Administrative Law Enforcement in Environmental Protection and Management

Yasminingrum(✉) and Widiati Dwi Winarni

University 17 Agustus 1945 Semarang, Semarang, Indonesia
yasminingrum12@gmail.com

Abstract. Environmental protection and management aim to maintain the function of environmental sustainability for the benefit of society in realizing justice. One of the demands of law enforcement is none other than justice with legal certainty. Administrative law enforcement is the front line in environmental protection and management. It is hoped that this law enforcement can be used as a procedural tool or means of resolving disputes over pollution and environmental destruction until justice is obtained.

Keywords: Enforcement · Administrative Law · environmental protection and management

1 Introduction

The 1948 Declaration of Human Rights mandates that environmental law is a fundamental human right. This can be interpreted theoretically that the creation of a welfare state depends on how the state exists toward its citizens in formulating a policy related to environmentally sustainable development.

Modern civilization has brought an extraordinary level of material success where humans can create technology and industrialization, but behind this level of success, humans have sacrificed natural resources through the practice of exploitation blindly without regard to the impact it has on humans and the environment. The unwise use of natural resources causes the quality and quantity of natural resources to decrease or decrease which in the end will be completely depleted.

Thus, natural resources play a very vital role in development for the sake of increasing human welfare. For this reason, the implementation of development functions as a production, ecological and social activity. Development that only emphasizes the production function by ignoring the ecological and social functions is not in accordance with the sustainable and environmentally sound development that has been proclaimed in the 1983 WECD known as "Our Common Future), which is emphasized that: [1] "sustainable development is a development that meets the needs of the present without compromising the ability of future generations to meet their needs".

Development is growth and change that is planned and carried out consciously by a nation, state, and government towards modernization in the context of developing the nation. Modernization is the development from a low-level state to a high level.

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According to Adji Samekto, modernization is the application of scientific knowledge to all activities in people's lives. With modernization, social changes will be made. Therefore, it takes initiative, active and critical for every citizen to be able to act in the right direction and by being able to become sources of decision making by the government in development.

Environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement (Article 1 point 2 of Law No. 32 The year 2009). For this reason, human awareness is needed in protecting and managing the environment. Growing human awareness in protecting and managing the environment wisely in carrying out sustainable development requires law enforcement.

Administrative law enforcement is carried out by government officials who are used as the frontline to prevent damage and pollution. Administrative law enforcement is a tool of public power as a reaction to non-compliance with administrative legal norms. Administrative law enforcement is expected to be an alternative to realizing environmentally sustainable development.

2 Findings and Discussion

The writing method is carried out using a normative review, namely a study of the opinions of scholars and administrative law theory, to obtain an overview of the enforcement of administrative law in the protection and management of a just environment.

Positioning the government as the subject of development as stated by Mansaour Fakih, that from this perspective (the ruler of the state's position with all development efforts), the role of the government becomes the subject of development, namely treating the people as objects, recipients or recipients of clients or even development participation.[2] The government in encouraging community participation, starting from the level of planning, and implementation to obtaining the results fairly and equitably.

The government as an agent of development requires human resources and natural resources. According to Trijono, it is said that: Development is an effort to determine basic human needs both individually and in groups in a way that does not cause damage to both social life and the natural environment. [3] From this understanding, it can be concluded that natural resources, the environment, and social ecosystems are the main things in carrying out development. Thus the relationship between development and the environment is interdependent, in the sense that development does not damage the environment.

Development that aims to meet current and future needs to achieve community welfare, for that the state is able than the conservation of natural resources and the environment. Pancasila and the 1945 Constitution of the Republic of Indonesia. Sustainable development is mandated for the achievement of a just and prosperous society which is the ideal of the Indonesian nation. Constitutionally which is the legal basis. The position of the legal subject of development has been amended in Chapter XA of the 1945 Constitution of the Republic of Indonesia concerning Human Rights, namely in:

Article 28C paragraph (3) stipulates that "everyone has the right to advance himself in fighting for his rights collectively to build his community, nation, and state".

Furthermore, Article 28 H paragraph (1) stipulates, "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and have the right to obtain health services". In addition, the State is given the authority to control natural resources, as regulated in Article 33 Paragraph (3) which also stipulates that "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

The Indonesian government is committed to implementing environmentally friendly and sustainable patterns in the implementation of national development. As stated in the environmental management policy contained in the Law of the Republic of Indonesia No. 32 of 2009 concerning the Protection and Management of the Environment instructs that one of the management objectives is that the development carried out must pay attention to the environment or called sustainable development, whose definition is stated in a juridical manner in Article 1 point 3 of Law no. 32 of 2009 which states that: "Sustainable development is a conscious and planned effort, which integrates environmental, social, and economic aspects into a development strategy to ensure the integrity of the environment as well as the safety, capabilities, welfare, and quality of life of present and future generations."

Sustainable development and environmental insight as principles in the framework of economic democracy as the basis for state administration. This will continue to develop not only limited to environmental, economic, and community aspects, but also concerns global humanitarian issues and includes issues of politics, education, culture, and so on.

The right to development as a human right cannot be revoked on the basis that everyone and all people have the right to participate in contributing to and enjoying economic, social, cultural, and political development, in which all human rights and basic freedoms can be fully realized. [4] Hak on development as a human right is a manifestation of justice in managing natural resources that guarantees the unity and integrity of the nation.

Injustice in managing natural resources which are suspected by the state is a clear threat to the unity and integrity of the nation and disrupts national stability. Injustice and community dissatisfaction are felt in several areas in Indonesia due to the absence of honesty and equity as contained in the precepts of justice in Pancasila.

Environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement (Article 1 point 2 of Law No. 32 The year 2009). Article 3 of Law no. 32 of 2009 stipulates that environmental protection and management aims to:

1. Protect the territory of the Unitary State of the Republic of Indonesia from pollution and/or environmental damage,
2. Ensure safety, health, and human life,
3. Ensuring the survival of living things and the preservation of ecosystems,
4. Maintaining the preservation of environmental functions,
5. Achieving harmony, harmony, and environmental balance,
6. Ensuring the fulfillment of justice for present and future generations,
7. Ensuring the fulfillment and protection of the right to the environment as part of human rights,

8. Controlling the use of natural resources,
9. Realizing sustainable development, and
10. Anticipating global environmental issues.

Environmental management is the duty and authority of the government and local governments. Duties and powers given to local governments create democratization in natural resource management. The law that regulates the environment is Law no. 32 of 2009 concerning Environmental Protection and Management. Environmental protection and management are carried out with the responsibility to maintain sustainability and wise use. Wise environmental protection and management include efforts to utilize, organize, maintain, supervise, control, recover and develop natural resources.

Policies in the utilization, arrangement, maintenance, supervision, control, recovery, and development of natural resources are based on regulations governing the licensing of environmental protection and management followed by supervision and enforcement of administrative law. Supervision and enforcement of administrative law as preventive measures to prevent environmental pollution and/or destruction.

Preventive measures are based on administrative legal instruments which are instrumental in nature with preventive purposes in the form of prevention of environmental pollution and/or destruction. Prevention of environmental pollution and/or destruction in the context of environmental conservation. Prevention of environmental pollution and/or destruction will be successful if the legal instruments for supervision and administrative law enforcement are really effectively implemented. Supervision and enforcement of administrative laws that are not implemented effectively will cause environmental pollution and/or damage.

The principle of justice not only distributive justice to everyone according to what is their right, or gives to each person based on the individual distribution (commutative), but justice is based more on the existence of comparison between distributive justice and commutative justice as a form of justice. Accommodative nature of the greater public interest to obtain legal protection.

According to Karl H. Peschke, justice is a condition in which a person or community gets what is due to him or her. Individual or individual justice is when a person or individual gets what is due to that person or individual. Justice that is communal or group in nature, ie if the community or group gets what is the right of the community or group.

Justice is the embodiment of law, so the law must reflect a sense of justice as a pillar of the principle of the rule of law. One of the demands of law enforcement is none other than justice with legal certainty. The principle of justice does not only distribute rights to everyone according to what is their right, or gives to each person based on the individual distribution (commutative), but justice is based more on the existence of comparison between distributive justice and commutative justice as a form of justice. Accommodative nature of the greater public interest to obtain legal protection.

Based on the principle of the rule of law, justice does not allow the sacrifices imposed on a few people to be aggravated, while some enjoy the benefits and/or receive disproportionate treatment in accordance with the applicable legal provisions. Observing various actions of government officials authorized to enforce administrative law can be described below.

No.	Type of approach	Nature of approach	Type of sanctions
1.	Legalistic-formal	Repressive	License revocation
2.	Material	Persuasive-preventive	The deterrent effect of punishment
3.	Interests	Non-juridical, but more political in nature	Norms of behavior (code of ethics)

Here the law no longer acts as a giver of justice to everyone equally, but the law is only a pleonexia that gives benefits to certain people by seizing and sacrificing what is the right of others. Law enforcement aims to act neutrally, in the sense of treating the law fairly for everyone and applying the law consistently to every citizen who violates the law, so that justice as an urgent part of law enforcement must be enforced fairly, because fairness views parties in the initial situation as rational and equally neutral.

This constitutive principle is in accordance with legal principles, as it is known that there are two legal principles, namely:

1. The principle of constitutive law that provides the basis for the principles of regulatory law
2. The principle of regulative law, serves to clarify, and deepen the principle of the constitutive law. State Administrative Law which regulates public policy is a constitutive principle which includes:

    a. He principle of rescue exceptionne, in certain cases there is always a risk;
    b. The principle of revocation of rights with adequate compensation;
    c. He principle of good governance (unwritten law).

As a regulatory principle is the principle of solus publica (public interest). If studied in depth, the largest part of environmental law is State Administrative Law. It can be in the form of Laws, Government Regulations, Ministerial Decrees, Regional Regulations, Governor Decrees, and Regent/Mayor Decrees. State Administrative Law will appear to be related to the role of the government to provide business establishment permits and take steps to save the environment if the provisions required in the licensing are violated.

Administrative law enforcement is part of besturen, where sanctions are a tool of public power used by the authorities as a reaction to non-compliance with administrative law norms. Administrative law enforcement instruments include supervision which is a preventive measure to enforce compliance and the enforcement of sanctions which is a repressive measure to implement compliance.

The use of administrative legal authority, including:

1. Legitimacy, namely the issue of authority in supervising and applying sanctions. This authority is determined through attribution or delegation, except for sanctions in the form of revocation of State Administration decisions, because this authority is attached to the issuing party (Contrarius Actus).

2. uridical Instruments, this is related to the types of sanctions. In the state administrative law, the types of sanctions are known, namely government coercion, forced money, administrative fines, and revocation of State Administration decisions.
3. Administrative Law Norms, that the government's policy of implementing sanctions is based on written and unwritten government norms (general principles of good governance). So the government is given the authority to assess/consider whether or not to use this authority. The government may not use the authority to apply sanctions based on considerations of economic reasons, the instrument of coercion is inadequate, unable to coerce, the government doubts about a violation, and others.
4. Here are two types of cumulative sanctions, namely external communication where administrative sanctions can be applied together with civil and criminal sanctions, and internal communication in which two or more administrative sanctions are applied together.

In the author's opinion, although there are external sanctions, they do not always have to be juxtaposed with criminal sanctions when the government apparatus uses discretionary authority that is truly accountable and aims for the public interest, so the criteria for state losses must be handled wisely because it is indeed used for public welfare for the sake of public welfare. Public interest.

3 Conclusion

The enforcement of administrative law in the protection and management of the environment is by applying administrative sanctions which are a tool of public power as a reaction to non-compliance with administrative law norms. The use of administrative law authority is based on legitimacy, juridical instruments, administrative law norms, and the accumulation of sanctions.

References

1. FX Adi Samekto, 2005, Kapitalisme, Modernisasi dan Kerusakan Lingkungan, Pustaka Pelajar, Yogjakarta
2. H.M Hadin Muhjad, 2005, Hukum Lingkungan Sebuah Pengantar untuk Konteks Indonesia, Genta Publishing, Yogjakarta
3. N.H.T Siahaan, 2007, Hutan Lingkungan Dan Paradigma Pembangunan, Pancuran Alam, Jakarta
4. Sondang P Siagian, 2005, Administrasi Pembangunan, Konsep Dimensi dan Strateginya, Bumi Aksara, Jakarta
5. Trijono, 2007, Pembangunan sebagai Perdamaian, yayasan Obor, jakarta
6. Yoschim Agus Tridiatmo, Keadilan Restoratif, Cahaya Atma Pustaka, Yogjakarta

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