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Precautionary principle in settlement of environmental disputes in Indonesia

Cita Yustisia Serfiyani, Ari Purwadi
Department of Law, Universitas Wijaya Kusuma Surabaya, Indonesia

Abstract
Legal protection for the community from the deteriorating quality of the environment in Indonesia has been guaranteed by Act Number 32 of 2009 on The Protection and Management of Environment. However, in practice, environmental disputes still occur due to pollution and/or environmental destruction when victims who feel harmed either intentionally or unintentionally use their right to sue, either through a class action lawsuit, an environmental organization's right to sue, or the government's right to sue. Settlement of lawsuits for environmental cases can be done through the courts or outside the courts. Dispute resolution through the courts refers to the approach of 3 (three) types of instruments, namely administrative law, civil law and criminal law. This study discusses the resolution of environmental disputes based on a responsive legal perspective including the precautionary principle in examining the community's right to sue and the government's right to sue as the plaintiff in representing the interests of the community through a study of the implementation of environmental cases that have occurred in Indonesia.

Keywords: Precautionary principle, environmental law, class action

Introduction

Environmental problems can cause dangers that have a wide impact on the condition of the world's ecosystem globally (Sage, 2019). The development in the agricultural sector, for example, was now difficult to separate from the impact of pollution due to artificial fertilizers and pest control insecticides and sophisticated innovations in the field of plant varieties which can endanger the ecosystem (Nayana, Ritu, 2017) [8].

Environmental pollution that develops into an environmental dispute through litigation settlement can be carried out through class action lawsuits, environmental organization lawsuit rights, or government lawsuit rights (Fauser, Utz, 2021) [3]. Although, in the resolution of environmental disputes in the past, the right to sue was still often an obstacle for an individual or group of people or environmental organizations to sue in court due to the judge's doubts about the plaintiff's qualifications (Menkel-Meadow, 2020).

Environmental organizations have the right to file lawsuits for the sake of preserving environmental functions. For example, in the case of WALHI vs Newmont pollution in Buyat Bay in 2012 (Nuraida, 2012) [5], the case of WALHI vs PT Semen Indonesia pollution in 2016, WALHI vs the Minister of Energy and Mineral Resources in 2018 and the case of allegations of ecological disaster PT IMIP in 2023. The role of NGOs in enforcing environmental criminal law has in fact been widely practiced in the courts, for example, environmental NGOs such as WALHI have actively submitted written amicus curiae to the courts in several environmental criminal cases and SLAPP (Strategic Lawsuit Against Public Participation) cases as regulated in Article 66 of The Protection and Management of Environment.

The form of environmental NGO participation also includes several stages in criminal law enforcement, namely becoming a third party with an interest in pre-trial, as a reporter and witness to environmental crimes. Environmental organizations have legal standing to participate in environmental law enforcement by providing assistance to the community and the environment inside and outside the court.

The threat of very serious environmental damage but not accompanied by the certainty of scientific evidence is a condition where the precautionary principle can be applied to the consideration of the Judge's Decision. The precautionary principle, for example, was once applied in the settlement of an environmental dispute between the Ministry of Environment and Forestry and PT Merbabu Pelalawan Lestari where there was a condition where the evidence, witnesses and experts submitted by each party showed contradictory differences, resulting in a difference of opinion (dissenting opinion) between the Panel of Judges at the cassation level legal efforts with the first level and other special appeals.

The precautionary principle in resolving environmental disputes is an approach used to address the risk of environmental damage before there is conclusive and definite scientific evidence (Hsiang *et al*, 2019). This principle has been adapted by Indonesia through the ratification of 2 (two) conventions, namely the Ratification of the Rio de Jeneiro Conference which contains the precautionary principle through Act Number 5 of 1995 on The Ratification of The United Nations Conventions on Biological Diversity and Act Number 6 of 1996 on The Ratification of The United Nations Framework Convention on Climate Change.

The precautionary principle emphasizes preventive measures to prevent a decline in the quality of the environment and ecosystem due to acts of destruction and pollution, whether intentional or unintentional, as has been adopted in various policies after the 1992 Rio Declaration (Akyuz, 2021) [2]. Through this principle, every business that has an impact on the environment is required to first prove the impact of its business activities on the allegations of environmental pollution and destruction by the plaintiff. Although in practice there is still a gap in the meaning of the precautionary principle between before and after the Constitutional Court Decision Number 18/PUU-XII/2014.

Before the issuance of the Constitutional Court's decision, the precautionary principle was interpreted as a principle that requires scientific evidence first. However, after the a quo Constitutional Court Decision, this scientific evidence is no longer absolutely necessary because every business actor who is currently extending a waste management permit is considered to have a permit and is therefore responsible for all management of the business activities concerned even though the written permit has not been issued.

The problem studied in this research is how to prove the elements of error (schuld) and the elements of the causal relationship between error and loss in environmental disputes based on a responsive legal perspective so that the precautionary principle can be applied to the resolution of environmental disputes in Indonesia. The research method approach was based on normative legal research methods with statute approach and conceptual approach methods. The purpose of this study was to analyze the right to sue in environmental disputes from the perspective of responsive legal thinking and to analyze the precautionary principle in environmental disputes from responsive legal thinking as a guideline for judges in deciding environmental cases is actually a bias towards the community.

Method

This study uses normative legal research methods with a statutory approach and a conceptual approach. The statutory approach focuses on studying the Rio Declaration of 1992, Law Number 32 of 2009 concerning Environmental Protection and Management including Law Number 32 of 1997 and related court decisions, while the conceptual approach studies the principles, theories and legal doctrines related to environmental dispute resolution, especially the precautionary principle and responsive legal theory.

Discussion

A. Responsive legal perspective on environmental dispute resolution through class action lawsuits

Act Number 32 of 2009 on Environmental Protection and Management has provided a very strong legal basis for protecting the community from poor environmental quality and including environmental disputes. However, the emergence of environmental pollution and/or destruction often develops into environmental disputes when one of the parties suffering or victims feels disadvantaged by environmental pollution and/or destruction, either intentionally or unintentionally. Settlement of environmental cases can be done through the courts or outside the courts. Settlement of disputes through the courts refers to the approach of 3 (three) types of instruments, namely administrative law, civil law and criminal law. Settlement of environmental disputes in court includes class action lawsuits, environmental organization lawsuits, or government lawsuits.

Legal standing in environmental cases refers to the right to sue or legal standing to sue in relation to environmental issues. This legal standing applies in the context of environmental protection in Indonesia. Legal standing in the context of environmental protection provides rights to various parties, including individual rights to sue in Article 84 paragraph (1) of The Act Number 32 of 2009, community rights to sue in the form of class actions in Article 91 of The Act Number 32 of 2009, government rights to sue in Article 90 of The Act Number 32 of 2009, rights to sue environmental organizations or Non-Governmental Organizations (NGOs) in Article 92 of The Act Number 32 of 2009, and administrative rights to sue in Article 93 of The Act Number 32 of 2009.

B. The implementation of the precautionary principle in environmental disputes in indonesia

The precautionary principle is an approach used to address the risk of environmental damage before there is conclusive and certain scientific evidence. This principle recognizes that scientific uncertainty should not be used as a reason to delay preventive action in protecting the environment. The precautionary principle emphasizes how to take precautions so that there is no decline in the quality of the environment due to pollution. The precautionary principle is basically an idea that is a response to conventional environmental policies that assume that efforts to prevent or overcome environmental damage can only be carried out if the risk of an activity that has an environmental impact has actually occurred. The absence of conclusive and definite scientific findings or evidence cannot be used as a reason to delay efforts to prevent environmental damage. Strictly speaking, this principle means that every business that has an impact on the environment must first scientifically prove the impact of its business activities on the environment, as well as how to overcome it.

The precautionary principle has become an important principle since it was adopted in various policies after the 1992 Rio Declaration produced at the United Nations Conference on Environment and Development (UNCED) which stated that caution needs to be continuously applied by the state in the policy-making process. In judicial practice, the use of the precautionary principle in the consideration of judges' decisions has been carried out even before the UUPPLH, namely in the Mandalawangi case with the Supreme Court Decision No. 1794 K/Pdt/2004. The floods and landslides in Mandalawangi at that time were caused by topographic conditions, environmental damage/pollution, land use that was not in accordance with its function and designation as a protected forest area, forest fires and above-normal rainfall continuously for seven days, due to incorrectly procedural protected forest utilization activities by Perum Perhutani as the area manager. At that time, Mandalawangi's status was still a protected forest but then its status was changed to a limited production forest based on The Decree of the Minister of Forestry Number 419/KPTS/II/1999.

The judge at the cassation level in the Supreme Court Decision No. 1794 K/Pdt/2004 gave a bold consideration that went beyond the statutory regulations carried out through facts in the field by expanding the concept of strict liability without basing it on Article 35 of the 1997 UUPLH by classifying protected forest management as a hazardous activity (extra hazardous) or unusual (non-natural use) because the UUPLH at that time had not adopted the precautionary principle so that the judge acted progressively by assuming that violations of the precautionary principle should indeed give rise to absolute responsibility for the defendants without depending on whether or not there is evidence from the defendants.

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Furthermore, in the case of pollution of the Surabaya River, the Supreme Court Decision Number 1479 K/Pid/1989 defines that evidence is considered valid if the process of taking it is carried out in the context of pro yustisia with the procedural procedures that have been stipulated in the Criminal Procedure Code (KUHAP) (Mangkunegara, 2024) [6].likewise in 2021, PT Chevron Pacific Indonesia (CPI) SKK Migas, the Ministry of Environment and Forestry (KLHK), and the Riau Province Environment and Forestry Service were sued at the Pekanbaru District Court (PN) for alleged environmental pollution from 297 locations in four districts/cities in Riau Province. In lawsuit number 150/Pdt.G/LH/2021/PN. pbr by the plaintiff, the Indonesian Forest Destruction Prevention Agency (LPPHI), the defendants were said to have dumped hazardous and toxic waste (B3) in the form of oil-contaminated soil (TTM) from the Rokan Block to the Sultan Syarif Hasyim Grand Forest Park conservation area to the fields and gardens owned by residents.

Conclusion and recommendation

Conclusion

The implementation and regulation of the precautionary principle is a bias towards the community so that the Judge is positioned as a rechtsvinding to realize justice and prioritize the welfare and happiness of the community which must be applied from the early stages of the environmental dispute resolution process, both through litigation and non-litigation.

Recommendation

The precautionary principle needs to be continuously applied by the state in the policy-making process because environmental destruction activities that have the potential to cause serious and difficult-to-recover impacts are what must be prevented so that they do not become a reason to delay the dispute resolution process.

References

1. Carrie Menkel Meadow. “What is an Appropriate Measure of Litigation? Quantification, Qualification and Differentiation of Dispute Resolution”, Onati Socio-Legal Series, 2021, 11(2).
2. Emrah Akyuz. “The Development of Environmental Human Rights”, International Journal of Environment and Geoinformatics, 2021, 8(2).
3. Fauser Utz. “Risk Mitigation of Corporate Social Performance in US Class Action Lawsuits”, Financial Analysts Journal, 2021, 77(2).
4. hsiang. The Distribution on Environmental Damages”, Review of Environmental Economics and Policy, 13, 1.
5. Ida Nuraida. “The Practice of CSR of PT Newmont Minahasa, South East Minahasa, North Sulawesi, Indonesia”, Bina Ekonomi, 2012.
6. RM Armaya Mangkunegara. “Juridical Analysis of Forestry Criminal Law Enforcement by Corporations in Environmental Fiqh Framework, 2024, 24(1).
7. Rowan F Sage. “Global Change Biology: A Primer”, 25 Years edition of Global Change Biology, 2020, 26(1).
8. Sharma Nayana, Singhvi Ritu. “Effects of Chemical Fertilizers and Pesticides of Human Health and Environment: A Review”, International Journal of Agriculture, Environment and Biotechnology, 2017, 10(6).