
Political Review of the 2009 Number 32 Law on Environmental Protection and Management



Sulhan¹, Suteki²

^{1,2} Faculty of Law, Diponegoro University Semarang

ABSTRACT: The 2009 payload or bill change policy on environmental protection and management was directed to provide both revision and new arrangements to address issues related to the development of innovation in policy, international policy harmonizing, and improved environmental law enforcement efforts in the course of environmental protection. The research method used was normatif yuridis. Research suggests that it is necessary to revisit the content material in the law or executive regulations especially with article 66 of the law 32/2009, and that protection efforts to victims in the public's dimension have been more and more strongly stated in the rule

KEYWORDS: political law, formulation, statute 32 year 2009

INTRODUCTION

Industrial building by corporations or corporations in addition to being a positive influence can also be a negative influence such as pollution or environmental degradation. With the damage and pollution that these environmental events are affected, especially those close to the region, beyond the damage both to materials and to immaterial effects that victims of a lifetime disability will suffer. This suffering can also be experienced by the victims' families, hence how important legal protection is to them. For victims and victims of pollution and/or destruction of the environment needed are protective devices.

That can be done without a criminal liability system for perpetrators of environmental crimes. Even the environmental penal system of accountability cannot be relieved of the legislative policies embodied in environmental regulations.¹

It has been seen that the 1945 bill supports the environment. This is pictured by "obtaining a good, healthy environment" mentioned in section 28h section 1 and chapter 33 verse 4 that mentions "environmentally foresight," meaning that any policies governments will take and economic activities in Indonesia must submit to the terms of human rights on a healthy, healthy environment. Thus, the 1945 constitution was referred to as the green or green constitution. The term green constitution was mentioned once by jimly ashiddiqie in his book green constitution: a green constitution of the republic of Indonesia constitution in 1945.

The 2009 article no. 32 act on the protection and management of the environment (ACTS 32/2009) has alluded to society's right and access to implement activation in its involvement for the protection of environmental management. Given the urgency of the protection and management of the environment around us, public participation in those protection attainments is needed. But with freedom of speech held to protect the environment, there are still efforts to prevent public participation by government officials as a representation of both the government and the corporations involved. The effort has a designation known as slapp (strategic participation against public participation) that is, when translated into Indonesian becomes a strategic action against public participation and its being handled as anti-slapp.

Slapps is the first popular concept in the United States since it was introduced by George w. pring and Penelope canan of the university of Denver in 1980. It should be asserted that a claim or strategic suit is a claim by a party (both public and people) by using the strategic and easily executed chapters by law enforcement with the intention of intimidating or silencing public participation. Basically, it means that this public participation is either another or the (group, people, non-governmental organizations) who have been victimized because they have been involved in participating in protests by raising their views on actions and policies by the first party on issues of public interest.

¹ Barda Nawawi Arief. *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. Kencana. Jakarta. 2007. hlm. 109.

Political Review of the 2009 Number 32 Law on Environmental Protection and Management

Protection is also provided by the judiciary organization that will examine the demands and strategic against public participation by reference to the director of the Supreme Court's decision no. 36/ kma/sk/ii /2013 in which judges review environmental matters are required to further value environmental benefits to the environment. Efforts were made to protect the environmentalists from slapper's actions and to prevent public from having to report, testifying both as fact witnesses and as expert witnesses. Thus, ecological justice and environmental sustainability can be realized.²

But the rules and directions in these two legal products still do not provide sufficient answers to the main concerns of slappers, both slapper's definition, the direction of slapper's reach, the custom of slappers and anti-slapper operations in the legal systems of events both criminal and civil. It is hardly easy to identify slaps, but in view of the concept of anti-slaps, citizens who are advocating the right to a viable environment, both healthy and well cannot be debated or challenged as asserted in article 66 of statute no. 32 in 2009. The arrangement for this chapter is intended to protect victims and/or preserver that act in law enforcement because of pollution and environmental degradation. Based on the above description then the writer will address this problem as follows.

1. What is the urgency of the reformulation article 66 of act 32 in 2009 on environmental protection and management?
2. How will the 66th act act 32 policy of future environmental protection and management be formulated?

RESEARCH METHODS

This type of study carried out in this study is a barbarically analytical tollactic study. Dis normatif research is used to describe and analyze legal matters that occur under the rule of the law are valid that are closely related to the subject of this study, to what extent policyholders apply it. Yuridis normatif research USES binding legal materials as secondary data, from some angles binding power can be classified in (primary legal material, secondary law and tertiary law).

DISCUSSION

A. Urgency of the reformulation section 66 of act 32 in 2009 on environmental protection and management. The urgency of the reformulation of article 66 of act 32 in 2009 on the protection and management of the environment is based on basic considerations, which will be described as follows:

1. The basis of a philosophical consideration the foundation of a democratic state is freedom. Countries that are acquired through a long and costly struggle, so the word democracy has an important meaning.

In formulating the principles of legal protection in Indonesia, the foundation is Pancasila as the country's ideology and philosophy. The state of the republic of Indonesia as a "rechstaat (the law state)" and a democracy has authority to protect and govern its subjects as an exercise of free speech. In the fourth amendment to the constitution of the republic of Indonesia in 1945, it is found in chapters 28e (2) setting up freedom of thought and opinion. The existence of civil society plays an important role in the democratic process of statecraft.

In today's globalisation society must take an active role in shaping and realised a good and proper government order. In a country that has developed a democracy system, public participation is an inevitability. In the political science literature, both the integration of society and the participation of environmental activists is an important dimension of law enforcement in the environmental protection effort.³

As a result of development that often affects the sustainability of the environment, both rejection and acceptance of society are key to sustainable development. To ensure compliance with the important role of the community, room for public participation must be opened at all. In addition, what are the reasons for the importance of community participation in law enforcement in order to protect the environment are as follows:⁴

- a) community participation is a tool for getting information about the condition, needs and attitudes of the local people, without the presence of development and projects programs will fail;
 - b) that people will more trust in projects or development programs if they feel involved in the preparatory and planning process, for they will know more about the project and will have a sense of owning it;
 - c) that it is a democratic right when people are involved in the development of their own societies
2. Basis of sociological considerations

WALHI, in the 2018 environment review, photographed the natural resources policy situation throughout 2017. In walhi's notes, an ecological breakdown with all its causes is the fruit of mismanagement policies. It is associated with

² iti Ruhama Mardhatillah, Melindungi Pejuang Lingkungan, 23 Oktober 2018 <https://news.detik.com/kolom/d-4269307/melindungi-pejuang-lingkungan>, diakses pada tanggal 1 Oktober 2022 Jam 13:43 WIB.

³ Muhammadiyah, "Partisipasi Publik Sebagai Strategi Mewujudkan Good Governance Otonomi Daerah", Otoritas Jurnal Ilmu Pemerintahan, Vol. III No 1, Tahun 2013, hlm. 58

⁴ Diana Conyers. *Perencanaan Sosial di Dunia Ketiga*. UGM Press. Yogyakarta. 1991. hlm. 154- 155

Political Review of the 2009 Number 32 Law on Environmental Protection and Management

extractive space mastery dominance, perverse thought of policing, and ambiguity of law enforcement. One effect of mismanagement of government policies in the environment sector and natural resources is seen in the massivity of the popular resistance to development projects massively promoted by the government. In the first quarter of 2007, the company's net profit in the first quarter of 2007 fell to rp779.9 trillion from rp67.9 trillion in the same period last year

Environmental advocates have been facing serious problems for some time now. Throughout 2017, criminalized cases against environmental defenders have sprung up. This can be seen from several major cases that get the attention of national media, such as a crime against joko prianto at the rembang, or the budi of banyubau. Various measures have been taken in an effort to suppress the activity of environmental defenders. From criminalization to most severe cases like the west sumba massacre, east southeast nusa, 25th April 2018.⁵

The fight was intended to inflict terror, fear that might interfere with society's participation in the fight for its rights. The situation in which citizens have access to access to good living environment or those familiar with the strategic participation against public participation is aimed at working back against public participation as an effort to capitalize on the policies of governments in order to block access to the partition of a community active in satisfying its right to a healthy and healthy environment. Those who destroy slaps have at least 2 (two) the most important goal:

- a. either removes, retards, or silences all forms of a society. Such actions are performed to give threats, fears, and insecurity and then to other actions that can thwart the partition of a society. This action is generally done by those who are deeply disturbed by the intersection. In environmental cases, it's primarily done by governments, corporations, or law enforcement.
 - b. B. Failed to address the issue at hand. If participation is not accomplished, of course the solution to the problem will not be solved. Hence, slapp fillers are always trying to thwart participation and not discuss too much of the substance of the problem. If the substance of the problem is solved, it will be solved in accordance with slapp fillers' wishes
3. A basis for juridical

Jurisdictionally, protection of public participation in the protection and use of the environment has been regulated in certain products of the law, including the legislation (bill) 1945 chapters 28e verse (3) that reads "everyone has the right to freedom of association, unity, and expression." It provides the basis for free speech for communities embodied in society's participation in environmental protection and use.

This was enhanced by a 1945 chapter 28h section 1 and chapter 33 verses (4) that discuss the environment, the sound of section 28h verse (1) (1) is "everyone has the right to live well born and in the heart, to live in, and to have a healthy environment and a right to health care" and the sound of chapter 33 verse 4 is "the national economy is held according to our Shared, justice efficiency, sustainable, Environmentally insightful, self-reliance, and by balancing national progress and economic unity".

From these two chapters, it can be seen that the 1945 law was in favor of the environment. This is pictured by "obtaining a good, healthy environment" mentioned in section 28h section 1 and chapter 33 verse 4 that mentions "environmentally foresight," meaning that any policies governments will take and economic activities in Indonesia must submit to the terms of human rights on a healthy, healthy environment.

Thus, the 1945 constitution was referred to as the green or green constitution. The term green constitution was mentioned once by jimly ashiddiqie in his book green constitution: a green constitution of the republic of Indonesia constitution in 1945. Recognizing the importance of community involvement in the protection and management of the environment, the 2009 no. 32 law (bill PPLH) has provided some common provisions for communities to speak for protection and environmental management. Progressively, act 32/2009 on environmental protection and management mentioned has given:

- a. a acknowledgment of the right to a healthy, healthy environmental security as part of human rights
- b. Recognition of the right to access information, participation and environmental justice
- c. legal protection for anyone who fights for the rights to the environment. This right is guaranteed through the provision of opportunities for the public to address the court by the use of proxy rights as found in section 90 s.d. section 92.

Among other things, anti-strategic against public participation (anti-slapp) protection has been provided in article 66 of the PPLH bill. The instruments that provide public participation as contained in the PPLH bill are also detailed in November 36/ kma/sk/ii /2013 on the enforcement of environmental development guidelines. The primary reasons for the 32/2009 and 36/2013 of the law's weaknesses and limitations:

⁵ELSAM, Dibawah Bayang-Bayang Kekerasan Negara dan Perusahaan: Laporan Situasi Pembela Hak Asasi Manusia atas Lingkungan Periode November 2017-Juli 2018 <http://referensi.elsam.or.id/wp-content/uploads/2018/09/Revisi-Oke-1-min.pdf> diakses pada 2 Oktober Jam 17:00 WI

Political Review of the 2009 Number 32 Law on Environmental Protection and Management

- 1) how is slapp's range in sight?
- 2) would a crime or violence against the environmental defenders be categorized as slapp?
- 3) how are the criteria for slapp?
- 4) how are anti-slapp implementation mechanisms in the legal system of criminal and civil events?

The UUPLH shortage in chapter 66 has made many societies that do not use it as a tool or as a shield in courts of law. The criteria of slappers that have not been explained in Indonesian regulations have had a very difficult effect on identifying one slapp action that has taken place in Indonesia. The third problem is that slapp's range is so abstract and unexplained that it impacts the many demands and demands that have criminalized environmentalists.

Clear evidence of urgency is published and execution of enforcement regulations to confound anti-slapper with the many environmental fighters that are threatened by slapp, even by courts, being found guilty (criminal) or damaging to the disputed parties. Based on the analysis of the ruling made by Bem University of Indonesia's law school, it is evident that 13 cases of law on the island of Java and that none of the 13 decisions considered article 66 of the PPLH law, there is only one case that mentions 66 of the PPLH act, but not as a reference to the ruling.

In this regard if in UUPLH and current related rules have not accommodated and regulated in detail and clearly in regard to anti-slapp, then the writer argues it should be reorientation and reevaluation of the rules on anti-slapp in the environmental reform effort of the law, as an improvement or realignment of future legislative policies. Lawmakers in the making of rules must be based on a full desire to form a society in accord with a national purpose.

The rule of law capable of directing society's change in a better direction and was not made only for a moment's sake. The substance of the law is good when it contains legal certainty and is not discriminatory, it contains civility and can be executed

B. formulation policy article 66 of act 32 in 2009 on future protection and management of the environment.

Based on an explanation of the urgency described earlier, in this case, there are recommendations based on the 2009 no. 32 law analysis and evaluation of environmental protection and management.

1. the reformulation of provisions in article 66 UUPLH, which currently exists is proposed to be re-enactment by adding anti-slapp provisions. Regarding anti-slapper, which will be published in UUPLH to clarify the provisions of this 66 UUPLH, the content of which is included:

a. Criteria Specify SLAPP

In determining slaps, the last and most important thing in determining slaps is did environmental issues really happen? It is not intended to ensure that any contamination occurs. But enough to the extent of the alleged corruption and/or destruction alone. To make this easier, an environmental problem object can refer to the complaint under article 5 of the verse (2) environment minister and forestry rule no.22/ menlhk/set. 1/3/2017 about governance of alleged pollution and/or destruction of the environment and/or destruction of forests.

If the problem is real, it is certainly actionable by the government. So that anti-slapp is not only a protection form but also an environmental solution. Then it must be determined whether or not there is participation. Participation here is in accordance with the arrangement under section 65 of law 32/2009, which in that chapter is in a very varied and widely open form.

In this case slapp criteria need to be redefined, starting with the protection prerequisites for victims/victims; Protected subject; Ban against public participation; Forms of public participation; Resistance to public participation; Protection mechanism for slapp's victims; The criminal provisions and their transition requirements in more detail, which the writer could briefly describe as follows:

1) Protection Prerequisite

Slapp's actions cannot be identified easily. This is because the legal procedure used is legitimate. To identify if an action should be categorized as slapp, in this case the screen and the canan mention the four criteria a claim is slapper, that is:

- a) there are complaints, complaints and demands from the community;
- b) public communication between government and government officials to complaints, complaints, and demands;
- c) complaints, complaints, and complaints are carried out on the basis of issues involving public interest or public attention; and
- d) (slapp) is posed against non-government or group individuals

2) Protected Subject

According to historical historical and canan reasons to produce the concept of anti-slapper, it is clear that the subject who does the slapp in this case is the one who has the power of both the power of rank and the power of capital. Anti-slappers are primarily intended for communities and environmental organizations, as

Political Review of the 2009 Number 32 Law on Environmental Protection and Management

graphic and canan findings show that slappers are primarily governments (including law enforcement), business and actors with other economic and political interests.

Whereas in Indonesia, the understanding of "every man" is vast. Sk kma 36/2013 only mentions anti-slapp as protection for "environmental fighters". The eco warrior terminology is also very broad, so it needs to be determined who potential subjects get slaps and are protected under anti-slapp provisions.

Under article 66, it is seen as not working effectively because until now the individual and community that fight for the environment was easy to prosecute or prosecute with an alibi in another case. This resistance is not only against individuals and organizations that are merely activists but also against experts who testify in court and the local leaders who shut down businesses that do not hold ward permits. In this case the formula or formulation that can be added on the subject that can be protected is as follows:

- a) he subject protected against public participation is each individual and both an environmental organization.
- b) everyone of both the individual and the environmental organization referred to in the verse (1) finds protection when using his participation rights to environmental issues.

3) Participation Is A Form

It is public when we compare the established anti-slapper regulations found in article 66 of the PPLH act that says "everyone who fights for the right to a healthy and healthy environment cannot be prosecuted either criminal or civil."

Therefore, it can be said that the sentences contained in the anti-slapp rule in Indonesia are anything but straightforward. This ambiguity contained in the word "fight" is in the sense of its terms is not clear, so is it a means of petitioning, demonstrating, or other matters not mentioned in this chapter. So the terms of public participation in question can be formulated as follows:

Which is a form of community participation in environmental issues, including

- a) march/demonstration;
 - b) the pulpit was free;
 - c) opinions and/or criticism through electronic media as long as it does not conflict with the regulatory rules
 - d) petitioning;
 - e) administration of reports and/or information to authorities;
 - f) presentation of facts and/or expert witnesses at trial; And/or
 - g) participation in all forms in order to save the environment
- ### 4) Resistance To Public Participation

Forms of public participation can be formulated as follows: action against public participation includes, among other things:

- a) menace/intimidation;
- b) arrest;
- c) deprivation;
- d) violence both physically and physically;
- e) defamation;
- f) persecution;
- g) murder;
- h) filing;
- i) reporting a crime; And/or
- j) all efforts aimed at silencing, resisting, and/or hindering public participation.

5) The Prohibition

Resistance to public participation the provisions against resistance to public participation may be formulated as follows:

- a) everyone is forbidden by violence and/or threats of violence to prevent, obstruct and/or prevent others from making public opinion in an effort to save the environment.
- b) everyone is forbidden by violence and/or threats of violence to deceive and/or coerce others into giving false information, misleading or misrepresentation that is necessary in connection with the protection and enforcement of the environment.

6) slapp's victims' protection mechanism

- a) the mechanisms of civil suit protection against slapp's victims in the civil justice system can be carried out through advances of slapp's own suggestion suit. Article 132 letters (a) herziene inlandsch

Political Review of the 2009 Number 32 Law on Environmental Protection and Management

reglement (" hir ") defines the reconvention asa lawsuit raised by the plaintiff in a return suit against the plaintiff's appeal to him.

The reconvention suit was filed by the courts during a hearing of the plaintiff's complaint. So that its formula can be formulated as follows; Public participation protection mechanisms in the civil justice system can be performed by the victim herself through: I provision; - ii. Conception; Or iii.

The reconvention suit, stating that the suit brought to him was an effort to counter public participation. Before proceeding to the point of verification, the judges examining the matter are required to rule in advance.

- b) mechanisms in criminal crimes protection mechanisms for public participation in the criminal justice system can be carried out by the victim himself, stating in a defense that the charge was made against public participation. As proof of public participation, the panel of judges review the case and the party can hold a follow-up hearing with the evidencing council's agenda.
- 7) criminal regulations should also be determined to stipulate penal conditions for resisting public participation, missal for prison crimes and/or criminal penalties.
- 8) Transition Provisions
 - a) victims of public participation prior to this law went into effect and had not received compensation, medical assistance, or psychological rehabilitation were entitled to compensation, medical assistance, and/or psychological rehabilitation.
 - b) the victims referred to above can apply for damages, medical assistance, and/or psychological rehabilitation to institutions that administer witness and victim protection

CONCLUSION

The force of act number 32 in 2009 on protection and management of the environment was directed to provide either revision or new arrangements to address issues related to the development of innovation in policy, international policy harmonizing, and improving environmental law enforcement efforts in order to provide environmental protection.

The need to revise the content material in the law or executive rules especially with article 66 of the law 32/2009, so that protection of victims in the public's dimension is increasingly evident in the rule. And it needs to include legislation on change of protection and environmental management legislation into priority national legislation programs.

REFERENCES

- 1) Abdurrahman. 2005. Pengantar Hukum Lingkungan Indonesia. Bandung: Alumni
- 2) Diana Conyers. 1991. Perencanaan Sosial di Dunia Ketiga. Yogyakarta: UGM Press
- 3) Muhamad Erwin. 2009. Hukum Lingkungan dalam Sistem Kebijaksanaan Pembangunan Lingkungan Hidup, cet-II. Bandung: PT.Refika
- 4) Aditama Soerjono Soekanto dan Sri Mamudji. 2014. Penelitian Hukum Normatif. Jakarta: Radja Grafindo Persada
- 5) Ashabul Kahpi, "Peran Serta Masyarakat Dalam Pengelolaan Lingkungan Hidup", *Jurisprudentie*, Vol. 2. No. 2 (2015)
- 6) Eko Nurmadiansyah, "Konsep Hijau: Penerapan Green Constitution dan Green Legislation dalam Rangka Eco-Democracy" *Veritas et Justicia*. Vol. 1 No. 1 (2015)
- 7) Muftia Nisaul Hikmah dan Wartiningi, "Efektivitas Penerapan Pasal 66 Undang-Undang Nomor 32 Tahun 2009 Terhadap Perlindungan Aktivistis Lingkungan", *Simposium Hukum Indonesia*. Vol. 1 No. 1
- 8) ELSAM, *Dibawah Bayang-Bayang Kekerasan Negara dan Perusahaan: Laporan Situasi Pembela Hak Asasi Manusia atas Lingkungan Periode November 2017-Juli 2018* <http://referensi.elsam.or.id/wpcontent/uploads/2018/09/Revisi-Oke-1-min.pdf>
- 9) MaPPI, *Anti SLAPP dan Perlindungan Terhadap Kriminalisasi Aktivistis*, 13 Febuari 2018 <http://mappifhui.org/2018/02/13/diskusi-indonesian-centerenvironment-law-icel-anti-slapp-dan-perlindungan-terhadap-kriminalisasiaktivis/>
- 10) Siti Ruhama Mardhatillah, *Melindungi Pejuang Lingkungan*, 23 Oktober 2018 <https://news.detik.com/kolom/d-4269307/melindungi-pejuang-lingkungan>



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