred. The Supreme Court has rightly used the precautionary principle in adjudicating cases. The precautionary principle is not only used for the management and formulation of policies such as licensing permit but also applied in the settlement of cases in court, Under the terms of these, precautionary principle not only be preventive, but also to be repressive.

6. SUGGESTION

1. Need supervision and review by the government on the issuance of IUPHHK-HTI plantations on forests are not productive so that the precautionary principle correctly can be applied.
2. Government should always keep an eye on activities or business utilization of industrial forest by wood companies, namely the way down directly into the field to see how the activity going.

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