

## Analisis terhadap asas subsidiaritas dalam penegakan hukum tindak pidana lingkungan di Indonesia = Analysis on the subsidiary principle in environmental crime enforcement in Indonesia

Erianto N., author

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### Abstrak

Keberadaan asas subsidiaritas dalam penegakan hukum lingkungan bertujuan untuk meningkatkan ketaatan masyarakat terhadap sistem nilai tentang pentingnya pelestarian dan pengembangan kemampuan lingkungan hidup masa kini dan masa depan. Asas subsidiaritas yang dimuat dalam Undang-Undang Nomor 23 Tahun 1997 Tentang Pengelolaan Lingkungan Hidup menjelaskan bahwa hukum pidana hendaknya didayagunakan apabila sanksi bidang hukum lain, seperti sanksi administrasi dan sanksi perdata, dan alternatif penyelesaian sengketa lingkungan hidup tidak efektif dan/atau tingkat kesalahan pelaku relatif berat dan/atau akibat perbuatannya relatif besar dan/atau perbuatannya menimbulkan keresahan masyarakat. Penelitian ini menggunakan penelitian yuridis normatif yang didukung dengan penelitian lapangan dalam bentuk wawancara dengan penyidik PPNS lingkungan hidup serta menganalisis beberapa putusan pengadilan mengenai tindak pidana lingkungan hidup.

Dari hasil penelitian diperoleh kesimpulan bahwa asas subsidiaritas belum maksimal digunakan disebabkan penjelasan mengenai bagaimana penerapan asas subsidiaritas masih kurang sehingga terjadi perbedaan penafsiran di tingkat penegak hukum maupun ahli hukum di lapangan. Tidak adanya kriteria dalam menentukan kapan dan dalam kondisi bagaimana asas subsidiaritas diterapkan atau dapat dikesampingkan menyebabkan penerapan asas subsidiaritas sangat tergantung pada subjektifitas penegak hukum itu sendiri. Konsep asas subsidiaritas di masa mendatang mesti diatur secara jelas dan tegas sehingga kepastian hukum, keadilan dan mamfaat penegakan hukum lingkungan dapat terwujud.

.....The existence of the subsidiary principle in environmental crime enforcement is intended to raise public compliance toward the value system on the importance of environmental conservation and development to support life at present time and in the future. The subsidiary principle as contained in the Law Number 23 of 1997 on Environmental Management stipulates that criminal code should be empowered if other forms of sanctions such as administrative sanction or civil sanction and when alternative settlement is ineffective in settling environmental cases or if offense is relatively serious and/or its impact has caused a restlessness among the community. This study is a judicial normative study supported by field research in the form of interviews with PPNS environmental investigators in conjunction with an analysis of several court decisions on environmental related cases.

The result reveals that in its current state the subsidiary principle has not been fully applied due to the insufficient technical guidelines on its application, which leads to different interpretation among the law enforcement officers and legal experts in the field. There is no specific criterion governing when and where and in what condition the subsidiary principle should be applied or when it can be waived. This kind of ambiguity has lead to a situation where the application of the subsidiary principle is highly dependent on the subjectivity of the law enforcement officers. In the future, the subsidiary principle must be laid down clearly to prevent ambiguity and different interpretation; therefore, legal certainty, justice and the benefits of environmental law enforcement may be achieved.