

## Evaluasi aspek perdata penegakan hukum lingkungan (studi kasus: PT Newmont Minahasa Raya, Manado, provinsi Sulawesi Utara) = The evaluation of the civil aspect of environmental law enforcement (case study: PT Newmont Minahasa Raya, Manado, Sulawesi Utara)

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### Abstrak

Masyarakat Indonesia dalam kenyataannya lebih akrab dengan lingkungan alamnya daripada penerapan teknologi. Perkembangan teknologi yang mengelola sumber daya alam harus memberikan manfaat yang sebesar-besarnya bagi kesejahteraan rakyat, dengan tetap memperhatikan keseimbangan dan kelestariannya sehingga tetap bermanfaat bagi generasi-generasi mendatang. Dengan memperhatikan kualitas lingkungan alam, sosial, budaya, dan ekonomi sebagai komoditi masyarakat setempat yang tersubsistem. Hanya tindakan manusia yang membuat seolah-olah mampu menguasai alam sehingga hampir semua lingkungan hidup sudah tersentuh oleh kehidupan manusia. Manusia adalah sebagian dari ekosistem, manusia adalah pengelola pula dari sistem tersebut.

Kerusakan lingkungan adalah pengaruh sampingan dari tindakan manusia untuk mencapai suatu tujuan yang mempunyai konsekuensi terhadap lingkungan. Pencemaran lingkungan adalah akibat dari ambiguitas tindakan manusia. Kewajiban pengusaha untuk melakukan pengendalian pencemaran lingkungan hidup adalah salah satu syarat dalam pemberian izin usaha maka pengusaha dapat dimintakan pertanggungjawaban jika dia lalai dalam menjalankan kewajibannya. Dengan hal tersebut, aspek perdata penegakan hukum terpadu lingkungan hidup atas kasus Teluk Buyat oleh NMR, merupakan upaya penyelesaian sengketa lingkungan hidup dengan penerapan asas tanggung jawab mutlak membayar ganti rugi dan pemulihan lingkungan hidup sekitarnya.

Penelitian ini secara umum bertujuan untuk mengetahui upaya penegakan hukum lingkungan hidup dan secara khusus bertujuan untuk mengetahui: (1) mengetahui proses penyelesaian litigasi di Pengadilan Negeri Jakarta Selatan; (2) Mengetahui kedudukan hukum dan kepentingan penggugat; (3) Mengetahui petitum dan optimalisasi penggugat terhadap tergugat I (PT.NMR) dan Tergugat 11 (Direktur PT.NMR) hingga putusan. Hipotesis yang digunakan dalam penelitian ini adalah: (a) Evaluasi aspek perdata penegakan hukum lingkungan terhadap kasus PT.NMR, Provinsi Sulawesi Utara berdasarkan peraturan perundang-undangan lingkungan hidup terkait dapat implementasikan instrumen penegakan hukum lingkungan untuk mencapai tujuan namun kenyataannya tidak efektif; (b) Kurangnya kapasitas dan komitmen aparat penegakan hukum dalam melaksanakan penegakan hukum lingkungan hidup untuk merealisasikan pelaksanaan satuan tugas tim penegakan hukum lingkungan hidup sebagai gabungan satuan tugas penelitian dan pengembangan melakukan serangkaian kegiatan terhadap dampak besar dan penting untuk mengembangkan sistem penegakan hukum lingkungan hidup terpadu (satu atap) atap ke depan; (c) Keterbatasan kuantitas dan kualitas aparat penegakan hukum lingkungan hidup dalam hal -penanganan litigasi dan non-litigasi kasus Newmont Minahasa Raya di Teluk Buyat - Sulawesi Utara.

Penelitian ini digunakan penelitian kualitatif dengan penyajian data menggunakan metode deskriptif analitis, terhadap proses litigasi aspek perdata penegakan hukum terpadu lingkungan terhadap kasus PT.NMR. Dimana pemerintah (KLH) sebagai penggugat terhadap PT.NMR dan Direktur NMR, Sulawesi Utara

sebagai tergugat di Pengadilan Negeri Jakarta Selatan. Implementasi kaidah-kaidah hukum perdata dalam menyelesaikan sengketa lingkungan hidup, pada hakikatnya memperluas upaya penegakan hukum dari berbagai peraturan perundang-undangan termasuk ruang lingkup hukum lingkungan keperdataan. Dalam hubungannya dengan sengketa lingkungan hidup, akan membedakan adanya tiga fungsi dari penegakan hukum perdata, yaitu: (1) dengan melalui hukum perdata dapat dipaksakan ketaatan pada norma-norma hukum lingkungan baik yang bersifat hukum privat maupun hukum publik. (2) dapat memberikan penentuan norma-norma dalam masalah lingkungan hidup, (3) memberikan kemungkinan untuk mengajukan gugatan ganti kerugian atas pencemaran lingkungan terhadap pihak yang menyebabkan timbulnya pencemaran tersebut, yang biasanya dilakukan melalui gugatan perbuatan melawan hukum.

Hasil analisis penelitian sebagai teknik penegakan hukum melalui upaya-upaya yang bersifat persuasif-edukatif (preventif) dan teknik penegakan hukum yang bersifat represif, yang disebut penindakan hukum bagi para perusak/pencemar lingkungan melalui peran, para pihak yang terlibat secara langsung, meliputi Penggugat, Hakim, Saksi, Ahli, maupun peran para pihak yang tidak terlibat secara langsung, meliputi Instansi pemerintah yang bertanggung jawab dibidang lingkungan hidup, organisasi lingkungan hidup, legislatif, media massa.

Kesimpulan penelitian aspek perdata penegakan hukum terpadu lingkungan hidup merupakan pengelolaan dan pengawasan untuk mempertahankan kelestarian fungsi lingkungan hidup maka dapat menarik kesimpulan sebagai berikut: (1). Gugatan KLH melawan PT.NMR dan Direktur PT.NMR merupakan proses menguji atau uji coba Standi in Judicio. 2. Kedudukan pemerintah sebagai pelaksana instrumen maka tuntutan ganti-kerugian harus konkrit - nyata. 3. Pemerintah sebagai penggugat di Pengadilan Negeri Jakarta Selatan, nampak tidak tegas dan aktual sesuai kondisi dan desakan masyarakat korban untuk mendorong proses penegakan hukum melalui proses class action terdahulu tanpa Standi in Judicio untuk mengukur posisi gugatan litigasi dengan kekuatan proses hukum acara perdata.

Adapun saran Standi in Judicio dimana penulis menyarankan, bahwa saatnya untuk merevisi. UUPH (UU No.2311997), yakni: 1. instrumen administrasi, perdata, pidana, dan upaya alternatif harus diatur proses beracara, 2. valuasi ekonomi atas kerugian lingkungan hidup dan kerugian sosial-budaya masyarakat dilegalkan, 3. penataan peraturan internal maupun eksternal harus meningkatkan kemampuan agar supaya proaktif, preventif, represif. 4. dimensi social control dan sarana social engineering kurang efektif maka ke depan diprioritaskan.

.....In fact, the Indonesian people know better their nature environment than the technology aspects. The development of technology that manage natural resource should bring people to reach their welfare as great as possible but still concern to natural conservation and equilibrium so that it is useful continually to our next generation. Only human actions sign as if they are able to manage the nature whole after which giving the effects that almost all natural environment aspects have been explored by them. Human is a part of ecosystem, human also one who manage this ecosystem. Human actions also give the effect of environment damage when they want to reach their goals connected with the environment aspect itself. The ambiguities of human action result in the environment damage.

Assuasive instrument. The entrepreneur has the obligation in controlling environmental pollution which it is one of the requirements of giving permission of venture processing so that he could be asked for the responsibility in case he derelict in his obligation. Based on that fact, civil aspect on integrated law enforcement of life environment on NMR of Teluk Buyat environment pollution case is an effort to solve legal action of Buyat's life environment by implementing the total responsibility term with pay the

compensation and restore the environment to normal condition.

This research has generally purpose to know how life environmental law efforts are enforced and has specifically purpose to know : (1) The Court session process of civil aspect on integrated law enforcement of life environment on pollution impact and/or life environmental damage of Teluk Buyat, Minahasa Province of South Sulawesi. (2) The decisive factor of civil aspect on integrated law enforcement of life environment in fulfill the duty and authority in remanding or handling pollution and/or damaging of Teluk Buyat's life environment case and how is the mechanism the government agencies law enforcement process which they responsible for live environment section which stand for the interest of life environment and local people management. (3) Petition and the optimal of government development as the litigant which has submitted the claim to accused I (PT. NMR) and Accused II (PT. NMR Director) until the verdict of the judge of court of first instance in North of Jakarta which connected with UUPH and other regulations.

The hypothesis used in this research are : (1) Civil aspect on integrated law enforcement of life environment to NMR case based on UUPH, AMDAL, B3 License and other life environment regulation could represents of life environment law enforcement to reach its goal. (2) The institution of law enforcement commitment in bringing about their integrated life environment civil duty by the form of PT. NMR case handling team work, by the goal to bring about the life environment law enforcement task team Minister of Life environment decree as the combination of developing and researching task team for bringing about a series of activities to integrally important and extensive impact to develop the integrated system of life environment law enforcement for furthermore. (3) By limitedness of quality and quantity of civil aspect on life environment law enforcement of PT. NMR case, it should capable.

In this research the writer use qualitative research by providing the data using analytic descriptive method to litigation process of civil aspect on law enforcement of life environment in PT. NMR case. The government, represented by Life Environment Ministerial (KLH), as the litigation to PT. NMR and the director of PT. NMR as the accused in North Jakarta court of first instance. In fact, the implementation of legal norms in solving of life environment legal action case would expand law enforcement efforts from various constitution regulations include within environment civil law scope. Related to life environment legal action, there are three civil law enforcement functions: (1) By civil law, one subject could be enforced to obey environment law norms; either in private law or public law. (2) By civil law, it could determine the norms inside the life environment terms. (3) It gives the opportunity for someone or corporation to submit the compensation claim to the party which carry out pollution in life environment, it is usually implemented by a claim of against the law.

The result of research analyze as the law enforcement technique by the persuasive-educative (preventive) efforts and also repressive law enforcement technique, which also called a legal action for those who carry out the pollution through roles of directly involved parties- such; Litigant, Judge, Witness, Expert and also roles of indirectly involved party such; Government Instance which is responsible in life environmental matters; organizations, legislative and mass media.

The conclusion of this research is that the civil aspect on integrated law enforcement of life environment connecting to manage and sustain the function of environmental conservation completed with various instruments, they are : 1. KLH against PT. NMR and Director of PT NMR is an examination process or *standi judicio* try-out, 2. The position of .government \_ party as instrument organizer so the compensation claim submitted properly and concretely, 3. Government as litigant party seems unclear and actual in accordance with people pressure as the victim to enforce the law enforcement by class action claim without

standi judicio to measure litigation claim position by the power of civil law process.

The Standi In Judicio suggestion, the writer suggest that it is time to make a revision of UUPLH (UU No.2311997). Consist of : I. The Criminal, Civil , Administration instrument and also other alternative efforts must be set up in procedure, 2. Economic valuation upon the detriment of life environment and social-culture detriment of people should be determined in regulations, 3. The obedience of internal and external regulations should increase the capability in order to be preventive, reactive, and repressive, 4. The social control and social engineering dimensions are still ineffective; for furthermore they should be a priority. The instrument of next life environment law enforcement should be bringing out gradually; the stage is: (a) Preparation. (b) Initiation. (c) Development. (d) Program adoption. (e) The Implementation or realization of program. (f) Completing and consolidation.