Journal of Engineering and Applied Sciences 13 (6): 1430-1435, 2018
ISSN: 1816-949X
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Politic of Legislation in Indonesia About Forestry and the Mining Activity Permit in the Forest Area of Environmental Justice

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Abstract: The purpose of this study was to determine the legal politics in Indonesia about the formation of forestry legislation in mining activities permit in forest areas in terms of environmental management strategy that is based on justice. This research is juridical doctrinal nature descriptive with a qualitative approach. The method used was legislation approach (statute approach) and the conceptual approach (conceptual approach). The data collection technique in this research was collecting the primary data and secondary data relating to the regulation of forest management in order to remain sustainable. The results showed that the, political interpreted as a policy of the government policy in forestry management as a whole and can be categorized as forest politics. Political laws of occupation and the use of natural resources have been regulated in the constitution of the republic of Indonesia year 1945 but the regulation on the management of natural resources, particularly forests which produce injustice. Even away from the sense of justice as referred in the preamble Homeland 1945. One of the causes of injustice and abuse was the number of mining permits which opened and caused the forest destruction in violation of the principle of sustainability. Issue within the framework of law should not stand alone because it is still in the realm of environmental law which means it is very closely related to the forestry law and the environment. Therefore, there is need for policy formulation based green legislation which overarching the governance of sustainable and justice forest area in a single regulation.

Key words: Politic legislation, forestry law, environment, mining and natural resources, justice, principle

INTRODUCTION

Forest law is a very interesting problem to be studied and analyzed as it relates to the how the norm, rule or legislation in the field of forestry can be done and implemented. Forestry which is origin is a gift and a trustee of the god almighty and it is one of treasures which regulated by the government, giving usefulness to mankind and therefore in this case, handled and used its maximum for the greatest prosperity of the people in sustainable basis. Forests as one aspect in supporting life and source of the people's welfare, their existence decreased, therefore, its existence must be maintained continuously, profess remain and managed with a noble character, fair, authoritative, transparent and professional and responsible (Abdul and Muhammad, 2011).

Problems in permitting the use of protected forest areas for mining have been a prolonged debate between the central government and local government. In addition, war between the ministries had happened because of different interests. In fact, the rules regarding the use of protected forest areas are clear. Law No. 41/1999 on Forestry Article 38 (1) states that "The use of forest areas for development outside forestry activities can only be carried out in a productive forest and protected forest areas". Then in Paragraph 4 stated that "In the protected forest area is prohibited to be mined by open pit mining pattern". Clear that open-pit mining in protected forest areas is not permitted. In addition, besides violating the Forestry Law, it is also considering the importance of protected areas and conservation areas as life support systems.

Constitution: Constitution of the Republic of Indonesia Year 1945 which called the 1945 law actually has outlined the basic natural resource management with a principle that is ideal. In Article 33, Paragraph 3 affirmed that the earth and water and natural resources contained in it

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controlled by the state and used for the greatest prosperity of the people but unfortunately in the regulation and subsequent implementation, it is more highlighted that the aspect of control or domination is done by the country, so that, the concept of right to control state sovereignty (HMN) appears. This concept can be meet in an Act and further it is called as the act. In Law No. 5 of 1960 on Agrarian which called as ACTPA and more specifically concerning to the forestry in Law No. 5 of 1967 on Forestry. Article 2 (2) ACTPA affirms that the State's rights gave authority to regulate and organize allocation, use, supply and maintenance of the earth, the water and air space, define and regulate legal relations between people with the earth, water and air space, determine and regulate legal relations between persons and legal acts concerning land, water and space.

At the beginning of the period of the new order regime, the government is eager to improve the economic conditions through stimulating the economic growth. One source of national wealth of the country at that time was natural resources, especially in the forestry sector, especially, the use of wood in Foreign exchange as much as possible. Due to the forest exploitation requires much capital, so that, created a favorable climate for the investment. Then, the Act No. 1 of 1967 was born concerning to the foreign investment which referred to PMA, Law No. 5 of 1967 on Forestry and Law 7 of 1968 concerning domestic investments then, it was called as PMDN. This condition leads to the practice of forest management which heavily dominated by the state. State has full authority to establish criteria and define the national interest as defined in the act. As a result, natural forest resources with the legitimacy continued implementing regulations which are dominated by a handful of people who have access in shaping policy. On the other hand, it also led to the marginalization of communities (indigenous) from forest management that resulted in the impoverishment of the unequal distribution of structural poverty and unequal distribution of wealth in society.

This is the beginning of a prolonged disaster for natural resources, especially forests. Issuing various permits of forest concession that these mining permits have less attention to the quality of the environment and other forms of licensing have resulted in continuous degradation of forest and caused endless disaster. The pattern of exploitative policies with strong dominance of state makes the policy a highly centralized, top-down and minimal participation. The position of society is seen as objects of policy formulation rather than considered as subjects who should participate setting the policy direction of environmental resource management.

As this study discusses here, first political law about how is the law on the establishment of forestry legislation in permitting mining activities in forest areas and second are the legal policies which result the legal policy in permitting mining activities in forest areas synchronized with the equitable environmental management strategy.

MATERIALS AND METHODS

The method of this research is descriptive juridical doctrinal nature with qualitative approach. The legislation approach (statute approach) and the conceptual approach (conceptual approach) which based on views and doctrines that developed in the jurisprudence were used in this research. The data collecting technique in this research was done by collecting primary data through library homeland constitution of 1945, Act No. 41 Year 1999 on Forestry, Law No. 4 Year 2009 on Mineral and Coal Mining and Law No. 32 of 2009 on the protection and environmental management. Then, the secondary data collection was done through observing the results of previous studies and articles relating to the regulation of forest management in order to remain sustainable. In this study, researchers used the concept of the second law, the law is positive norms in the legislation system of national law and this means that the law will be studied is the positive law which is a normative concept (Soetandyo, 1994).

The location of this research was at UNS library. In the normative concept, law is the norm, both identified with justice to be realized (ius constituendum) or the norms that have been embodied as a command that explicitly and positively clear (ius constitutum) to ensure certainty (Setiono, 2005), descriptive research is a further development of exploratory research. From the exploratory study, researchers already know some variables involved in the study. Research about history of the law is intended to explain the development of those areas of law which studied. Through research, legal history will be revealed to the surface of the legal facts of the past in relation to the facts of the present law.

RESULTS AND DISCUSSION

Law as a part of social science is a discipline that is not considered something which applies absolutely and definitely. According Sidharta, law is a very complex

entity, covering diverse social reality, the perception has many aspects, dimensions and phases (Bernad and Refkleksi, 1999). Then led to the birth discipline that describes the relationship between jurisprudence and other social fields such as philosophy of law, legal theory, legal history, sociology of law, legal anthropology, legal logic and political legal arises.

Political law began to arise when the law as an element in society subsystem which can not run a purely and neutral both in the process of forming or its implementation. Political law created as an alternative legal discipline among the deadlock of methodology in understanding the complexity of the relationship between law and non ethnicity law which in this case is politic.

Laws can be understood as the set of rules arranging the order of life both as a nation and a state. State law as established concept includes scientific state equipment in its action over both citizens and in conjunction with agencies of other countries, must not be arbitrary but must pay attention to the regulations applied (Wirjono, 1991). The legal agreements can be understood as the set of rules governing the order of life both as a nation and a state that representatives of the people that were in legislative institution producing a product in a democratic law, however, its content obviously can not be separated from the political forces that are inside. Implementation of state organizational wheels can not be removed from the power frame because in the country there are centers of power which always plays its role accordance with the duties and authorities which predetermined. However, the implementation often caused conflict with one another because the power that runs closely-related with political elements that were ruling. This means the existence of state power, law and politics is a unity or units which can not be separated.

Indonesia is a country of law and as implemented in the elucidation of the Constitution 1945 (ACTD 1945) then everything connected with the implementation of state and government must be grounded and based on law. It was also once a "barometer" to measure whether an action or actions are in compliance or not in accordance with the agreed terms. Before the amendment of Act 194, Article 33 Paragraph 3 is the only constitutional provisions relating to the management of the environment and natural resources. The provisions became the basis for the legitimacy of the government in the implementation of development and utilization of natural resources in Indonesia. Political laws of authorization and the use of natural resources have been regulated in the constitution of the Republic of Indonesia year 1945 but for more than 60 years of independence, especially, 30 years of the new order regime and the reform era, all regulations on the management of natural resources, especially, forests, instead produce injustice. In practice, they also did not provide prosperity (general wellbeing), even away from the sense of justice as set on the forth in the preamble to the constitution of the Republic of Indonesia year 1945. In fact, social justice is one of the principles of Pancasila contained in the preamble of the constitution of the Republic of Indonesia year 1945 was supposed to be a guide and guidelines as the ideal of law and legal principles in the preparation of legislation in the field of natural resources, especially in this case is the forest (Otong and Vadis, 2012).

Politics is defined as a policy, then government policy in managing forestry, it is as a whole can be categorized as forest politics. In this study, the researcher highlight the changes in land use in forest environments which often happened. As we know if the forest land conversion is not carried out as intended, according to the environment that have good ecosystem then what happens in reality if the forest can not be sustainable land and it is an environmental pollution (Rostron, 2001). Deforestation becomes very difficult to be controlled then, it is one of the causes of the disaster occurring sources in Indonesia. In a book of legal politics which written by Bram (2014) quotes from Hans Wehr etymologically legal politics is the Indonesian translation of legal terms dutch "rechtpolitiek" which is a combination of two words, namely "recht" and a political. In Indonesian, recht interpreted as derived from the Arabic "hukm" which means the verdict, decree order, rule, power, punishment and others. According to Wirjono, he said politics in Dutch dictionary written by Van Dear Tas implies a regulation be interpreted as a policy (Policy) which implies series of concepts and principles that are an outline and basic plans in the implementation of certain research, leadership and how to act (Wirjono, 1991).

Environmental laws and policies are predominantly goal-oriented. This goal oriented feature is evident in national as well as international law, sustainable as an overraching societal paradigmion with obcious environmental law and policy. Yet, environmental law also involves priorities, covitcs and clashes of interests ans concerns for justice and fairness (Handayani, 2016). The legal relationship between the forestry and environment toward the forest resources, then in short, it is about the right delegated to the control of state agencies, namely the ministry of environment and forestry. It can be explained that the control of the forest is the country. In this case, the state does not implement its own right to control in the use of forest. It this case, it is to know and to compare between Law No. 5 of 1967 and Act No. 41 of 1999.

The products of law and the policy in forest management in term of law in forest management, it is identified based on the highest hierarchy in Indonesian Law, namely Decree (Decree) MPR, Law (ACT)/Government Regulation in replacing the (PERPU), Government Regulation 7 (PP), Presidential Decree (Decree) and other implementing regulations (decree of the minister and regulation).

MPR (TAP) MPR: Two decrees of MPR (TAP) MPR related to protected forest are TAP MPR No. IX/2001 on Agrarian Reform and Natural Resources Management, MPR Decree No. 3/2000 which regarded as the sources of law and arrangement of legislation. The first TAP aims as policy which synchronized between sectors within reorganizing control, ownership, use and optimal land use, equitable, sustainable and friendly environmental for the greatest prosperity of the people.

With the existence of TAP or decree in all sectors, it is expected to have one way in determining the agrarian resource management policy because it has a positive impact on the management of protected areas. It can be used as a foundation for the coordination of all sectors in its implementation on the ground.

Law (ACT)/government regulation in replacing PERPU: Related to laws which regulate protected areas at least totaling 13 pieces and published starting in 1967-2004. Thirteen of this law can be seen in Table 1. The new mining law is still in the form of draft because it has not been approved by the parliament, it is still need to be revised and it is necessary for perception regarding the reclamation and involves the role of environment and forests ministry in the evaluation of reclamation on exmined areas.

The Law No. 23/1997 which is a replacement ACTLH, 1982 in substance considered to be more advanced than ACTLH 1982. The fundamental change is in its substance of some principles that have been written and give greater authority to the minister of environment to command the person or party which responsible for an activity to perform the audit. According to the ACTLH 1997, every business activities that bring a major and significant impact on the environment must have an environmental impact analysis to obtain a license to conduct business and activities including the forest utilization.

Government regulation (PP): Government regulations were identified relating to the management of protected areas into 11 units. Government regulation No. 45 2004 divided the forest protection activities into 3 conservation Forest Management Units (KPHK), Protected Forest Management Unit (KPHL) and Productive Forest Management Unit (KPHP). The implementation of forest governments, aims to protect the forest, forest products, forest and environment, so that, the function of protection, conservation and production functions achieved optimally and sustainably. For more details there are eleven government regulations that have been published they can be seen in Table 2.

Table 1: The law organizing the area permit management to mine activity

Regulation	Content
Act No. 5/1960	About Agraria
Act No. 1/1967	Foreign investment
Act No. 5/1967	Basic forestry
Act No. 7/1968	The domestic investment
Act No. 4/1967	Mining basic conditions
Act No. 4/1982	Basic provisions of environmental management
Act No. 5/1990	Conservation of natural resources and ecosystems
Act No. 24/1992	Spatial planning
Act No. 5/1994	Ratification of the UN convention on biological diversity
Act No. 6/1994	Ratification of the UN convention on climate change
Act No. 23/1997	Management of the environment
Act No. 22/1999	Local government
Act No. 25/1999	Financial balance between central and regional
Act No. 41/1999	Forestry
Act No. 32/2004	Local government
Act No. 33/2004	Financial balance between central and local government
Government regulation No. 1/2004	Establishing 13 mining companies in protected forest
Act No. 19/2004	Giving permission on forestry mining activities in the forest region
Act No.7 / 2004	Water resources
Act No. 32/2009	On the protection and environmental management
Act No. 27/2007	About spatial
Act No. 4/2009	Mineral and coal
Act No. 32/2009	Protection and management of the environment
Act No. 23 / 2014	Local government
Act No. 92/2015	Second amendment Act. 23 2014 on local government

Presidential decree (decree): Presidential decree relates directly or indirectly to the management of protected areas and they are 9 points. Those nine decrees can be seen in Table 3 they were arranged based on the publication year. Presidential decree 32 of 1990 mentions criteria for protected areas. While the goals of the management of protected areas are to increase the protective function toward the soil, water, climate, flora and fauna and historical and cultural values of the nation and to maintain diversity of plants, animals, ecosystems and natural uniqueness types.

Presidential decree 41/2004 is intended to give permissions to the 13 mining companies that had existed before the enactment of Law No. 41 of 1999 on Forestry to continue its activities until the permit expires or the agreement in question. Although, the SK is clearly contrary to the Article 38 Paragraph 4 and Law 41 of 1999 on Forestry but this decree states that the permit is based on the principle of leasing in accordance with the Ministry of Forestry, so that, it is an open space for field operation

protection is the authority of the central and local through a ministerial decree that the damage protected forest can be minimized for example in the form of rules and strict sanctions on forest rehabilitation and reclamation efforts. Presidential decree relating to the management of protected forest can be seen in Table 3.

Decision/regulation (Decree No./permen): Decision or the ministerial regulation governing protected forest can be seen in Table 4. Besides the ministries of forestry, mining, energy and mineral resources, the ministry which has much authority to set them is the ministry of home affairs. There are at least 18 decrees or Permen and decision of the director general relating to the management of protected areas.

Table 2: Government regulations about forest area

Regulation	Contents
PP No. 54/1957	Forest management
PP No. 21/1970H	PH and HPHH
PP 33/1970	Forest planning
PP No. 28/1985	Forest protection
PP No. 29/1982	Environmental impact analysis
PP No. 47/1997	National spatial plan
PP No. 18/1994	Natural resources tourism in the use of national parks zone, forest parks and nature wildlife
PP No. 62/1998	Submission part of government affairs in the forestry sector to the regions
PP No. 68/1998	Natural reserve area and nature conservation areas
PP No. 25/2000	Central and local authority limits
PP No. 4/2001	Requirement to restore damage environment
PP 34/2002	Land use and plan management forests use and the use of forest area
PP 44 of 2004	Forestry planning
PP 45/2004	Forest protection

The development concept considered the environmental aspects which legally poured into law on environmental management including the legal instruments in it to be less effective in reaching the law purposes of environmental management when dealing with legislation/regulation and management of certain natural resources (Bram, 2014). Indonesia is recognized as the largest archipelago country can be pioneer in gressn development right. This is wiil elaborate the ontologt (nature) and the ways or methods in to archive the ultimate goal of green development right (Handayani, 2016). Environmental legislation was closely and explicitly associated eith human welfare with parliament and the court only willing to interfere in private property rights where necessary for scuring important scial benefits. Yet, developments in legislation as much as in the patterns of

Table 3: The presidential decree governing the forest area

Regulation	Contents
Presidential Decree 43/1978	Ratification of the UN convention on the cites
Presidential Decree No.23/1990	Environmental impact control agency
Presidential Decree 32/1990	Management of protected areas
Presidential Decree No.75/1993	Coordination of the national spatial management
Presidential Decree 118/2000	Closed and opened business sectors with specific requirements for investment
Presidential Decree 127/2001	Sector/type of small business and field/type of opened business into medium or large enterprises with partnership terms
Presidential Decree 41/2004	Licensing or the agreement in the field of mining located in forest areas
Presidential Decree No. 28 in 2011	About the use of protected forest areas for underground mining

Table 4: Ministerial decrees governing the forest area

Regulation	Contents
Minister of Agriculture Decree No. 337/KPTS/UM/II/1980	Criteria and procedures for determination protected forest
Joint Decree of Minister of mines and energy and forestry Minister No. 969. K/05/M.PE/1989/429/KPT-II/1989	Guidelines of the implementation arrangement on mining and energy in forest areas
Joint ministerial decision mines and energy and the Minister of Forestry No. 436/KPTS-II/1991	Creating the coordination team, fixed ministry of mines and energy and the environment and forestry ministry and amendment of mining permit procedures and energy in forest areas
Ministerial Decree No. 55/KPTS-II/1994	Guidelines in borrowing and using forest area
SK Director General of PHPA No. 129/1996	Pattern of nature reserve area management, conservation areas, hunting park and forest preserve
Ministerial Decree No. 292/KPT-II/1995	Interchange of forest area
Director general of general mining Decree No. 36. K/271/DDJP/1996	Reclamation guarantee
Ministerial Decree No. 70/KPTS-II/2001	Determining the forest areas, changing status and function of forest area
Regulation of the minister of forestry number: P.14/MENHUT-II/2006	Guidance in borrowing and using of forest area
Joint regulation of the Minister of Manpower and Transmigration and the Minister of forestry Number: per.23/MEN/XI/2007 and No. P.52/MENHUT-II/2007	Releasing the forest region in the context of transmigration implementation
P.43/MENHUT-II/2008	Guidance of borrowing and using of forest area
Ministerial Decree No. P.50/MENHUT-II/2009	The assertion about the status and functioning of forest lands.
PP. No. 24 of 2010	The use of forest area
PP. No. 61 year 2010	Amendment of Government Regulation No. 24 year 2010 on the use of forest areas
PP. No. 105 2015	Changing the Government Regulation No. 24 year 2010 on the use of forest areas
Permen P.56/MENHUT-II/2008	Procedures for determining damage, reclamation and regulation for calculating the non tax revenue of forest area
Permen P.84/MENHUT-II/2014	Amendment P.56/MENHUT Forest II/2008 on procedures for determining damage area, reclamation and regulation to calculate the non tax revenue of forest area
Environment and forestry candy P.50/ MENLHK/SECRETARIAT/2016	Guidance in borrowing and using the forest area

common law thinking which evoleved to deal with nuisance claims, some times exceede a purely instrumental approach to environmental protection (Dossier, 2013). The existence of adverse impacts on coastal communities, it will also propagate to fulfillment basic rights wish should be inherent in every human being, namely, the substantActve rights anprocedural rights that will ultimately, leade to change the enjoy of human rights (Bodansky, 2010)

CONCLUSION

The existence of overlapping and confusing policy to the implementers. As occurred in the use of forest land for the development outside forestry. Protected forest function as a protection of a life support system to regulate the water flow, prevent floods, control erosion, prevent the intrusion of sea water had not been appreciated widely by district governments. Dualism of government policy which on the one side seeks to protect the protected areas and establish rules to preserve it but on the other side, it opens opportunities for the protected forest area to be exploited. Then, weak monitoring and enforcement against the perpetrators of vandal protected areas.

RECOMMENDATIONS

The need to realize the awareness regarding to the function of protected forest between sectors involved in the management of protected forest. Considering the complexity problems of protected forest, some policies need to be made in a comprehensive, integrated and which are not overlapping, essential legislation governing the institutional aspects of protected areas including national and local institutions, optimization spirit of legislation, need to think about how the issue of mining in protected forests can be solved. Hopefully, there is harmony between the needs of the technical standard of mining activities and the technical standard of the use of forestry based on the sustainable forest management.

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