

Restoring What's Environmental About Environmental Law in the Indonesian Supreme Court

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Abstract- This study aims to discuss the role of the Supreme Court in overcoming environmental pollution and destruction, so that a good and healthy environment can be created. The results show that the Supreme Court has tested 643 times related to the environment which resulted in significant changes related to environmental regulations. However, this decision was not competence of judges greatly influences the results of judges' decisions. If the judge who handles the settlement of environmental cases in court is less competent in the environmental field, then the results of the decision are not environmentally oriented, Indonesia lost an average of 1.47 million hectares of forest and 12.7 million hectares of tenurial conflicts per year.

Keywords- Restoring; Environmental; Supreme Court.

I. INTRODUCTION

Environmental law enforcement measures that are appropriate, consistent, and long-term will create a solid foundation for development in the economic, political, socio-cultural, and defense and security domains.[1] Environmental law enforcement is inextricably linked to government-issued ecological policies, particularly when those policies are incorrect and lead to debate over their execution. Making and enforcing laws is a "purposeful human action," according to David Trubeck. To put it another way, legislating is never a sterile and independent process.[2] Even so, it is full of group interests or potential powers in a country that wants its claims to be legalized or protected by law, because the law, according to Schuyut, is "een neerlag van politieke machtsverhoudingngen" or, in Karl Marx's opinion, a representation of capitalist parties.[3]

According to Harry Supriyono, several factors contribute to today's global environmental catastrophe, including ineffective and even damaging legal regulations, poor political commitment, beliefs, and ideologies that affect the environment, acts, and behavior. State actors, such as transnational businesses, engage in deviant behavior, and pervasive cultural tendencies, such as consumerism and individualism, are exacerbated by individuals who are not properly supervised.[4]

The aforementioned issues all played a role in the environmental disaster in various ways, particularly in the forestry sector. A forest is an ecosystem unit in the form of a stretch of land containing biological natural resources

dominated by trees in their native setting, which are inextricably linked.[5] Forests are a determinant of life support and a source of human welfare that is deteriorating. As a result, it must be maintained indefinitely in order to be everlasting, and it must be treated with noble character, justice, authority, transparency, professionalism, and responsibility.[6]

Indonesia covers 53 percent of the world's land area, its forests are known as the world's lungs. Tropical forests, particularly in Sumatra, Kalimantan, and Irian Jaya, are held by Indonesia. Forest products from Indonesia are the world's biggest source of tropical timber.[7] There is a lot of illicit logging and forest fires in Indonesia because of the huge quantity of trees and the products that come from them, particularly wood, which is the main product. The depletion of the ozone layer and the increasingly unknown nature of climate change have become hot topics in recent years. In certain countries, forest fires are the most serious issue. The issue of forest damage due to forest fires that occur in places is felt by the community around the forest and neighboring countries as a result, resulting in losses for the residents of neighboring Indonesia. The firm and the million-hectare land project are deliberately burning trees for oil palm and HTI crops. The burned area is an area that was cleared as part of the preparations for the development of plantation lands through a land clearing procedure. Forest fires are therefore sparked by intentionally lit fires.[8]

I Gusti Ayu Ketut Rachmi Handayani expressed a similar viewpoint, claiming that illicit logging (Illegal Logging) in Java, Kalimantan, Sumatra, Papua, and other locations has resulted in drought, floods, and landslides in Java during the dry season. Monsoons are responsible for a significant loss of biodiversity. Land clearing, which causes forest fires, and mining companies that ignore environmental functions also contribute to forest and land damage.[9]

Because these crimes involve individuals as well as a group of persons with varying roles, it is now considered that illegal logging and forestry crimes have evolved into organized and systematic crimes. Because it affects production countries, countries where timber laundering happens, and consuming countries, illegal logging is featured on the United Nations' list of transnational crimes that must be stopped and eradicated.[10] Handling forestry crimes or illegal logging requires a specific structure to prevent and battle them due to their remarkable nature (extraordinary crimes), involving actors from the field, investors, financial institutions, and the state apparatus as protectors. Because laws and all

other implementing regulations are needed for legal certainty and highlight the role of law in managing environmental problems, UUPLH is the foundation of Indonesian environmental policy. The government creates environmental policy legislative instruments through a variety of preventative or at the very least rehabilitative measures to bring the environment back to a normal state of quality.[11]

After the UUPLH was founded, the problem of forestry crimes did not go away. The yearly report of WALHI demonstrates this. There were 16,334 hotspots from January to September 2018. There were 36,781 people in 2017. According to NASA FIRM 2019 statistics, there were 24,086 hotspots in 2019, up from 2,014 in 2018.[12] Residents become infected with ARI as a result of forest and land fires. Jambi has 20,471 residents, Central Kalimantan has 15,138, South Sumatra has 28,000, and West Kalimantan has 10,010 residents. The fire started because the arrangement of corporate land tenure was too broad, according to the Executive Director of Walhi, Central Kalimantan. Investment controls 12.7 million hectares (78%) of Central Kalimantan's 15.3 million hectares. HPH, palm oil, and mining are all examples of this. In 2015, Central Kalimantan has 17,676 hotspots. The majority of them are in concessions. Law enforcement efforts, on the other hand, are still insufficient. Only 30 companies have been investigated, ten of which have been sealed, but it is unclear what action would be taken next.[13]

II. FINDINGS AND DISCUSSION

Environmental cases have not been resolved in a way that is environmentally sustainable. Judges have not paid attention to environmental components that are victims, have not adopted an ecosystem approach, and have not projected that the initiator's activities will create pollution and damage to the environment, according to the evidence. In court decisions, these signals have not been taken into account. Similarly, the decision-makers (judges) do not have sufficient environmental expertise.[14] As a result, judges assessing and deciding environmental matters highlight environmental characteristics as a basis for considering court rulings in environmental disputes oriented toward ecological sustainability.[15]

As the determining party, the judge is one of the elements of the judiciary that has the most influence over the other members of the bench. Judges play a critical role in establishing a pro-environmental court system. The accomplishment of environmental justice will be harmed if courts disregard the environment in the resolution of environmental matters.[16] This is demonstrated by the decision indexation data set, which contains 643 decisions, including:[17]

Table 1
Court Decisions Related to the Environment

Court Decision	First Level	Appeal	Cassation	Judicial Review	Total
Civil court decision	27	16	24	6	73
State administrative court decision	19	8	103	34	164
.Criminal court decision	303	-	133	-	406
Total					643

Source: Nur Syarifah, dkk, 2020.

These findings suggest that judges' competency has a significant impact on the outcomes of their judgements when it comes to environmental disputes in court. If the judge in charge of environmental case settlements in court is inexperienced in the field, the decision will not be environmentally friendly. This has been demonstrated in a number of cases: 1808 K/Pdt/2009, 213/Pdt.G/LH/2018/PN.Plk, 591/Pdt.G-LH/2015/ PN.JKT.SEL, 118/Pdt.G/LH/2016/PN.PLK, and 44/Pdt.G/LH/2018/PN.Blog 139/Pdt.G-LH/2016/PN.JMB, 540/Pdt/2017/PT.DKI, 284/Pdt.G/2007/PN.JAK.SEL, 44/Pdt.G/LH/2018/PN.Blog, and 284/Pdt.G/2007/PN.JAK.SEL.[18]

Despite the fact that the Indonesian government has launched a number of initiatives through the State Ministry of the Environment, including coordination between police, prosecutors, and judges to equalize perceptions of procedural environmental law enforcement, environmental cases in the integrated environmental criminal justice system continue to be a source of contention. Another issue is that the number of qualified environmental judges in Indonesia does not match the number of judges and courts in the country. As a result of this circumstance, many environmental judges lack expertise.[19]

Judges have a critical role in ensuring that human or non-human interests (such as the environment) are protected. Judges, like lawmakers, can make laws to safeguard human and non-human interests (domain) that have been violated. Judges have the authority to interpret the terms of the legislation in light of the community's development and needs. The judge's decision is legal and must be regarded as correct (*res judicata pro veritate habetur*).[20]

Many laws or provisions in legislation are no longer applicable and are out of step with society's growth. People frequently create memes that recognize that the law is at the root of the events or interests it governs. Even though events or human attractions have progressed much, the law has not. Human awareness of the need to safeguard the environment is also growing.[21] The legislation is supposed to evolve in accordance with the understanding of the global human environment as expressed in the 1972 Stockholm Conference, which is a human development to protect nature. In this scenario, the expansion of the law is expected to be a strategy aimed at ensuring that courts deciding environmental concerns are guided by ecological sustainability.[22] Environmental

sustainability is a human interest, and the environment's interests must be protected and realized.[23]

Between 2017 and 2019, illicit logging cost the government more than US\$7 billion (about Rp. 70 trillion), resulting in a cumulative loss of more than US\$2 billion (roughly Rp. 20 trillion).[24] In addition to the financial losses generated by poor management, poor governance has the potential to violate the rights of people who rely on forests for their livelihoods through forest use allocation and the implementation of forest industry concession limits.[25] These rights include the rights of communities recognized by domestic law to meaningful consultation and just compensation for the loss of access to land and forests, the rights of indigenous peoples under international law to communal lands and natural resources, and rights recognized by the international community to one's safety, non-intrusion of personal life, privacy, family, and home. Land conflicts have been exacerbated by mismanagement and corruption in forestry and agricultural concessions, which has resulted in violence between companies and local communities in some cases.[24]

Apart from substantive legal difficulties, the Supreme Court must also address new legal issues and future trends in environmental disputes, such as the imposition of criminal penalties for corporate executives. Through PERMA No. 13 of 2016, Procedures for Handling Criminal Cases by Corporations, the Supreme Court has established inspection guidelines for corporations that have committed criminal crimes. In terms of controlling the examination of defendant corporations, the PERMA has been fairly broad. The PERMA, on the other hand, is insufficient to keep corporate management's analysis under control. The lack of clarity on when corporate governance can be charged with a crime and when the punishment is inflicted on the corporation is a problem that has been discovered in relation to this subject. When management is charged criminally with vicarious liability but the Prosecutor / Public Prosecutor does not charge the corporation, the problem becomes even more apparent. Another significant aspect that must be regulated in the form of a punishment for the defendant, who is a business executive charged with vicarious liability.[26]

Second, there are legal and administrative limits to criminal and administrative culpability. There are a lot of criminal cases in the environmental field, and there are a lot of administrative breaches. In general, certain administrative infractions are treated as criminal activities rather than administrative offenses under the law in this sector. For example, UU no. 32 of 2009 concerning Environmental Protection and Management makes it illegal to conduct business without first obtaining an environmental permit. 80 Of course, punishing every administrative infringement directly is excessive, especially when it includes Small and Medium Businesses, which have a higher risk of committing a breach or failing to meet organizational criteria. As a result, clearer parameters specifying the types of administrative breaches that should be penalised are required.[27]

Third, the environment as a legal person; environmental law has evolved in various other nations, including India, the United States of America, Ecuador, New Zealand, and Colombia⁸², resulting in jurisprudence that recognizes the environment, forests, and rivers as legal people with rights. However, due of its differences from a person in a direction in general, the environment must still be represented by another party, in this case the state, in order to obtain its legal rights as a person. As well as suing or deciding environmental concerns, judges (in their position as justices) are carrying out their obligations as state representatives in preserving ecological rights. The court decided that injury or damage to the environment should be equated with injury or damage to humans, citing Indian court judgements in the Ganges and Yamuna cases.[28]

III. CONCLUSION

The conclusions in this study were: (i) due to the ambiguous phrasing of the offense and varied sanctions, the proof of which is quite complex, save in the case of being caught red-handed, there are several obstacles at the level of law enforcement. Preventive and repressive law enforcement operations against forest and land fires, as well as their environmental repercussions, are still statistically ineffective. The lack of settlement of forest and land burning cases that have been brought before the Court demonstrates this reality. Almost no one has been penalized with the aforementioned legal penalties for forest and land clearance. Forest and land fires, on the other hand, continue to occur every year, particularly during the dry season. Forest and land fires have a negative ecological and economic impact. It causes the spread of smoke, which has considerably disturbed and hampered the smooth movement of goods by land, sea, and air, affecting breathing and air quality in adjacent countries. Third, in legal terms, forest and land fires are unquestionably a large-scale enterprise capable of wielding political influence. In this scenario, the state administrator should maintain a persistent focus on corporate crimes and law enforcement activities using existing tools. (ii) environmental competency is still lacking among judges. Their selections have not yet yielded results that are environmentally friendly, or their choices are not environmentally friendly. The Supreme Court's efforts to increase the environmental competency of justices by forming Environmentally Certified Judges.

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