IMPLEMENTATION OF THE COMPOSITION OF JUDGES IN FORESTRY CRIMINAL CASE SETTLEMENT BASED ON REGULATIONS LEGISLATION

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Abstract
Article 53 paragraph 1 has not been realized yet, the entry into force of Law Number 18 of 2013, because in the author's opinion that the government is not firm in dealing with forest destruction has not been implemented properly. After the enactment of this Law, the Chief Justice of the Supreme Court of the Republic of Indonesia must nominate candidates for ad hoc judges who are appointed through a Presidential Decree to examine cases of forest destruction. As for the formulation of the problem in this research is how the implementation of the composition of judges in the settlement of forest criminal cases based on the legislation, how the legal consequences in the implementation of the composition of judges in the settlement of forest criminal cases based on the legislation. The method used is normative legal research. Data sources consist of primary legal materials, secondary legal materials, and tertiary legal materials. In this study the data were analyzed qualitatively and in drawing conclusions the authors applied the method of deductive thinking. Based on the results of the research, it is known that the implementation of the composition of judges in the settlement of forest criminal cases based on the legislation that the existence of the composition of judges based on the legislation against the perpetrators in the law is recognized in practice.

Keywords: Judge, Forest, Ad Hoc

INTRODUCTION

The act of burning land as mentioned in Article 108, refers to Article 69 paragraph (1) letter h. The act of burning land in Article 69 paragraph (1) letter h is one of the forms of prohibition given by law. This means that land burning according to Law Number 32 of 2009 is classified as a violation. Based on Article 108 of Law Number 32 of 2009, criminal sanctions against any person, both individuals and corporations who burn land intentionally to clear land, are in the form of imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a minimum fine of Rp. 3,000,000,000.00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah).

One of them is the provision in Article 36 letter d of Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction (hereinafter referred to as the Forestry Law) which states that judges have the authority to "determine a person as a suspect and put him on a wanted list".

Article 22 AB (Algemene Bepalingen Van Wetgeving voor Indonesie) reads "If a judge refuses to settle a case on the grounds that the relevant legislation does not mention it, is unclear, or is incomplete, he can be prosecuted for refusing to try".

Article 16 of Law Number 4 of 2004 concerning Judicial Power reads "The court may not refuse to examine, try, and decide on a case that is submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and try it".

In response to this, in 2011, the Supreme Court issued a regulation on the certification of environmental judges. The certification of environmental judges is actually given in order to increase the effectiveness of handling environmental cases in the realm of litigation. This is part of an effort to protect the environment as well as to fulfill a sense of community justice as well as ecological justice whose rights are increasingly neglected in the midst of modern industrialization and globalization. The Supreme Court Decree Number 134/KMA/SK/IX/2011 requires environmental cases to be handled by judges who are environmentally certified. Coupled with the presence of Law Number 18 of 2013 Article 53 paragraph 1 which reads that the examination of forest destruction cases in the district court, carried out by a panel of judges totaling 3 (three) people consisting of one career judge and two ad hoc judges. Supposedly with the presence of this policy, environmental cases can be resolved in the realm of litigation properly. But in fact not. Many environmental case decisions are resolved by environmentally certified judges, in which they still do not reflect ecocentric values that should be adopted more in the content of decisions as part of critical judges' considerations. Another issue that is no less important is that since the enactment of Law Number 18 of 2013, ad hoc judges referred to in Article 53 paragraph 1 have never existed. environmental cases can be resolved in the realm of litigation properly. But in fact not. Many environmental case decisions are resolved by environmentally certified judges, in which they still do not reflect ecocentric values that should be adopted more in the content of decisions as part of critical judges' considerations. Another issue that is no less important is that since the enactment of Law Number 18 of 2013, ad hoc judges referred to in Article 53 paragraph 1 have never existed. environmental cases can be

resolved in the realm of litigation properly. But in fact not. Many environmental case decisions are resolved by environmentally certified judges, in which they still do not reflect ecocentric values that should be adopted more in the content of decisions as part of critical judges' considerations. Another issue that is no less important is that since the enactment of Law Number 18 of 2013, ad hoc judges referred to in Article 53 paragraph 1 have never existed.

Article 53 paragraph 1 has not been realized yet, the entry into force of Law Number 18 of 2013, because in the author's opinion that the government is not firm in dealing with forest destruction has not been implemented properly. After the enactment of this Law, the Chief Justice of the Supreme Court of the Republic of Indonesia must nominate candidates for ad hoc judges who are appointed by Presidential Decree to examine cases of forest destruction.

The authority of the Ad Hoc Judge itself has been shown in the Laws and Regulations, namely having the obligation to exercise Judicial Power as part of the Supreme Court. The difference between judges and ad hoc judges is in the area of the judiciary that decides the case. Career judges cover all courts under the Supreme Court while ad hoc judges are only special courts according to the laws and regulations governing ad hoc judges.

In fact, with the presence of environmentally certified judges' policies, they should open up greater space for legal discovery and access to justice with a progressive legal approach so that they can produce decisions that are not only oriented to community justice but also to ecological justice. The ecological approach has a transcendental nuance so that it makes judges think apart from being horizontal but also vertically upwards before deciding cases related to the environment. Environmental understanding from judges who have been fostered and given environmental certification is not accompanied by the simultaneous fertilization of divine and ecological values in deciding environmental cases. So that the settlement of environmental disputes is not optimal.

And so far the existence of the composition of judges against perpetrators in the law is recognized in practice it turns out that in practice there has never been a case of environmental pollution that punishes corporations or perpetrators, for example in the case of forest fires in Pekanbaru carried out by several existing companies and until now, criminal liability by corporation or the perpetrator as a person (corporate criminal liability) is a matter that still invites debate. Many parties do not support the view that a pseudo-corporation can commit a crime and have a criminal intent that gives rise to criminal liability. In addition, it is impossible to be able to present in the corporation with the actual physical in the courtroom and sit on the defendant's chair to undergo the judicial process. Forest and Land Burning, criminal acts committed by corporations or perpetrators of environmental pollution are very difficult to identify. Although it is known, to prove it in court is still facing legal problems, because of the difficulty in finding evidence.

RESEARCH METHODS

This research can be classified as normative legal research or library research method, namely legal research conducted by reviewing and researching library materials in the form of primary

legal materials and secondary legal materials.[1] Judging from the type, this research can be classified into normative legal research or library research methods, namely legal research carried out by reviewing and researching library materials in the form of primary legal materials and secondary legal materials. [2]The data source comes from secondary data. Secondary data in this type of research is divided into three types of data, namely primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials, secondary legal materials and tertiary legal materials[3] such as the Big Indonesian Dictionary, the Legal Dictionary and articles that can help with this research.

Collecting data using documentary studies/library studies. In certain circumstances, non-structured interview techniques can be used which serve only as a support, not as a tool to obtain primary data. The data were analyzed descriptively qualitatively, this analysis technique does not use statistical figures, but rather an explanation in the form of sentences that are presented in a straightforward manner. The data that has been analyzed and described is then concluded by using a deductive method, namely concluding from a general statement into a specific statement.

RESULT AND DISCUSSION

A. Implementation of the Composition of Judges in the Settlement of Forestry Criminal Cases Based on Laws and Regulations

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia on environmental management and sustainable development in Indonesia. In fact, based on the provisions of the amendment, basically the constitutional basis for environmental management and utilization of natural resources is no longer single, which is solely based on Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, but is bound by the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Article 28H paragraph (1) and Article 33 paragraph (4) of the 1945 Constitution.[4]

The government in carrying out its environmental management obligations as mandated by Law Number 23 of 1997 concerning Environmental Management is authorized to;

1. Regulate and develop policies in the context of environmental management.
2. Regulate the provision, designation, use, environmental management and reuse of genetic resources.

[1]Soerjono Soekanto and Sri Mamudji, Normative Legal Research A Brief Action, (Jakarta: Raja Grafindo, 2007), p. 13-14
[2]Soerjono Soekanto and Sri Mamudji, Normative Legal Research A Brief Action, (Jakarta: Raja Grafindo, 2007), p. 13-14
[3]Soerjono Soekanto and Sri Mamudji, Normative Legal Research A Brief Action, (Jakarta: Raja Grafindo, 2007), p. 13-14
[4]Soerjono Soekanto and Sri Mamudji, Normative Legal Research A Brief Action, (Jakarta: Raja Grafindo, 2007), p. 13-14

3. Regulate legal actions and relationships between people and/or other legal subjects as well as legal actions against natural resources and artificial resources, including genetic resources.
4. Controlling activities that have a social impact. Develop funding for efforts to preserve environmental functions in accordance with applicable laws and regulations.

Articles of environmental crimes outside the Criminal Code and Law Number 23 of 1997 include Law Number 11 of 1974 concerning Waters, Law Number 5 of 1983 concerning EEZ, Law Number 9 of 1985 concerning Fisheries, Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and Ecosystems, Law Number 41 of 1999 concerning Forestry[5]. In Law Number 41 of 1999 Article 50 paragraph I it is stated that everyone is prohibited from destroying forest protection infrastructure and facilities. Paragraph 2 states that every person who is granted a business permit for the use of an area shall enforce activities that cause forest damage.[6]

From the article above, it can provide a juridical explanation and affirmation, namely the prohibition of illegal logging. In addition, in chapter XIV the criminal provisions for violating Article 50 paragraph 1 and paragraph 2 are threatened with imprisonment for 10 years and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah)[7]

The number of companies that pollute the environment further worsens the level of public health. For this reason, it is necessary to strengthen the power of the community to solve environmental problems that require people to be aware, willing to care about environmental pollution that occurs around them which has harmed the community. There is a desire from the unity of all communities affected by pollution as an important capital to fight against industrial activities that pollute the environment. Strengthening the power of community autonomy to unite voices is very important in solving environmental problems. If within the community itself there is no compatibility and unanimous unity from all levels of society, it will experience difficulties in achieving success.

Forest and land fires usually occur during the dry season. This situation occurs as a result of land clearing and burning activities carried out by burning by the community or businessmen, to open new land for plantations for HTI (Industrial Plantation Forests), and oil palm plantations. The act of burning forest and land has caused direct or indirect changes to their physical or biological properties which have resulted in the environment not functioning as usual in supporting sustainable development.

Environmental damage is a direct and/or indirect change to the physical, chemical, and/or biological properties of the environment that exceeds the standard criteria for environmental

[5]Soerjono Soekanto and Sri Mamudji, Normative Legal Research A Brief Action, (Jakarta: Raja Grafindo, 2007), p. 13-14

[6]Soerjono Soekanto and Sri Mamudji, Normative Legal Research A Brief Action, (Jakarta: Raja Grafindo, 2007), p. 13-14

[7]Soerjono Soekanto and Sri Mamudji, Normative Legal Research A Brief Action, (Jakarta: Raja Grafindo, 2007), p. 13-14

damage. Forest fires or land fires can also cause environmental pollution and environmental damage so that they can be subject to sanctions under the PPLH Law.

Law Number 32 of 2009 concerning Environmental Protection and Management also regulates land burning. The crime of land burning is an environmental destruction that aims to clear land by burning land as contained in Article 69 paragraph (1) letter h. The sanctions are contained in Article 108 of Law Number 32 of 2009 concerning Environmental Protection and Management which reads:[8]

> "Everyone who burns land as referred to in Article 69 paragraph (1) letter h, shall be sentenced to a minimum imprisonment of 3 (three) years and a maximum of 10 (ten) years and a minimum fine of Rp. 3,000,000,000.00 (three billion rupiah) and a maximum of 10,000,000,000.00 (ten billion rupiah)."[9]

The elements contained in Article 108 of Law Number 32 of 2009 concerning Environmental Protection and Management indicate that the legal subject is burning the land. said every person in Article 108 of Law Number 32 of 2009, based on Article 1 number 32 of Law Number 32 of 2009 is an individual or a business entity in the form of a legal entity or not a legal entity.

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Based on Article 108 of Law Number 32 of 2009, criminal sanctions against any person, both individuals and corporations who burn land intentionally to clear land, are in the form of imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a minimum fine of Rp. 3,000,000,000.00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah).

Article 187 of the Criminal Code states that anyone who intentionally causes an explosion, fire or flood is threatened with a maximum imprisonment of 12 years if the act creates a danger to the public and to goods (paragraph 1). In paragraph (2), the maximum penalty is 15 years in prison if the act endangers the lives of others. Paragraph 3 with imprisonment for life or for a certain period of not more than 20 years, if the act causes danger to the lives of others and results in death. Meanwhile, Article 188 of the Criminal Code states that any person who by mistake (omission) causes a fire, explosion or flood, is threatened with a maximum imprisonment of five years or a maximum imprisonment of one year or a maximum fine of four thousand five hundred rupiahs, if because of this act arises general hazard to goods,

Based on the information from the Head of the Riau Regional Police that the perpetrators of land and forest burning are threatened with multiple layers of articles based on:

a. Law Number 41 of 1999 concerning Forestry Article 50 letter D "Everyone is prohibited from burning forests"

[8]Soerjono Soekanto and Sri Mamudji, Normative Legal Research A Brief Action, (Jakarta: Raja Grafindo, 2007), p. 13-14

[9]Ibid., p. 92.

1) Article 78 paragraph (3), the threat of imprisonment for a maximum of 15 years and a fine of a maximum of 5 billion Rupiah.
2) Article 78 paragraph (4), the threat of imprisonment for a maximum of 5 years and a fine of a maximum of 1.5 billion Rupiah.

b. Law Number 18 of 2004 concerning Plantations Article 48 paragraph (1) is sentenced to 10 years and a fine of 10 billion.
c. Law Number 32 of 2009 concerning Environmental Protection and Management Article 108 is sentenced to 3 years to 10 years and a fine of 3 billion to 10 billion.
d. Law Number 18 of 2013 concerning Forest Destruction Article 92 paragraph (2) against corporations is sentenced to 8 years to 20 years and a fine of 20 billion to 50 billion.

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In response to this, in 2011, the Supreme Court issued a regulation on the certification of environmental judges. The certification of environmental judges is actually given in order to increase the effectiveness of handling environmental cases in the realm of litigation. This is part of an effort to protect the environment as well as to fulfill a sense of community justice as well as ecological justice whose rights are increasingly neglected in the midst of modern industrialization and globalization. The Supreme Court Decree Number 134/KMA/SK/IX/2011 requires environmental cases to be handled by judges who are environmentally certified. Coupled with the presence of Law Number 18 of 2013 Article 53 paragraph 1 which reads that the examination of forest destruction cases in the district court, carried out by a panel of judges totaling 3 (three) people consisting of one career judge and two ad hoc judges. Supposedly with the presence of this policy, environmental cases can be resolved in the realm of litigation properly. But in fact not. Many environmental case decisions are resolved by environmentally certified judges, in which they still do not reflect ecocentric values that should be adopted more in the content of decisions as part of critical judges' considerations. Another issue that is no less important is that since the enactment of Law Number 18 of 2013, ad hoc judges referred to in Article 53 paragraph 1 have never existed. environmental cases can be resolved in the realm of litigation properly. But in fact not. Many environmental case decisions are resolved by environmentally certified judges, in which they still do not reflect ecocentric values that should be adopted more in the content of decisions as part of critical judges' considerations. Another issue that is no less important is that since the enactment of Law Number 18 of 2013, ad hoc

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The authority of the Ad Hoc Judge itself has been shown in the Laws and Regulations, namely having the obligation to exercise Judicial Power as part of the Supreme Court. The difference between judges and ad hoc judges is in the area of the judiciary that decides the case. Career judges cover all courts under the Supreme Court while ad hoc judges are only special courts according to the laws and regulations governing ad hoc judges.

Thus, there is a specificity for ad hoc judges in carrying out their duties as law enforcers in judicial institutions. Career judges and ad hoc judges have the same rights because career judges and ad hoc judges are both within the scope of the judiciary under the Supreme Court and are state officials.

In accordance with Article 19 of Law Number 48 of 2009 concerning Judicial Power, it is stated that Constitutional Judges and Judges are State Officials who exercise Judicial Power as regulated by law. The State Officials in question include Ad Hoc Judges who are part of the judges in accordance with Article 1 number 5 of Law Number 48 of 2009 concerning Judicial Power.

Judges as state officials have an important position in the judicial order. Therefore, the provisions regarding judges have been regulated in the Judicial Authority and the code of ethics that oversees judges as a profession which also includes ad hoc judges.

In fact, with the presence of environmentally certified judges' policies, they should open up greater space for legal discovery and access to justice with a progressive legal approach so that they can produce decisions that are not only oriented to community justice but also to ecological justice. The ecological approach has a transcendental nuance so that it makes judges think apart from being horizontal but also vertically upwards before deciding cases related to the environment. Environmental understanding from judges who have been fostered and given environmental certification is not accompanied by the simultaneous fertilization of divine and ecological values in deciding environmental cases. So that the settlement of environmental disputes is not optimal.

And so far, the existence of the composition of judges against perpetrators in the law is recognized in practice, it turns out that in practice there have never been cases of environmental pollution that punish corporations or perpetrators, for example in the case of forest fires in

Pekanbaru carried out by several companies in Riau Province and until now, criminal liability by corporations or perpetrators as individuals (corporate criminal liability) is a matter that is still inviting debate. Many parties do not support the view that a pseudo-corporation can commit a crime and have a criminal intent that creates criminal liability. Besides that, it is impossible to be able to present in the corporation with the actual physical in the courtroom and sit in the defendant's chair to undergo the judicial process. Forest and Land Burning in Riau Province, criminal acts committed by corporations or perpetrators of environmental pollution are very difficult to identify. Although it is known, to prove it in court is still facing legal problems, because of the difficulty in finding evidence.

As regulated in Article 99 paragraph (1) in conjunction with Article 116 paragraph (1) letter (b) of the Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management according to the second alternative indictment. Then PT SSS was also found guilty of committing a crime of not applying an analysis of environmental impacts or environmental management efforts and environmental monitoring efforts, environmental risk analysis and environmental monitoring. As referred to in Article 109 in conjunction with Article 68 of Law Number 39 of 2014 concerning Plantations in accordance with the fifth indictment of the Public Prosecutor.

In the judge's decision, the defendant was sentenced to a criminal fine of Rp. 3,500,000,000, and an additional penalty in the form of repair or recovery due to a criminal act of Rp. 38,652,262,000. Determine evidence of several files starting from the deed of establishment of PT SSS and other documents.

Forest and land fires usually occur during the dry season. This situation occurs as a result of land clearing and burning activities carried out by burning by the community or businessmen, to open new land for plantations for HTI (Industrial Plantation Forests), and oil palm plantations. The act of burning forest and land has caused direct or indirect changes to their physical or biological properties which have resulted in the environment not functioning as usual in supporting sustainable development.

Burning forest and land is against the law because in addition to being against the Criminal Code, it is also against Law No. 32 of 2009 on Environmental Protection and Management, Law No. 41 of 1999 on Forestry and Government Regulation No. 4 of 2001 on Damage Control. and or Environmental Pollution Related to Forest and Land Fires. A person or legal entity that conducts forest and land burning activities will be subject to sanctions in accordance with the above laws and regulations.

B. Legal Consequences in Implementing the Composition of Judges in the Settlement of Forestry Criminal Cases Based on Legislation

The Indonesian environment is the environment that exists within the boundaries of the territory of the Republic of Indonesia. According to the general explanation of Law no. 4 of 1981, the environment in the sense of ecology does not recognize state boundaries or administrative areas. However, if the environment is related to its management, then the boundaries of the

management authority area must be clear (TLN No. 3215). It is therefore clear that the concept of the Indonesian environment is not merely an ecological concept but also a legal and political concept.[10]

It is also said that the Indonesian environment according to the territorial concept is a legal definition. In this sense, the Indonesian environment is none other than the archipelago, which occupies a cross position between two continents and two oceans with a tropical climate and weather and seasons that provide natural conditions and a position with a strategic role of high value, where the Indonesian nation and people carry out their lives. state in carrying out environmental protection and management is the Archipelago Insight.[11]

Thus, there is a specificity for ad hoc judges in carrying out their duties as law enforcers in judicial institutions. Career judges and ad hoc judges have the same rights because career judges and ad hoc judges are both within the scope of the judiciary under the Supreme Court and are state officials.

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Judges as state officials have an important position in the judicial order. Therefore, the provisions regarding judges have been regulated in the Judicial Authority and the code of ethics that oversees judges as a profession which also includes ad hoc judges.

The judge's legal considerations are the basics used by judges in reviewing or observing a case, the judge also in passing a court decision needs to be based on theory and the results in the trial that will prove or give confidence to the judge, so that a proper and appropriate decision is obtained. balanced with the actions of the perpetrators of forest crimes.

The environmental sustainability paradigm refers to the concept of justice which is interpreted by its representation and distribution, related to how policies in environmental management can become a regulation that truly represents the aspirations of the wider community. Environmental management is an integrated effort to preserve environmental functions which includes policies for structuring, utilizing, developing, maintaining, recovering, monitoring, and controlling the environment.

Natural resources such as water, air, land, forests and others are important resources for the survival of living things, including humans. In its development, at least in Indonesia, three specific laws regarding the environment have been enacted as we will put them in parallel as a comparison. The first is Law Number 4 of 1982 concerning Basic Provisions for Environmental Management, then Law No. Number 23 of 1997 concerning Environmental Management which

[10]Soerjono Soekanto and Sri Mamudji, Normative Legal Research A Brief Action, (Jakarta: Raja Grafindo, 2007), p. 13-14

[11]Soerjono Soekanto and Sri Mamudji, Normative Legal Research A Brief Action, (Jakarta: Raja Grafindo, 2007), p. 13-14

was later replaced by Law Number 32 of 2009 concerning Environmental Protection and Management.

Almost every day, various sad stories due to environmental damage color the mass media, such as floods, landslides, smog, Lapindo mud tragedy, and others. Along with that, news emerged that illegal logging, forest fires, and the construction of buildings or other projects did not comply with the layout and licensing procedures, and many other unacceptable behaviors that caused pollution and environmental damage. But ironically, the problem of handling and enforcing the law on environmental destruction is actually very weak.[12]

Environmental Law is almost blunt and helpless in dealing with various environmental crimes. So far, disappointment with court decisions seems to tend to fall on law enforcers, who are considered unprofessional and whose integrity is in doubt. Sources of damage to natural resources and environmental pollution in Indonesia stem from two main problems, namely institutional/structural problems and weak law enforcement.

CONCLUSION

Implementation of the Composition of Judges in the Settlement of Forestry Criminal Cases Based on the Laws and Regulations that the existence of the composition of judges based on the laws and regulations against perpetrators in the law is recognized in practice it turns out that in practice there have never been found cases of environmental pollution that punish corporations or perpetrators, for example in the case of forest fires in Indonesia. Pekanbaru is carried out by several companies in Riau Province and until now, criminal liability by corporations or perpetrators as individuals, forest fires in Riau Province, criminal acts committed by corporations or perpetrators of environmental pollution are very difficult to identify. Although it is known, to prove it in court is still facing legal problems, because of the difficulty in finding evidence.

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