Urgency of Judicial Review to Article 69 Paragraph (2) of Law Number 32 of 2009 Concerning the Environmental Protection and Management in Preventing Forest Fires Disaster in Indonesia

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Abstract. This article is research report on the search for models for handling forest fires through the penta helix approach. The mapping results of 5 (five) District Court decisions and the results of several Focus Group Discussions show how important it is to immediately examine the provisions of Article 69 paragraph (2) of Law Number 32 Year 2009 concerning Environmental Protection and Management. The spirit of Article 69 paragraph (2) to accommodate the community wisdom (Palembang) about farming by means of sonor. However, in one court decision it was revealed that the habits of people were also practiced by corporations even in one case of "utilizing" the local wisdom. Judicial review is important because some of scientific research results show sonor does not rice maximally. This study uses statute approach and factual approach and is analyzed qualitatively.

Keywords. Environmental Protection, Preventing Forest Fires Disaster.

1. Introduction

This research was initiated by the rise of netizens to respond to the decision of the Palembang District Court Number: 24 / Pdt.G / 2015 / PN. (The case of PT Bumi Mekar Hijau). In the case, PT Bumi Mekar Hijau was released from the lawsuit of the Government in this case represented by the Ministry of Environment and Forestry defeated and released the defendant from the lawsuit on Article 1365 of the Civil Code and Article 90 of the PPLH Law.

In this first year study, "model" of forest fire disaster was discovered through the penta helix approach, which involved academics, law enforcement in this case judges and prosecutors, corporations and the community. In this connection, in this first year study "mapping" of 5 (five) District Court decisions in cases of forest fires, interviews with judges and prosecutors, Forum Group Discussion was attended by academics, regional governments, corporations, prosecutors and the public.

2. Literature Review

It is undeniable that there cannot be same case as the other cases so that it is also understood that it is impossible for judges to decide the same for "the same" case. Likewise in the case of forest fires, 1 (one) District Court ruling frees the corporation from lawsuits and violating the Law while the 4 (four) decisions punish and or impose fines.

In case of adjudicating a case, it is certain that the judge has a reference which becomes the basis for the judge in making decision. Theoretically there are a number of approaches that can become the judge's

grip as explained by Mackenzie, among others, the theory of art and intuition approaches. Ideally the judge's decision contains considerations: juridical, philosophical and sociological. [1]
In this study using the Focus Group Discussion (FGD) method in outsourcing data and information. There are many advantages to using this FGD method as Krueger's opinion quoted by Onwuegbuzie that "Social science researchers can derive multiple benefits from using focus groups. One is that focus groups are an economical, fast, and efficient method for obtaining data from multiple participants... thus potentially increasing the overall number of participants in a qualitative study. Another group is the environment, which is socially oriented.[2] Furthermore, Onwuegbuzie cites several other advantages cited from several authors, namely:

1. The sense of belonging to a group can reduce the participants' sense of cohesiveness (Peters, 1993) and
2. They need to feel safe to share information (Vaughn, Schumm, & Sinagub, 1996),
3. The interactions that occur in the participants can yield important data (Morgan, 1988),
4. Can create the possibility of for more spontaneous responses (Butler, 1996), and
5. Provide settings where personal problems and provide possible solutions (Duggleby, 2005).

FGD that is implemented with regard to the existence of Article 69 paragraph (2) of the Act PPLH and local wisdom "Simboer Tjahaya" relating to the permissibility of clearing land by burning or sonor, produced data and information that is very useful for researchers in developing the argument. The community represented by the NGO stated that the community was still practicing sonor while from other parties, academics stated that if the practice of sonor was preserved it was feared that the peat layer would thin out which would not be able to be planted at all.
As a country that wants to participate in the international constellation both from the politic and trade then Indonesia should pay attention to the development of international trends. Environmental Sustainable Development as a development paradigm that is currently developing emphasizes the importance of 3 (three) pillars that underlie decision making, namely: (1) economic growth; (2) social development; and (3) ecosystem carrying capacity protection.[3]
Related with sonor practice as one local wisdom in Indonesia and three (3) pillars of decision-making, especially on the carrying capacity and ecosystem protection, pull what was stated by Hilman:[4]
"Local wisdom is important to take care and conserve the environment. Not only aware, but also morality and spirituality if human being live and unite with nature. It will emerge harmonization and give benefits to each other. This condition has the same argument like what Bintarto (1982) says that human beings as individuals or groups, live in the nature and environment. From the close relations and reciprocal, human being takes some adaptation, even the human being conservation".
At the same that the sonor practice causing smoke into the air will carry pollutants such as sulfur dioxide, (SO2), hydrogen sulfide (H2S) and carbon monoxide (CO) always were released into the air as byproduct of natural processes, such as forest fire.[5]
By creating policy that eliminates the opportunity to "burn" the forest, the government embodies the right of the community to live in a good and healthy environment. The right of the community to a good and healthy environment is a human right guaranteed in Article 28 H of the 1945 Constitution while at the same time making the law a means of social engineering.

3. Judicial Review

Judicial review, according to Jimly Asshiddiqie is testing carried out through the mechanism of the judiciary against the truth of a norm.[3] In the theory of testing, there are two types of testing: material test and formal test. This distinction is usually associated with differences in understanding between laws in the material meaning (wet in materiile zin) and laws in the formal sense (wet in formele zin). Both forms of testing by Law No. 24 of 2003 concerning the Constitutional Court is distinguished by the terms ' law formation ' and ' law content material '. Testing of material content of the law is material testing, while the test for formation is formal testing [3]. In terms of testing the material content of regulations under the law carried out by the Supreme Court (MA), the authority to test the content of the law against the 1945 Constitution, is owned by the Constitutional Court (MK).

4. Research Method

This research is a sociological research with legal approach and factual approach. Legal materials and data obtained were analyzed qualitatively.

5. Discussion And Results

a. FGD results

From the dynamics of the discussion, it can be concluded that in fact the spirit contained in the PPLH Law is specifically Article 69 paragraph (2) to accommodate the existence of local wisdom, which is not only in South Sumatra but for local wisdom throughout Indonesia. However, in practice many are exploited by irresponsible corporations. Indeed, in the discussion there were also those who argued that the method of farming, namely sonor, was still practiced by the community, because the farming technique still provided advantages and advantages. The opposite view states that it is feared that more days the swamp layer will thin out and even run out so that all the soil fertility is lost as happened in East Nusa Tenggara.

From the aspect of regional regulations, there is a Regional Regulation Number 8 of 2018 concerning Forest and / or Land Fire Control. The scope of the regulation includes prevention, mitigation, handling and supervision efforts. While the approach taken is an ecological, legal, economic, social and cultural approach, friendly technology and community participation.

In Article 5 of the Regional Regulation Number 8 of 2016 it is regulated about obligations for corporations, namely:

(1) Holders of IUPHHKHA and IUPHHKHT, plantation business owners, landowners are obliged to protect their land from fire and are responsible for fires;

(2) Holders of IUPHHKHA and IUPHHKHT, plantation business owners, land owners must monitor the presence of forest fires and / or land and in the event of forest fires and / or land immediately take all necessary measures to prevent the spread of forest and / or land, then report to the nearest government apparatus;

(3) Holders of IUPHHKHA and IUPHHKHT plantation business owners, landowners are required to manage biomass from the results of forest clearing and / or gardens / land by applying plantation and agricultural technology to produce economically beneficial derivatives.

In Article 6, adding that prevention as stipulated in Article 5 is carried out by the application of the precautionary principle, the application of early warning and prevention systems and the application of land clearing without burning. Thus, Regional Regulation Number 8 of 2016 has prohibited the public and corporations from opening land by burning.

In some researches, it was revealed that the practice sonor planting by the public used by corporations to, reward people who burn the corporation land. Because if it is known by the authorities, it is easy to free from responsibility that it is not the corporation that does the burning but the community.[6]

Based on the facts above, there needs to be an active role from the community to no longer practice sonor. which in Local Regulation Number 6 of 2016 regulates the role of the community to use environmentally friendly agricultural technology. This fact is in line with what Sizer stated:

"The high number of hotspots that are still ongoing in Indonesia is a very serious issue, often related to land clearing for major commodities such as oil palm and wood and paper industries. This has damaged natural forests, contributed to high air pollution, had an impact on climate change and also had a very detrimental impact on public health in the region ".[7]

"... Although burning forests for companies in Indonesia is illegal, companies in the past have been known to use fire to clear land..." [7]

b. Mapping of District Court Decisions

The results of the review of 5 (five) court decisions revealed several things, namely:

a. The fire that occurred at the Defendant's location was carried out by the Defendant because it supported the preparation of land for the construction of land at low cost and fast way.

b. The existence of bad habits carried out by the land owner so that the fires have the intention to avoid high costs as production costs to be incurred by the company starting and land clearing activities to planting

c. Some corporations do not have adequate equipment and personnel to prevent and control fires.

d. Farming by sonor can be "utilized" by corporations to release responsibility for forest fires. This was the basis of one of the judges' decisions, "The fire originated from community land, but the cause did not know, besides the local community's habits that bordered the concession area of PT. In the dry season Bumi Mekar Hijau often burns thickets and dark plants / sonor systems for planting rice ".

c. Urgency for Submission of Judicial Review

Article 51 paragraph (1) Law No. 24 of 2003 concerning the Constitutional Court stipulates that the right for material test and formal test is given to parties who consider their constitutional rights and / or authorities to be impaired by the enactment of a law. The parties entitled to submit material test, namely:

1. Individual Indonesian citizens;
2. The customary law community unit insofar as it is still alive and in accordance with the development of the community and the principles of the Unitary State of the Republic of Indonesia stipulated in the law;
3. Public or private legal entity; or
4. State institutions.

Purpose of Article 69 paragraph (2) of Law PPLH is to accommodate their local wisdom in Indonesia, but in practice widely used by the corporation irresponsibly because Article 69 paragraph (2) of the Act PPLH regulates the permissibility of open land by burning or sonor. People represented by Non Governmental Organization states that the public is still practicing sonor: if the sonor practice be well preserved the peat layer thins and ultimately can not be planted at all.

Considering the importance of this problem, the existence of the interests of the people who have been harmed by the issuance of UUPLH has been studied (specifically Article 69 paragraph 2). The only way that the interests of the disadvantaged community can be resolved is to submit a judicial review to the Constitutional Court. Submission of the judicial review can be submitted by Indonesian citizens or other communities in accordance with Article 51 paragraph [1] Law No. 24 of 2003.

The case of forest fires in Indonesia has been very disturbing to the community. It has been proven that there have been three court hearings against the government of the Republic of Indonesia in the District Court, High Court and Supreme Court, all of which were won by the public. The decision of the Supreme Court on July 16, 2019 confirmed the decision of the District Court. The case began when a major fire broke out in 2015. One of them was hit by Kalimantan. A group of people sued the state, they were Arie Rompas, Kartika Sari, Fatkhurrohman, Afandi, Herlina, Nordin and Mariaty. They sued the Indonesian President (Defendant I), Indonesian Minister of Environment and Forestry (Defendant II), Indonesian Minister of Agriculture (Defendant III), Minister of Agrarian and Spatial Planning of the Head of the Indonesian National Land Agency (Defendant IV), Minister of Health of Indonesia (Defendant V), Governor of Central Kalimantan (Defendant VI), and Regional Representative Council of Central Kalimantan Province (Defendant VII).

President Joko Widodo was convicted of illegal acts in the case of forest and land fires (karhutla). The verdict was signed by the Palangkaraya District Court (PN) and strengthened by the Palangkaraya High Court (PT). In that case, appearing as plaintiffs included Arie Rompas, Kartika Sari, Fatkhurrohman, Afandi, Herlina, Nordin and Mariaty. According to the plaintiff, Jokowi as the person in charge has failed to guarantee the right to a good and healthy environment for all the people of Central Kalimantan.

On March 22, 2017, the Palangkaraya District Court decided:

1. Reviewing and revising forest and plantation management business licenses that have been burnt or unburned based on the fulfillment of the criteria for issuing licenses and supporting and carrying capacity of the environment in the Central Kalimantan Province;

2. To enforce civil, criminal and administrative environmental laws for companies whose land has fire;
3. Make roadmap for early prevention, prevention and recovery of forest and land fire victims and environmental recovery;

Punish the President of the Republic of Indonesia, Minister of LHK, Minister of Health and Governor of Central Kalimantan to:

1. Establish special lung hospitals and other diseases due to smoke air pollution in Central Kalimantan Province which can be accessed free of charge for victims of smoke;
2. Order all regional hospitals in the Central Kalimantan province to free up medical expenses for people affected by smog in Central Kalimantan Province;
3. Creating a pollution-free space evacuation place to anticipate potential forest and land fires that result in smoke air pollution;
4. Prepare evacuation technical instructions and cooperate with other institutions to ensure the evacuation runs smoothly;

Punish the President of the Republic of Indonesia, Minister of LHK, Governor of Central Kalimantan to make:

1. Vulnerability map to forest fires, land and plantations in the Central Kalimantan Province;
2. Standard policies on forest fire and plantation control equipment in the Central Kalimantan Province;
3. To sentence the Minister of KLHK to immediately revise the National Level Forestry Plan listed in Forestry Minister's Regulation Number 41 of 2011 concerning Standards for Facilitating Facilities and Infrastructure for the Management of Model Protected Forests and Model Production Forest Management Units;

Punish the Minister of KLHK and the Governor of Central Kalimantan to:

1. Announce to the public the burned land and the company holding the permit;
2. Develop a system of information disclosure on forest, land and plantation fires in the Central Kalimantan Province;
3. Announce environmental guarantee funds and countermeasures originating from companies whose land is on fire;
4. Announce forest conservation investment funds from companies holding forest permits;

Punish the Governor of Central Kalimantan to:

1. Create a special team for early prevention of forest, land and plantation fires throughout the Central Kalimantan Province based on village areas with members of the local community, for that
2. Allocate funds for team operations and programs;
3. Conduct regular training and coordination at least every 4 months in one year;
4. Provide equipment related to forest and land fires;
5. Make the team as information source on early prevention and prevention of forest and land fires in Central Kalimantan Province;
6. Immediately compile and ratify Local Regulations (Perda) with the Central Kalimantan DPRD which regulates Protection of Protected Areas as mandated in Presidential Decree No. 32 of 1990 concerning Management of Protected Areas.

Thus, the Government is obliged to implement the court decision, even though in reality to oppose the Cassation decision, the President submits a Judicial review to the Supreme Court.

6. Conclusion

Based on the above description, the judicial review of Article 69 paragraph (2) of the PPLH Law is very important to do.

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