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Environmental Law Enforcement in Philosophy of Law

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ABSTRACT: The environment is God's gift which should be protected and preserved. In Indonesia, arrangements regarding environmental management are regulated by various laws and regulations. However, ongoing destruction and even environmental pollution still exist. Therefore, this study aims to examine how environmental law is enforced in Indonesia and review environmental laws from the philosophy of law perspective. This study uses the philosophy of law research method in a paradigmatic study emphasizing the qualitative tradition. In its enforcement, environmental disputes can be resolved through criminal, civil, and administrative ways. In the study of Paradigm Critical Theory et al., environmental law must continue to be actively pursued by dismantling existing laws that consistently represent the authorities' interests. For the critical paradigm, law enforcement always seeks to achieve justice for the poor, weak, or minority groups for the oppression and legal imbalances that occur.

KEYWORDS: Law enforcement, environmental justice, philosophy of law, paradigm

1. INTRODUCTION

The environment is a God's gift that should be preserved and developed by humans so that they can support the lives of humans and other living things to improve the quality of life [1]. According to Djanius Djamin, the environment is defined as the condition of nature and all its contents that influence one another [2]. In Indonesia, the scope of the environment itself includes the space where the Indonesian state exercises its sovereign rights, sovereignty, and jurisdiction. Thus, the Government is obliged to carry out environmental management by issuing policies consisting of structuring, utilization, maintenance, restoration, supervision, and control of the environment. In this case, the government has complete control over activities related to environmental management by making rules that focus on environmental management in a renewable and sustainable manner [3]. Discourse on environmental management and law enforcement with environmental justice is a global issue with an international dimension. This issue is related to the common interest of humanity in enjoying a healthy and clean environment.

In making rules regarding environmental management, we must obey the law because rules and law are closely related. Ontologically, the law is generally interpreted as a rule in shared life or whole as a rule regarding behaviour that applies in a shared life. In its implementation, it can be imposed with a sanction [4]. According to ethical theory, the law's true purpose is simply justice. Therefore, the substance of the law is determined by our beliefs about what is fair and what is not. Thus, according to this theory, the law aims to realize justice. The nature of justice is an assessment of a treatment or action by studying it using a norm in a subjective view. In this case, two parties are involved: the party who treats and receives treatment [4].

In an environment, we recognize the concept of environmental justice, which can be defined as the suitability of rights between human needs and the surrounding environment. In order to achieve this conformity, a product of statutory regulations is made. In enforcing environmental law, the main instrument is its legality in the form of statutory regulations [5]. Based on the taxonomy of justice, environmental justice itself can be classified into four categories, namely: a. environmental justice as distributive justice; b. environmental justice as corrective justice; c. environmental justice as procedural justice; and d. environmental justice as social justice.

In Article 1 Point 2 of Law Number 32 of 2009 on Environmental Protection and Management, it is stated that "*Environmental protection and management are systematic and integrated efforts made to preserve environmental functions and prevent environmental pollution and damage that includes planning, utilization, control, maintenance, supervision, and law enforcement*." With environmental management, the government must develop various regulations, work programs, and activities supported by an environmental management support system that includes institutional stability, human resources, and environmental partnerships. The interdependence and holistic nature of the essence of the environment have resulted in the consequence that environmental management, including its support system, cannot stand alone but is integrated with all development activities in various sectors, both at the central and regional levels [5]. Therefore, in order to regulate more specifically related to environmental management, there are several regulations derived from the *a quo* law, such as Government Regulation Number 27 of 2012 on Environmental Permits, Government Regulation Number 101 of 2014 on Hazardous Waste Management, and Regulation of the Minister of Environment No. 13 of 2013 on Environmental Audit.

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Even though arrangements regarding environmental management have been made in such a way, Indonesia is currently experiencing severe problems regarding environmental pollution and destruction, which are increasing daily. Environmental issues are a big responsibility because this will affect the quality of life in the future. The exploitation of natural resources and the environment has worsened the quality of the environment, incredibly natural resources. In terms of environmental damage, forest fires are one of the phenomena that often occur in Indonesia and continue to increase. Based on data from the Indonesian Forum for the Environment (WALHI), forest fires in Indonesia have increased almost yearly. In 2015, around 2.6 million hectares of forest were burned, the most severe of which occurred in Central Kalimantan, Papua, South Sumatra and Riau. Then, in 2016 there were 438.3 thousand hectares of forest burned. This figure shows a decrease in the level of forest fires.

Furthermore, in 2017 there was another decline where there were around 165 thousand hectares of cases of forest fires. However, this lasted only a short time because, in 2018, there was an increase in forest fires, around 510 thousand hectares. Meanwhile, in 2019, the Ministry of Environment and Forestry (KLHK) of the Republic of Indonesia recorded around 135 thousand hectares of cases of forest fires in Indonesia still occurring and dominated by Sumatra, Kalimantan, and Papua [6].

Several related previous research articles, including the writings of Elly Kristiani Purwendah in the Journal of Legal Communication, entitled "*The Concept of Ecological Justice and Social Justice in the Indonesian Legal System Between Idealism and Reality*." In addition, Rahmat Rahmat also added in an article entitled "*Legal Harmonization of a Just, Democratic and Sustainable Environment.*" [7]. Meanwhile, this paper has a novelty compared to the two titles of the article. This paper discusses the study in philosophy of law regarding environmental justice law. The author will examine how environmental justice laws through philosophy of law's perspectives, something that has never been written about before.

Based on the described above, two formulations of the problem can be drawn: first, what is the portrait of law enforcement in environmental cases in Indonesia today?; second, how is the law of environmental justice in philosophy of law?

2. RESEARCH METHODS

This is philosophy of law research in a paradigmatic study emphasizing the qualitative tradition. The research specifications used in this study are analytical descriptive. Based on the understanding of Guba and Lincoln's paradigm, the author uses the critical theory et al. as an analytical tool in this paper. Methodologically, this paradigm uses dialogic/dialectical means to understand reality interactively, dialogues the subjectivity of researchers or writers on the reality under study, intending to transform ignorance and misunderstanding into awareness that historical structures can be changed and therefore real action is needed, one of which is through this critical review [8]. Furthermore, this study uses secondary data collected through a literature search or literature study. Research data were obtained from scientific journal articles, books, and previous research results.

3. RESULTS AND DISCUSSION

3.1. Portrait of Law Enforcement in Environmental Cases in Indonesia

Environmental law is a branch of law that has its characteristics, which Drupsteen calls the field of functional law. That is a field of law with elements of criminal, civil, and administrative law. Therefore, environmental law enforcement can be interpreted as applying instruments and sanctions in administrative, civil, and criminal law to force people to comply with environmental regulations. The government, community, or civil legal entities use administrative law instruments and sanctions. Suppose a government official issues a State Administrative Decision which is formally or materially contrary to laws and regulations related to the environment. In that case, the public can file a State Administrative Lawsuit. For the use of criminal sanctions, only government agencies are authorized to do so. Meanwhile, civil law instruments in the form of lawsuits can be carried out by the public, civil legal entities, and the government [9].

Based on the description, as explained earlier, in Indonesia, environmental cases can be enforced in 3 ways: by using criminal sanctions, civil lawsuits, or administrative efforts. In enforcing environmental law through Administrative Law, enforcement aims to stop environmental pollution directly at the source under the supervision and the application of administrative sanctions. Periodic supervision is carried out on activities with environmental permits to monitor compliance with licensing requirements by agencies authorized to issue environmental permits. The general legal basis for supervision to enforce administrative environmental law in pollution control in Indonesia is Articles 71-75 of the Environmental Protection and Management (PPLH) Law. Article 74 (1) of the PPLH Law emphasizes that supervisors have several tasks: monitoring, requesting information, making copies of documents or making necessary notes, entering certain places, taking pictures, making audio-visual recordings, taking samples, checking equipment, inspecting installations or means of transportation, and stopping certain violations. However, in reality, the monitoring facilities in environmental pollution control have yet to be comprehensively regulated, so administrative environmental law enforcement through preventive juridical means has not run optimally for controlling environmental pollution. Furthermore, as a consequence of supervision, administrative sanctions will arise consisting of the following [10]: a. government coercion or coercive action ("*bestuursdwang*" or "executive coercion"); b. forced money ("*publiekrechtelijke dwangsom*" or "coercive sum"); c. closure of place of business ("*sluiting van een inrichting*"); d. cessation of the company's machinery activities ("*buitengebruikstelling van een toestel*"); e. revocation of permits ("*intrekking van een vergunning*") through the process of: reprimand, government coercion, closure and forced money.

One concrete example of applying this administrative sanction is in the case of Mitra Plastik Sejahtera (MPS) Pollution Business Plastic Factory (UD) against the Avur Budug River where UD MPS. The Head of the Jombang Regency Environmental Service gave them environmental administrative sanctions in January 2019 because the factory did not have a Liquid Waste Disposal Permit (IPLC). The environmental administrative sanction was in the form of an operational ban for a certain period,

construction of several Wastewater Treatment Installations (IPAL), and the obligation to obtain a Liquid Waste Disposal Permit (IPLC). The imposition of administrative sanctions is included in environmental administrative sanctions by coercion from the government, as stipulated in Article 80 Paragraph (1) of Law No. 32 of 2009 [11].

In enforcing environmental law, apart from administrative sanctions, there are also criminal sanctions contained in Articles 97-120 of Law Number 32 of 2009 on Environmental Management. One example of the application of criminal law in environmental law cases can be seen in the case of PT. Cipta Rasa Utama. In this case, PT. Cipta Rasa Utama places B3 waste as Bottom ash and fly ash in an open area behind the factory site near the boiler without permission (hoarding, utilization from the authorities/governors, district heads, etc.). In this case, the judge stated that PT. Cipta Rasa Utama, represented by Hermawan Sunyoto as the Director, had been legally proven and convinced guilty of committing a criminal act of dumping waste or materials to environmental media without permission. Therefore, the judge imposed a sentence against PT. Cipta Rasa Utama with a fine of Rp. 750,000,000 (seven hundred and fifty million rupiahs) provided that within 1 (one) month, they did not pay the fine. Their property/assets would be confiscated for auction following the provisions of the law. In addition, the judge also imposed additional penalties in the form of cleaning up solid waste (fly ash and bottom ash) with a total volume of 19.105 m^3 (nine fifteen point one hundred and five cubic meters) and removing the waste from PT. Cipta Rasa Utama is to be submitted to a third party with permits at their expense [12].

For more details, the following table presents the judge's decisions related to environmental cases that have occurred in Indonesia:

Table 1. Enforcement of Environmental Law in Indonesia in Judge Decisions

Judge Decisions	Verdicts
North Jakarta District Court Decision: Number 735/Pdt.G-LH/2018/PN Jkt.User	• In this case, the party that becomes the Defendant is PT. How Are You Indonesia while the Plaintiff is the Ministry of Environment and Forestry of the Republic of Indonesia, represented by Dr Ir. Siti Nurbaya, M.Sc. • • In this case, PT. How Are You Indonesia has committed an unlawful act because its business activities produce hazardous and toxic waste materials, including Sludge from WWTP which contains heavy metals consisting of Arsenic, Cadmium, Chromium, Copper, Lead, and Zinc. • • For companies that produce waste, the government prohibits waste disposal into environmental media through Article 69 paragraph (1) letters a and e of the Law on Environmental Management. • • In the verification I of the KLH Verification team, it was found that some of the wastewater from the production process was not treated through the WWTP and was directly discharged into the Cihujung River through underground pipes. • • While in verification II, the KLH Verification team found that the WWTP area had several repair activities. In addition, two inlet streams in the equalization tub are trapezoidal without a stirrer. In the equalization tub found, a relatively long flexible hose. Furthermore, the verification team also found seepage of black waste water from chemical processes going into the river and a bypass directly leading to the river with a fairly heavy flow. • Based on the results of lab tests, it is proven that the waste generated from the defendant's business activities in the textile industry, which is disposed of directly into the environmental media, has caused pollution to the Cihujung River. • In his decision, the judge partially granted the plaintiff's claim. In addition, the judge also stated that the defendant committed water pollution with absolute responsibility. Furthermore, the judge also ordered the defendant to pay compensation of Rp. 12.013.501.184,-. The judge also ordered the defendant to pay a fine of Rp. 10,000,000.- per day of delay in implementing the decision calculated from the time the decision has permanent legal force.
Decision Number: 252/Pid.B/LH/2019/PN. Sbr.	• In this case, PT. Cipta Rasa Utama produces B3 waste in the form of bottom ash and fly ash, which is required to manage the B3 waste it produces. However, the company does not manage the B3 waste it produces. • The Company's actions constitute a criminal offence as stipulated and punishable under Article 102 in conjunction with Article 116 paragraph (1),

	the letter of law Number 32 of 2009 on Environmental Protection and Management. • In his ruling, the judge stated that PT. Cipta Rasa Utama has been legally and convincingly proven guilty of dumping waste and materials into environmental media without permission. Therefore the judge sentenced the company to a fine of Rp. 750,000,000, - provided that within one month PT. Cipta Rasa does not pay a fine, so the property/assets belong to PT. Cipta Rasa Utama was confiscated for auction under statutory provisions. In addition, the judge also imposed additional penalties in the form of cleaning up solid waste in the form of fly ash and bottom ash with a total volume of 19,105m^3 and removing the waste from PT. Cipta Rasa Utama will be handed over to a licensed third party at their expense.
Decision Number 238/Pid. B/LH/2020/PN Bks	• In this case, Muhammad Firdaus managed B3 waste without a permit, as referred to in Article 59 paragraph (4) of Law Number 32 of 2009 on Environmental Protection and Management. • The actions committed by Firdaus constitute criminal acts as stipulated in the provisions of Article 102 jo: article 59, paragraph (4) of Law Number 32 of 2009 concerning Environmental Protection and Management. • In his ruling, the judge decided that Muhammad Firdaus had been legally and convincingly proven guilty of committing a crime in waste management without the permission of the Minister, Governor or Regent per his authority. Therefore, the judge sentenced him to 1 year in prison with the provision that the sentence would not be carried out unless, at a later date, there was another order in the Judge's decision because Muhammad Firdaus committed a crime that can be punished before the probationary period for one year ends and a fine is imposed. Rp. 1,000,000,000, - provided that if the fine is not paid, it will be replaced with a 14-day prison sentence.

The three judges' decisions on environmental pollution cases tend to be *la bouche de la loi* or mouthpieces of laws in applying the law. In deciding these cases, judges tend to use the deductive method, the process of reasoning from general statements to specific statements, producing a conclusion. Thus, judges decide an environmental case using a positivism paradigm which assumes that law is a law and is considered perfect. If we examine it in depth, the law is always behind in following human development, so it cannot be said to be perfect and does not necessarily create justice for humans. If we relate this to the judge's decisions above, the judge has written a sentence following the law. However, the problem is, what about the immaterial losses caused by the environmental damage?

Based on the results of previous research by Elly Kristiani Purwendah in her writing entitled "*The Concept of Ecological Justice and Social Justice in the Indonesian Legal System Between Idealism and Reality*", current environmental justice is social justice [13]. Meanwhile, Rahmat Rahmat, in an article entitled "*Harmonization of Laws in the Field of Environment that is Equitable, Democratic and Sustainable*", argued that in order to form a just, democratic and sustainable environmental law, environmental sovereignty for appropriate human-nature balance with a legal pluralism approach to realizing environmental justice, can be a reference for establishing norms in laws governing the management of natural resources and the environment. For this reason, all parties' participation is required to create a just law. Law enforcement that only relies on written law has the potential to distort justice because it is made in a top-down manner and does not involve the participation of all parties involved.

3.2. Law with Environmental Justice in Philosophy of Law

In a broad sense, a paradigm is defined as the main, primary, or umbrella philosophical system built from ontology, epistemology, and methodology consisting of fundamental beliefs that cannot be exchanged. In this case, a paradigm can show a particular set of fundamental beliefs related to the main principles that cause adherents to be bound to a particular worldview, along with ways of understanding and studying the world that will always guide the thoughts, attitudes, words, and actions of its adherents. One of the opinions and classifications of paradigms that are systematic, dense, and rational is conveyed by Guba and Lincoln, where they differentiate paradigms based on three fundamental questions, which include [13]: a. the form and nature of reality are then known as ontological questions; b. the relationship between individuals or community groups and the environment is from now on referred to as epistemological questions; and c. how individuals or community groups get answers to what they want to know is known as methodological.

In understanding a systematic, solid, and rational paradigm, Guba and Lincoln offer five main paradigms: Positivism, Post-Positivism, Participatory, Critical Theory et al., and Constructivism. The classification of the five paradigms is obtained through responses to 3 basic questions consisting of ontological, epistemological, and methodological. Following are the five main paradigms as a fundamental belief system according to Guba and Lincoln [13]:

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Table 2. 5 Main Paradigms as Basic Belief in Philosophy of Law

Questions	Positivism	Postpostivism	Participatory	Critical Theory et al.	Constructivism
Ontology	Naive Realism; The external reality is objective, honest and understandable.	Critical Realism; Imperfectly understood external, objective and actual reality.	Participatory Reality: Subjective – objective reality co-created by the mind and the cosmos.	Histroist Realism: Virtual realism is formed from social, political, cultural, economic, ethnic and gender factors.	Relativism: Multiple and varied realities, based on social experience.
Epistemology	Dualist/ Objectivist: The researcher and the object of investigation are two value-free independent entities.	Dualis Modification/ Objectivist: Dualism recedes, and objectivity becomes the determining criterion.	Critical Subjectivity: Participatory transaction with the cosmos; an extended experiential, propositional, and practical epistemology of knowledge; findings are co-created.	Transactional/ Subjectivists: Researchers and investigative objects are linked interactively.	Transactional/S ubjectivity: Researchers and investigative objects are related interactively.
Methodology	Experimental/ Manipulative: Empirical test and verification of research questions and hypotheses.	Experimental Modification: Falsification utilizing critical multipliism or modification of triangulation.	Political Participation: Collaborative action inquiry; practical preferences; use of grounded language in a shared experiential context.	Dialogic/ Dialectical: There is a dialogue between the researcher and the object of investigation.	Hermeneutical/ Dialectical: Construction is traced through the interaction between the researcher and the object of investigation.

The law in the Critical Theory et al. paradigm is interpreted as 'virtual realities' where the law is understood as virtual/historical reality. Thus, adherents of this paradigm believe in the law virtually because, according to them, the law is an awareness that is not true/falsely realized. Hence, the law is a series of structures as a virtual/historical reality that is a crystallization of political, cultural, economic, social, cultural, ethnic, gender, and religious values that have been going on for a long time. Adherents of this paradigm also believe that law is an instrument of hegemony that tends to be dominant, discriminatory and exploitative. Therefore, the law should be open to criticism, revision, and transformation to achieve emancipation. Thus, it can be said that the ontology of this school is historical realism [13]. Furthermore, the epistemology of this paradigm is transactional-subjectivist, in which humans, groups, and institutions are bound to each other interactively. Therefore, in making, forming or developing, even law enforcement begins with mediation between the values held by all interested parties. According to this paradigm, law is created, formed, built, and enforced through a dialectical methodology. In this case, a 'dialogue' occurs between lawmakers, law enforcers, and the wider community. It should be noted here that this dialogue is dialectical, namely turning ignorance and misunderstanding into awareness to break inequality or oppression [13].

Thus, according to this paradigm, environmental justice laws must always be sought and fought for because the existing laws display the opposite. This is because adherents of this paradigm believe that applicable law is an instrument of hegemony that tends to be dominant, discriminatory, and exploitative. This happens because behind it is a historical structure in the form of political, cultural, economic, social, cultural, ethnic, gender, and religious aspects that have lasted long and crystallized. According to this paradigm, environmental justice law can be achieved when the relationship between law and society is united because the epistemology of this paradigm itself is subjectivist transactional in which humans, groups, and institutions are bound to one another interactively. Therefore, this paradigm interprets environmental justice law as a law that is integrated with its subject. Epistemologically, in terms of environmental law products in Indonesia, the relationship between humans and law is distant because Indonesia is a country with a Civil Law System country that is very thick with a positivist paradigm. In the positivist paradigm, the epistemology is objectivist-dual, in which the relationship between the subject and the law is dissimilar since the paradigm sees law as independent, meaning it is not interrelated/dependent on one another. In addition, in this paradigm, a new law can be just when it is built together through a dialectical process. Hence, a law for the environment should be built together

through dialogue. Initially, forming a legal product will begin with mediation between the values held by all interested parties. This has been adopted in Chapter XI of Law Number 11 of 2011 on the Formation of Legislation. However, in reality, this public participation is often neglected.

One of Paradigm Critical Theory et al. is Critical Legal Studies. This originated from a movement in the 1970s in the United States. This movement continues the legal school of American realism, which wants a different approach to understanding the law, not just the Socratic understanding [14][15][16][17]. CLS rejects the notion that law is separate from political, economic, social, and cultural elements as conceptualized by Hans Kelsen with his theory of the pure theory of law (pure legal theory) which longs for a law to be free from non-legal elements such as politics, economics, social, and others. On the other hand, CLS considers that outside interests always intervene in law and are never neutral and objective. This means that law cannot be separated from politics because it is not formed in a value-free vacuum. CLS's thinking lies in the fact that law is politics, so they reject and attack the positivist beliefs in legal science. CLS criticizes the applicable law because it has been biased towards politics and has never been neutral. The legal doctrine that has been formed so far is more in favour of those who have power, so it is concluded th at the law is flawed from birth because it is formed through political "battles" that tend to take sides and are subjective for the interests of certain groups. Thus, this school views social justice in law as an ideal that still has to be strived for because political, economic, and other factors always influence laws related to the environment. As shown the documentary, the film "Sexy Killer" portrays the coal industry in Kalimantan; the policies and laws that apply cannot be separated from the authorities' interests related to political and economic factors. Small communities become victims. They have to face various environmental impacts related to health and various other adverse effects from the coal mining that is carried out. The interests of the owners of capital are paramount.

In Critical Legal Studies' view, laws that are lame, unfair, oppressive, and exploitative like this must be opposed. The struggle towards emancipation, equality, and justice must be continuously pursued, including through demonstrations that environmental activists must carry out. They must also continue to inflame that fighting spirit in other communities to invite anyone out of misunderstanding and ignorance that the law has always been on the side of the authorities and entrepreneurs. Communities must be aware, willing to move together and fight to realize environmentally just laws. That is the character in the fundamental belief of a person with a paradigm of Critical Theory et al.

4. CONCLUSION

Based on the previous discussion, the following conclusions can be drawn: In enforcing environmental law in Indonesia, three efforts can be taken: administrative, criminal, and civil efforts. Based on a review of judges' decisions on cases concerning the environment, thus far, environmental law enforcement has not been able to achieve justice for all parties because judges only based their judgment in passing decisions on environmental cases on written law.

In the critical theory et al. paradigm study, laws just for the environment must be continuously strived for and fought for because the applicable law displays the opposite. According to this paradigm, the law itself is a tool of hegemony that was formed due to the existence of a historical structure in the form of political, economic, social, cultural, religious, racial, and gender aspects, which have lasted a long time and were formed just like that. In terms of law enforcement related to the environment, the law is related to the historical structure in the form of political and economic aspects, which makes it impossible for the law to be fair because it is bound to side with particular political and economic interests. In order to realize a law that is environmentally just, there must be real action to dismantle this historic structure. It can be done through resistance to the regime, power, and owners of capital. Those oppressing the people and vulnerable groups have only been oriented towards gaining unilateral benefits. Therefore, environmental law enforcement should prioritize emancipation and listen to the voices of the common people as the party that should be defended.

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