

Economic Instrument Approach Related to the Giving of Environmental Insurance in the Enforcement of Environmental Law

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ABSTRACT

Related to economic instrument approach of environmental insurance gift specially in enforcing the environmental law intrinsically, it has been regulated in Law number 32 of 2009 on the environmental protection and management in the article 42 paragraph 1 affirming that in order to preserve the environment function, the central government and the local government are obliged to expand and apply the environmental economic instrument. One of them is environmental insurance development. The reality of environmental insurance is the incurrence of giving protection when the environmental contamination or damage occurs. The purpose of this study was to examine the position and function of environmental insurance in environmental law enforcement and the extent of the impact caused by the provision of environmental insurance through an economic instrument approach to environmental law enforcement. This research used literature review. This study found that environmental insurance is basically similar to conventional insurance, only that the object of insurance is a more common property and open access (not private). The claim calculation approach is more comprehensive and requires a special approach. Environmental insurance can function as a means of overcoming environmental pollution, because environmental insurance is one way to guarantee the cost of environmental recovery in the event of pollution or damage. Environmental insurance provides many benefits for businessmen as well as other parties and also for environmental preservation. Environmental insurance is very important in providing protection and guarantee to the community to be able to continuously obtain ecological and economic benefits from the natural resources and the environment that is in the vicinity. This paper proposes suggestions, including the permits granted by the local governments should be re-evaluated, then the government should be more objective and selective in granting licenses to mining companies today.

Keywords: *environmental insurance, economic instrument, environment, the enforcement of environmental law*

1. Introduction

Indonesia as a country based on law in the framework of the welfare state, emphasized in the basic constitution the Preamble of the 1945 Constitution of the Republic of Indonesia to realize a life sovereignty of the people in order to realize prosperity for all Indonesian people [1]. In the context of the realization of prosperity for all Indonesian people, especially in the field of environment, it is regulated in a constitution that affirms that everyone has the right to a good and healthy environment [2-6].

Environmental law is a field of legal science [7-10], which is one of the most strategic fields of legal science because environmental law has many aspects, including administrative law, criminal law, and civil law. Thus, environmental law certainly has more complex aspects. Therefore, exploring environmental law is very impossible if it is done alone, because it is considered as closely related to other legal aspects that include environmental law.

The overall structure of the Indonesian country and political situation underwent major changes with the fall of the New Order regime in 1998, which was then followed by bureaucratic reformation in 1999-2000 [11]. In the New Order era, the environmental management only concerned with economic aspects so that the legal aspects became weak. During the reformation era, there were many environmental damages, so that Law Number 32 of 2009 concerning Environmental Protection and Management, there was a paradigm shift in strengthening the legal aspects that put forward the aspects of criminal law.

The Criminal Law Aspect, which used to be the foremost fortress in environmental protection and management, is now moved to become the last bastion of environmental damage prevention which is often referred to as *ultimum remedium* or the last weapon. One of the factors that causes criminal law aspects to be heralded as the last bastion of protection and prevention of environmental damage is because criminal law aspects require criminal evidences (for conventional cases), while environmental cases must require laboratory tests in the field which requires substantial funds. Besides that, the apparatus resources in this law enforcement case are generally weak in the field of environment, so that the foremost stronghold in Environmental Protection and Management is from the aspect of Administrative Law in order to provide preventive and controlling efforts.

Administrative aspects of the core consists of 3 (three) aspects, including the first one which is licensing. Licensing has a strategic function by issuing the latest innovations namely the existence of environmental permits in the issuance of business licenses in the framework of ecological interests, not just economic interests alone, so that an environmental permit is one of the conditions for a business exit consisting of; (a) Small businesses have a minimum feasibility recommendation from the local government; (b) Medium businesses have a UKL/UPL at a minimum; and (c) Large businesses must have an AMDAL (Environmental Impact Analysis). The second one

is the Supervision of the implementation of environmental exploration which is supervised by a Commission that has a License on Environmental Impacts. The last one is the Imposition of Sanctions. Imposing sanctions today is in the form of administrative sanctions consisting of reprimands (oral or written), government coercion, freezing business licenses, and revoking business licenses.

The year of 2009 was again an important year in the development of Indonesia's environmental law with the issuance of Law Number 32 of 2009 concerning Environmental Protection and Management. The drafting of this law, besides aiming to address the deficiencies in the regulation of Law Number 23 of 1997, is mainly motivated by adaptation to decentralization.

In the protection and management of the environment, there are several approaches taken in the management of the environment, one of them is the economic instrument approach [12-14]. An economic instrument is an instrument that emphasizes the economic benefits obtained by the owner of an activity if he complies with environmental requirements as governed by environmental laws and regulations.

Economic instruments are a way to change human attitudes and behavior towards the environment, the purpose of using this instrument is to change the profit value relative to losses for actors by providing economic incentives. Disincentive incentives include market instruments that generate profit and loss in the form of money, so it is tangible.

To change human attitudes and behavior towards the environment to deal with damage and losses that will arise to the environment, and in the context of preserving environmental functions, the Government of the Republic of Indonesia issues the latest regulations on environmental protection and management as stipulated in Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH), in article 42 paragraph (1). In the context of preserving environmental functions, the Government and regional governments must develop and implement environmental economic instruments. One of them is the development of environmental insurance (Article 43 paragraph (3). Environmental Insurance is insurance that provides protection when pollution and/or damage to the environment occurs).

The application of environmental legal principles can also be reflected in judicial decisions, sometimes even before formal regulations explicitly regulate a particular legal concept [15, 16]. Three important elements in the use of economic instruments to provide protection and prevention of environmental damage, among others, containing elements of value, managing benefit elements, and containing elements of efficiency [17]. Among these three elements that provide the function of justice are the elements of efficiency. The element of efficiency provides a saving function by using as few natural and renewable resources as possible according to natural reason and rhythm. However, different conditions faced in protecting environmental damage in the area of Manarang Village, Mattiro Bulu District, Pinrang District, South

Sulawesi Province were caused by the dredging of soil and sand to be used as piles and as building materials which resulted in excessive environmental damage. The land that was once a garden land has now been transformed into an artificial lake which causes a shift in the land around the dredging area. However, the surrounding communities are unable to do anything because they do not know what to do because the community's knowledge of environmental impacts is minimal.

Natural resource and environmental factors are ones of the key factors in the development [18-20]. Not only do these natural and environmental resources have economic value, but they also have ecological value, the amount of which can be monetized. The concept of valuation is better known as ecological economic valuation in the form of resource economic valuation. The economic and ecological benefits of this monetary result can be used as a tool to determine the value of natural resources and the environment. Today, the condition of Indonesia's natural resources and environment generally experiences a lot of degradation. Two reasons are the pollution and environmental damage from various economic activities.

The purpose of this study was to examine the position and function of environmental insurance in environmental law enforcement and the extent of the impact caused by the provision of environmental insurance through an economic instrument approach to environmental law enforcement.

2. Materials and Method

Research Type

The type of research used was normative research using a conceptual approach and a statute approach.

Data collection technique

Data collection techniques used by the authors in this study were literature study techniques that examine various legal documents related to environmental law that are associated with the function of environmental insurance through the approach of economic instruments.

Data analysis technique

All data collected have been analyzed using a theoretical basis, then analyzed qualitatively. Qualitative analysis is an analysis that completely deconstructs the position and function of environmental insurance through an economic instrument approach to environmental law enforcement.

3. Result and Discussion

Position and Function of the Environment Insurance

The environment is a union of space with all objects, power, conditions, and living things, including humans and their behavior, which affect nature itself, the survival of life, and the well-being of humans and other living creatures. Environmental protection and management [21] is a systematic and integrated effort undertaken to preserve environmental functions and prevent environmental pollution and/or damage

which includes planning, utilization, control, maintenance, supervision, and law enforcement

Insurance or coverage is an agreement between 2 (two) or more parties by which the insurer binds himself to the insured by receiving insurance premiums to provide compensation to the insured due to the expected loss, damage or loss of profit, or legal liability to a third party that may suffered by the insured arising from an uncertain event, or to provide a payment based on the death or life of an insured person[22, 23]. Environmental insurance as a model of transfer or risk sharing for activities carried out by each business activity that will cause negative impacts in the form of environmental pollution and/or environmental damage, which from the beginning was predictable for the resulted damage and losses[24].

In terms of the language, insurance is a form of legal terms that is often used in the laws and insurance activities themselves. Insurance is a form of protection of an object from the threat that causes harm. The insurance business is divided into 2 (two) types, namely businesses in the field of insurance activities, while companies engaged in this field are called Insurance Companies, and businesses in the field of supporting business insurance activities called insurance support businesses while the company itself is called Company Insurance Support [25].

An important element of insurance activities is Coverage and Guarantee, whose Dutch language is known as Verzekering or Assurantie. Furthermore, as a result there is a basic concept in the form of coverage in the insurance system, therefore it can also be stated that there is an "insured" as a party whose risk is borne or protected by "the guarantor" in the event of a liability relationship between the insurer (which is carried out generally by the Insurance Company) and the insured risk (those who feel and need to protect their business interests by transferring the risk to the insurer).

The basic function of insurance is to make efforts to overcome uncertainty about specific losses for pure losses and not losses that are speculative. Insurance objects are objects and services, body and soul, human health, legal liability, and all other interests that can be lost, damaged, lost and or diminished in value.

There are several types of insurance businesses consisting of; (1) an insurance business that provides services in managing risks of loss, loss of benefits, and legal liability to third parties, arising from uncertain events, (2) life insurance business that provides services in managing risks related to the life or death of an insured person, and (3) reinsurance businesses that provide services in reinsurance of the risks faced by loss insurance companies and/or life insurance companies.

Therefore, the provision of environmental insurance is very useful to guarantee or protect the cost of environmental recovery in the event of environmental pollution. This will also bring the consequences of the availability of funds as savings to face risks and claims for compensation from the polluted parties or communities. Other

benefits that will be obtained will open new business opportunities for the insurance services.

The enforcement of environmental law is a very important part in the effort to create an arrangement (compliance) of environmental law [8, 26]. In environmental law enforcement, a good environmental management system is needed. The environmental management system cannot be separated from its management factors, namely humans. Humans are basically selfish (egoistic). Human attitudes and actions towards their environment are strongly affected by economic considerations, both the individual economy and the country economy. This excessive economic objective causes over-exploitation without adequate protection. To change it, human attitudes and actions must be changed to be environmentally friendly.

The effect caused by the provision of environmental insurance through an economic instrument approach

The development of Indonesian environmental law is inseparable from a number of key factors whose track record colors the development of scientific discourse and practice of environmental law. Democracy and rule of law are prerequisites for the implementation of sustainable development. Ideally, environmental law must be able to bridge constitutional democracy with the role of law. The role of law in fulfilling constitutional rights related to a good and healthy environment needs to be prioritized.

Democracy in environmental management is then considered to have a positive influence on environmental quality [27]. This conclusion is supported by the results released by several studies. However, on the other hand, some experts argue that democracy does not necessarily have a positive impact on the environment. One reason is that there is a fact that is hard to deny that the high increase in pollution in the last decade came from countries that are considered to be very democratic, namely rich countries that use high technology that produces pollution. In the context of rights, the right to a healthy environment is also closely related to other rights, both subjective rights that are substantive, such as the right to health, the right to water, to the rights of indigenous peoples, as well as procedural rights which came to be known as triple access rights.

These procedural rights create economic instruments, especially in the provision of environmental insurance. However, risks inherent in every human activity, both personally and professionally, such as the risk of loss of life, injury, health, or ownership associated with events that cannot be predicted in advance in conditions of uncertainty, such as loss of life due to natural disasters environmental damage or pollution, and so on. Risks that occur are negative and cause losses including economic losses, so the risk must be avoided or reduced. Efforts to avoid risks can be done alone or delegate these risks to parties outside the individual or company who are dealing with risks today.

Environmental effects have a type that is evaluated by environmental insurance in an economic approach such as property damage quickly due to extraordinary events, and loss of economic value from property or natural resources.

According to the laws and regulations in the article concerning environmental economic instruments, it is explained that one of the environmental economic instruments includes incentives and/or disincentives. The incentives and/or disincentives are referred to applying in the form of the development of environmental insurance. Environmental insurance is basically similar to conventional insurance, only the object of insurance is a more common property and open access (not private). So the claim calculation approach is more comprehensive and requires a special approach.

Environmental insurance can function as a means of overcoming environmental pollution, because environmental insurance is one way to guarantee the cost of environmental recovery in the event of pollution or environmental damage. Environmental insurance provides many benefits for businessmen as well as other parties and also for environmental preservation. Environmental insurance is very important to provide protection and guarantee to the community to be able to continuously obtain ecological and economic benefits from the natural resources and the environment that is in the vicinity.

The provision of environmental insurance through the economic instrument approach provides many benefits to the material loss or threat of material suffered by the community due to negligence of the entrepreneur in carrying out his business or matters related to daily activities.

Thus, environmental issues as well as environmental laws governing the provision of environmental insurance in an economic approach will give responsibility to business managers for environmental damage caused by the business undertaken, and of course open up considerable opportunities for insurance companies.

4. Conclusion and Recommendation

This study concludes that environmental insurance is basically similar to conventional insurance, only the object of insurance is a more common property and open access (not private). The claim calculation approach is more comprehensive and requires a special approach. Environmental insurance can function as a means of overcoming environmental pollution, because environmental insurance is one way to guarantee the cost of environmental recovery in the event of pollution or environmental damage. Environmental insurance provides many benefits for businessmen as well as other parties and also for environmental preservation. Environmental insurance is very important to provide protection and guarantee to the community to be able to continuously obtain ecological and economic benefits from the natural resources and the environment that is in the vicinity. This paper proposes suggestions, namely the granting of permits granted by local governments should be re-evaluated, then the

government should be more objective and selective in granting licenses to mining companies today.

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