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Enforcing Environmental Laws and the Public Interest Principle

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Abstract

This abstract delves into Indonesia's identity as an archipelagic state with a majority of its territory encompassed by the sea. The concept of being an archipelago was first formalized through the Djuanda Declaration, revolutionizing maritime boundary determination. The establishment of the archipelagic baseline, composed of basepoints on outer islands and features, is pivotal in defining the nation's territory. As a custodian of its environment, Indonesia's government undertakes a comprehensive role in environmental stewardship, intertwining sustainable development with ecological preservation. Beyond regulation, the government orchestrates resource management, conservation, and restoration, shaping a harmonious relationship between human advancement and ecosystems. This responsibility, grounded in law, underscores the government's commitment to synergizing diverse interests with long-term environmental health. The centrality of the public interest principle in environmental law enforcement cannot be understated. Its application is paramount in preventing ecological harm and pollution resulting from business activities, fostering sustainable utilization of resources, and guiding equitable resolution of environmental disputes. By encouraging environmentally responsible practices among businesses, minimizing negative environmental impacts, and harmonizing ecological considerations with economic and social dimensions, this principle serves as a crucial tool for safeguarding both communities and the environment.

INTRODUCTION

Indonesia is an archipelagic state with 17,504 islands connected by the sea, and two-thirds of its area consists of the sea (Alverdian, 2022). Indonesia first voiced the concept of an archipelago nation in international forums known as the Djuanda Declaration, which changes the paradigm of determining a country's maritime boundaries with archipelagic characteristics. The archipelagic baseline is used as a reference for determining the territory of an archipelagic country, and it is made up of points called basepoints that shall be on the outermost islands, drying reefs, or even low-tide elevations.

As an archipelagic state, Indonesia's government is responsible for orchestrating comprehensive environmental stewardship, which encompasses

formulating, utilizing, preserving, restoring, oversight, and regulating the environment within the broader ambit of Indonesia's climate. The government's significance transcends mere governance; it becomes the guardian entrusted with upholding the delicate equilibrium of the environment, a task of paramount importance in guiding Indonesia's journey toward sustainable development across its vast geographical tapestry. Within this framework, the Indonesian government is responsible for orchestrating a trajectory that harmonizes progress with ecological preservation.

Functioning as a vigilant overseer, the government engages in a multifaceted role that stretches beyond policymaking and legislative enactment. It embraces the mantle of a conscientious steward, actively involved in the intricate choreography of environmental management activities. With unwavering determination, it navigates the complexities of these endeavors, steering clear of potential pitfalls and charting a course that safeguards the natural heritage for present and future generations.

The government's role in this realm extends beyond mere regulatory imposition; it entails a strategic wielding of authority and control. The government exercises a formative influence over resource utilization, conservation efforts, and restoration undertakings by holding the reins that direct environmental initiatives. This role as an orchestrator of environmental harmony is a testament to its commitment to fostering a symbiotic relationship between human progress and the intricate ecosystems that sustain life.

At its core, this custodianship is animated by the tenets of the law—a potent instrument through which the government nurtures and safeguards the mosaic of human interests. This commitment is not merely a matter of legal obligation but a dedication to fostering a balance between development imperatives and the imperative of environmental well-being. Through the institution of law, the government's role as a protector of diverse human interests is concretized, ensuring that the aspirations of the populace are intricately interwoven with the environment’s longevity.

The government's pivotal role in safeguarding environmental equilibrium is not confined to rhetoric but is woven into the fabric of its actions. As it steers the ship of sustainable development through the archipelagic expanse of Indonesia, it embraces the dual roles of steward and overseer, utilizing the reins of control to weave a narrative of harmonious coexistence between humanity and nature. This narrative derives its strength and resonance from the bedrock of legal principles

and societal well-being. Implementing legal frameworks, and functioning as guardians of human interests, is imperative that transcends circumstances. These legal mechanisms operate harmoniously in times of tranquility and in the wake of legal transgressions. Unfortunately, the relentless pursuits of natural resource management, while serving the overarching goal of national prosperity, have progressively eroded the quality of the environment. This degradation, although pursued with the ultimate welfare of the Indonesian populace in mind, poses a formidable challenge to preserving environmental equilibrium.

At the heart of this challenge lies the imperative for robust environmental law enforcement. This encompasses a spectrum of activities that contain the application and execution of laws, culminating in legal recourse against any transgressions or deviations committed by legal entities. These actions may take shape through conventional judicial channels or alternative dispute resolution mechanisms, such as arbitration procedures. Indonesia's holistic perspective on its existence, spanning territorial and celestial realms, underscores the Archipelago Concept as a guiding beacon. The government's intricate role as an environmental steward necessitates a steadfast commitment to regulatory frameworks that honor diverse human interests. Balancing the pursuit of prosperity with the imperative of ecological conservation remains an ongoing challenge, compelling the state to refine its approaches to law enforcement and sustainability continually.

The law that has been violated must be enforced again; through this law enforcement, the law will become real. Gustav Radbruch stated that in this law enforcement, three things must be considered: legal certainty, expediency, and justice. Legal certainty will protect against arbitrary acts of the state, state officials, and other parties who have power. Law enforcement and implementation must provide benefits for human life, do not let law enforcement give unrest in society. In addition, law enforcement must be fair. However, the law is only sometimes synonymous with justice because being fair to someone is not necessarily fair to others. For this reason, law enforcement's three elements, namely legal certainty, expediency, and justice, must be considered and implemented together.

Embedded within the legal system, law enforcement stands as a distinct facet, separate from the legal framework and the cultural milieu in which it operates. Law, in its capacity as a socio-empirical phenomenon, assumes the role of an independent variable, wielding an influential impact across multifarious dimensions of human existence (Venter, 2022). It is within these dimensions that

the intricate interplay of societal dynamics unfolds, shaping the dependent variables of social life.

The endeavor to comprehensively understand the realm of law as an independent variable requires an exploration of its practical manifestation and the consequential effects it engenders. This encompasses a holistic investigation into the intricate relationship between law and society, often encapsulated within the concept of "law society." This line of inquiry delves into the intricate mechanisms by which legal principles manifest in real-world scenarios, resulting in tangible effects reverberating through society's fabric.

The study of law as an independent variable requires a departure from the confines of theoretical legal analysis and delves into the practical realities of its application (Pelengkahu & Satria, 2023). This interdisciplinary approach illuminates the manifold ways legal systems interface with the human experience, thereby facilitating a nuanced comprehension of the intricate web of cause and effect that defines the interplay between law and society. As one of the functions of law, namely to protect the public interest, the principle of public interest can be applied in environmental law enforcement by considering that the environment is a human right that needs to be protected and maintained for the public interest and future generations. For this reason, applying the principle of public interest in environmental law enforcement requires synergy and collaboration between the government, society, and the business sector to create a healthy, sustainable, and sustainable environment. In this research, the discussion will be limited to "Application of the Public Interest Principle in Environmental Law Enforcement" namely, how to examine one of the principles in environmental law enforcement by focusing on the principle of public interest and knowing what things need to be discussed in this paper regarding public interest in environmental law.

RESEARCH METHODS

The present paper adopts a robust research methodology, combining both juridical review research and literature study approaches. The utilization of these methodologies serves to provide a comprehensive and in-depth analysis of the subject matter. This study's juridical review research methodology entails a meticulous and thorough examination. This involves the systematic and objective data collection, which focuses on legal principles and regulations. The essence of this method lies in its adherence to a rigorous framework that aligns with legal standards. Through this lens, the study delves into the subject matter precisely, evaluating it within legal precepts and norms.

Concurrently, the literature study methodology complements the juridical review research, enhancing the breadth and depth of the analysis. This methodology harnesses the knowledge and insights of various scholarly and informative sources. The approach hinges on an extensive exploration of diverse reading materials. This encompasses an array of sources such as books, legal journals, opinions of renowned scholars, legal statutes, educational materials, personal notes, and reports from prior research endeavors.

By employing the literature study method, the research delves beyond the confines of legal doctrine, enabling a broader contextualization of the subject matter. This method amplifies the study's scope, providing a platform to explore interdisciplinary connections and the practical implications of legal concepts.

In synthesis, the fusion of juridical review research and literature study methodologies forms the bedrock of this research endeavor. The juridical review ensures a meticulous and lawful examination, while the literature study method enriches the study with diverse perspectives and interdisciplinary insights. Through the convergence of these methodologies, the research aims to present a holistic and insightful analysis that underscores the depth and complexity of the subject matter.

RESULTS

Environmental Law Enforcement in Indonesia

The conception of environmental protection is enshrined in the Indonesian constitution. It explicitly states that everyone has the right to a healthy environment, and the environment is also part of human rights that cannot be reduced. In world history, the development of the basic principles of environmental management in Indonesia was influenced by the principles in the Stockholm Declaration, the Rio Declaration, and the Johannesburg Declaration.

Based on the study of the three declarations, it can be found various principles and concepts of environmental management in the context of sustainable development that apply universally, such as:

a) Right to a healthy environment;
b) Intergenerational and intragenerational equity;
c) Biodiversity Conservation (the principle of protecting biodiversity);
d) Precautionary Principle;
e) Sustainable use of natural resources (sustainable use of resources);
f) Eradication of poverty;
g) Prevention of environmental harms;

h) Public participation;
i) Access to information (right to information);
j) Environmental impact assessment and informs decision-making;
k) Peaceful settlement of disputes;
l) Equal, expanded, and adequate access to judicial and administrative proceedings.
m) Sovereignty over natural resources and responsibility not to course damage to the environment of other states or areas beyond national jurisdiction (State sovereignty over natural resources and protection of the State from liability for damage to the environment resulting from activities outside the state's territory).

Law enforcement or law enforcement, according to experts, Satjipto Raharjo explains that law enforcement is a process to realize the wishes of the law into reality. In line with his thoughts, Soerjono Soekanto stated that the essence of law enforcement lies in the desire to harmonize the relationship of values that are spelled out in stable and embodied rules and actions as a series of final value explanations to create, maintain and maintain peaceful living relationships. To achieve the condition of preserving the ability of a good and healthy environment requires the knowledge of law enforcement officials and the compliance of citizens with applicable regulations, as for the law, namely administrative, criminal, and civil law. According to Siti Sundari Rangkuti, environmental law enforcement is an effort to achieve compliance with regulations and requirements in general and individual legal provisions through supervision and application (or threat) of administrative, criminal, and civil means.

Siti Sundari Rangkuti states that environmental law enforcement can be carried out preventively and repressively, according to its nature and effectiveness, as for preventive and repressive ecological law enforcement, namely: Preventive law enforcement means that active supervision is carried out in compliance with regulations without direct events concerning concrete events that give rise to the suspicion that legal regulations have been violated. Preventive law enforcement instruments are counseling, monitoring, and using supervisory authority (sampling, stopping machines, and so on). Thus, government officials/agents authorized to grant permits and prevent environmental pollution are the primary law enforcers. Repressive law enforcement is carried out in the event of acts that violate regulations and aims to end prohibited acts directly.

The reliance on the application of criminal law is based on the condition that the administrative sanctions that have been imposed are not complied with or the violation is committed more than once. The punishment is not equal to or lighter than the maximum criminal limit stipulated in the Criminal Code, and especially in Article 97 to Article 115 of the 2009 UUPPLH, it is still possible or allowed for a lighter punishment. This confuses the enforcement of environmental criminal law, especially in the judge's decision to deter the perpetrator (deterrence effect). Environmental law enforcement in Indonesia includes structuring and enforcement (compliance and enforcement).18 Environmental law enforcement in a broad sense, which includes preventive and repressive. The definition of preventive is the same as compliance, including negotiation, supervision, lighting, and advice). In contrast, repressive includes investigation, investigation up to the application of administrative and criminal sanctions.

Environmental or criminal offenses are contained in various laws and regulations other than the UUPLH and the Criminal Code. Therefore, the accuracy of law enforcers, especially investigators, public prosecutors, and judges, is needed in finding laws and regulations relating to environmental crimes in various rules and regulations. In other words, which laws and regulations will be used, depending on what resources the environmental crime is committed. Environmental protection and management is the application of ecological principles in human activities towards and or with environmental dimensions.

In the context of environmental law enforcement, it is carried out in stages: administration, civil, and criminal. Although in PP P3LH, there are some differences in principle in law enforcement, in the l context, it still uses illegal instruments as in environmental enforcement cases. This is included in PP P3LH in Article 533, which states, “When this Government Regulation comes into force, all laws and regulations governing supervision and administrative sanctions are adjusted to the provisions in this Government Regulation." So, it can be concluded that only the regulation of supervision and administrative sanctions follows the PP P3LH, so the PPLH Law is still used as an environmental criminal sanction against environmental-based business activities or activities when abused.

Application of the Principle of Public Interest through the Principles of Environmental Law

In Environmental Law, some principles or principles must be obeyed by all stakeholders in carrying out activities related to the environment. For the Government, these principles are used as guidelines in making policies, decisions,

or actions related to or affecting the environment that can harm the public interest. For people who run businesses and/or activities, these principles are used so that their businesses and/or activities do not cause environmental damage and/or pollution. For judges, this principle is used as a guideline in resolving criminal cases or environmental disputes to provide justice for the community and the environment. For the principle of public interest to be realized, ecological law enforcement must prioritize four principles that are considered to avoid public interest violations, including the polluter pays principle, the principle of liability based on fault, the principle of strict liability, and the precautionary principle.

Polluter Pays Principle

According to The Organization for Economic Cooperation and Development (OECD), the polluter pays principle obliges polluters to bear the costs required in the framework of efforts taken by public officials to maintain environmental conditions in an acceptable condition; or in other words, the expenses needed to carry out these efforts must be reflected in the price of goods and services that have caused pollution during the production or consumption process. The principles applied by the OECD are covered by seven policies, including:

a) Direct control;
b) Taxation;
c) Payment;
d) Subsidies;
e) Various intensive policies such as tax benefits, credit facilities, and accelerated debt amortization or repayment;
f) Auction of pollution rights;
g) Levies.

According to the OECD, pollution control efforts involve alternative costs of implementing anti-pollution policies, measuring and monitoring management, research costs, technological development of pollution management units, and maintenance of unit installations. The primary purpose of this principle is to internalize environmental costs. As one of the cornerstones of environmental policy, this principle implies that the polluter shall be responsible for eliminating or eliminating pollution. He is obliged to pay the costs of eliminating it.

Under the principle of liability based on fault, liability will never be born without fault, so fault is the only factor that gives birth to responsibility. This principle of liability based on fault has been implemented in national laws in

various countries. In Article 1365 of the Civil Code (KUHPt), the elements that must be met in liability based on fault lawsuit are:

a. there is an unlawful act on the part of the defendant;
b. the act can be blamed on him, and
c. the plaintiff suffers a loss due to the fault; and the fault.

Regarding proof of liability based on fault, a critical point in the principle of liability based on fault is the burden of proof. As a general rule, the principle of liability based on fault stipulates that the plaintiff is obliged to prove that the defendant has committed an unlawful act, has achieved a fault, and as a result of the fault, has caused damage to the plaintiff. The principle of liability based on fault stipulates that the plaintiff is obliged to prove that the defendant has committed an unlawful act, has achieved a mistake, and his error has caused damage to the plaintiff.

Theory of Strict Liability

The theory of strict liability is the responsibility of people who carry out a type of activity that is categorized as abnormally dangerous. So, he is obliged to bear all the losses caused, even though he has acted carefully to prevent the danger or loss, even though it was done without intent.

According to E. Suherman, Strict liability is equated with absolute liability; in this principle, there is no possibility of exempting oneself from responsibility unless the loss arises due to the injured party's fault. According to L.B. Curzon, this principle is needed about:

- The importance of guarantees to comply with specific essential regulations necessary for the welfare of society.
- Proof of guilt is tough to obtain for violations of regulations related to public welfare. rules relating to the general interest.
- The high degree of social danger arising from the conduct of the act.

Participation between Government and Community in Environmental Law Enforcement

Contribution to Environmental Law Enforcement

Implementing Environmental Protection and Management is vital in building life and obtaining a suitable environment for humans and other living things. It is stated that one of the objectives of the Unitary State of the Republic of Indonesia (NKRI) is to promote general welfare in the life of the nation as mandated in the 1945 Constitution of the Republic of Indonesia Article 33 paragraph (3), which

states that: "The earth, water and natural resources contained therein are used for the greatest prosperity of the people". So, it is necessary to use resources wisely so that they can be used for current and future generations.

As a developing country, Indonesia is currently developing in all fields, and development here is an effort by the Indonesian people to improve their living standards by utilizing all their (Bayuseto, 2023). However, climate change endangers Indonesia's sustainable development by increasing the frequency and severity of hazards, including cyclones, floods, and other natural disasters. Environmental stewardship and sustainable growth are central to MCC's mission in places like Indonesia, and MCC's mandate is to reduce poverty.

Indonesia's economic planning follows a 20-year development plan from 2005 to 2025, segmented into 5-year medium-term development plans called the RPJMN (Rencana Pembangunan Jangka Menengah Nasional), each with different development priorities. Indonesia announced its goal of integrating low-carbon, green growth into its national development strategy in 2017, and to support this effort, WRI led a research consortium to explore the potential of low-carbon development, resulting in the central positioning of green growth in Indonesia's national development plan for 2020-2024. The green sukuk in Indonesia is an excellent example of the pioneering role of governments in leveraging private finance for green and sustainable development. One of Indonesia's development priorities is promoting an inclusive economic system through sustainable investment, innovative financing, sustainable tourism, MSME support, and digital technology.

The issuance of laws on the environment has an essential meaning that the Indonesian government has seen and placed the environment as one of the critical factors that support the implementation of development in Indonesia, so environmental problems must receive extra attention from all components of Indonesian society, mainly due to the increased growth of companies. The presence of companies in reality does not only provide benefits but also causes problems, especially those related to pollution due to the industrial waste they produce.

To regulate this matter, the government has issued Law No. 32 of 2009 concerning Environmental Protection and Management (PPLH Law), which governs the responsibilities of the central government, local governments, and the responsibilities of business actors (companies) in environmental management, especially in law enforcement. 25 The Ministry of Environment coordinates the Protection and Management of the Environment in the central government, which

then delegates its affairs to local governments as organizers of local government affairs as the implementation of regional autonomy. Through the PPLH Law, the government gives comprehensive authority to local governments in environmental protection and management in their regions that are not regulated in the PPLH Law. The government must establish environmental policies, conduct supervision, and conduct law enforcement. Meanwhile, business actors must fulfill the provisions of environmental legislation as stipulated in Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law).

Provincial and district/city governments have the authority to manage the environment within the limits set by the PPLH Law Article 63, paragraph (2) and paragraph (3). One of the duties and authorities of the provincial and district/city governments is to provide guidance and supervise the compliance of those responsible for businesses and/or activities with the provisions of environmental licensing and laws and regulations in environmental protection and management. The implementation of guidance and supervision in provincial and district/city governments is carried out by local government officials by the PPLH Law Article 71 paragraph (1), which states that: "The Minister, Governor, Regent/Mayor by their authority shall supervise the compliance of the person in charge of business and/or activities with the provisions stipulated in the laws and regulations in the field of environmental protection and management". For this reason, strengthening efficient and effective environmental monitoring systems and tools is a must. The role and authority of local governments in environmental management is also expressly stated in Article 13 and Article 14 of Law Number 23 Year 2014, mainly due to the increased growth of companies. The presence of companies in reality does not only provide benefits but also causes problems, especially those related to pollution due to the industrial waste they produce.

Linkages between the Right to the Environment and Community Participation

Community participation in environmental management is closely related to the right to the environment. The Constitution of the Republic of Indonesia in 1945 protected the right to a good and healthy environment. After the amendment, the provision is formulated in Article 28H paragraph (1): "Every person has the right to live in physical and spiritual prosperity, to have a place to live and to have a good and healthy environment and to receive health services".

Koesnadi Hardjasoemantri stated that the right to the environment is a subjective right owned by every person. The realization of the right to a good and healthy environment is an effort to realize the fulfillment of other human rights,

especially the right to life, the right to a decent standard of living, the right to health, and other rights whose fulfillment is closely related to good and healthy environmental conditions. Siti Sundari Rangkuti also stated that the juridical interpretation of the right to a good and healthy environment must be realized through the establishment of various legal channels as an effort to protect the law for the community in the environmental field. These forms of protection include the right to take part in administrative law procedures, such as the right to participate (in prank, public hearing) or the right to appeal (beroep) against administrative determinations (state administration).

Internationally, community participation in environmental decision-making has also been recognized as one of the main principles of environmental governance in the 1992 Rio Declaration. Principle 10 of the Rio Declaration states that environmental issues are best addressed with the participation of all concerned citizens at the relevant level. The Rio Declaration also stipulates that states must ensure each individual has appropriate access to information regarding the environment held by public authorities, including information on hazardous substances and activities in their communities and the opportunity to participate in decision-making processes. In addition, the state should facilitate and encourage public awareness and participation by making information readily available.

In the historical context, the Right to the Environment is classified as a Third Generation Human Right. The right to the environment is not a stand-alone right, but there are derivative rights that will determine the extent to which the quality of the right to the environment can be fulfilled. Two aspects make up the right to the environment: procedural and substantive. Substantive aspects are the right to life, a decent standard of living and health, and the right to intra- and inter-generational justice. Meanwhile, procedural rights are supporting elements to fulfill substantive rights, namely the right to information, the right to participate in decision-making, and the right to access justice.

Currently, procedural rights to fulfill the request to the environment have been regulated in the Aarhus Convention (Convention Access to Information, Participation and Decision Making and Access to Justice in Environmental Matters). Article 1 of the Aarhus Convention states: "To contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters by the provisions of this Convention." The

provisions of Article 1 of the Aarhus Convention explicitly ask the state to guarantee the fulfillment of the right to access to information, public participation in decision-making, and access to justice in environmental matters as a form of completion of the right to the environment by the state.

CONCLUSION

In the context of environmental law enforcement, it is carried out in stages: administration, civil, and criminal. For the principle of public interest to be realized, ecological law enforcement must prioritize four principles that are considered to be able to avoid several violations of the public interest, including the polluter pays principle, the principle of liability based on fault, the focus of strict liability, and the precautionary principle.

The importance of the principle of public interest in environmental law enforcement must be prioritized; this principle is applied so that businesses and activities do not cause damage and pollution of the environment and maintain the background so that it can be used sustainably and as a guide in resolving environmental disputes to provide justice for the community and the environment. Encourage companies to implement environmentally responsible business practices and minimize their adverse impacts, and also maintain a balance between environmental interests with economic and social interests and pay attention to other aspects such as the economic and social interests of the community.

Suggestion

In enforcing Environmental Law, it is necessary to have a principle that can maintain the rights of everyone in terms of enjoying, utilizing, and using the environment as well as possible, these rights need to be fulfilled because humans have the right to feel peace and security in living life in their environment. In addition, it is a shared responsibility to protect the environment from damage by irresponsible parties. For this reason, applying the principle of public interest must be the main focus in environmental law enforcement; one way is by increasing the role of law enforcers and the community to continue to contribute with their participation in environmental law enforcement in Indonesia. Contributions between the government and the community and companies that manage the environment so that the environment can be used sustainably and no violations can harm any party.

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