DISORDER OF LAW AS ALTERNATIVE ENFORCEMENT OF ENVIRONMENTAL LAW: REMBANG PUBLIC LAWSUIT AGAINST PT. CEMENT INDONESIA TBK CASE STUDY

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Abstract

Purpose of Study: The purpose of this study is to analyze and describe the concept of disorder of law in understanding the law and its work in society as something that flows in achieving an order and describes the disorder of law which causes chaos in the enforcement of environmental law in the case of Rembang community against PT. Cement Indonesia. This is closely related to the attitude of the Governor of Rembang in addressing the verdict of the PK by revoking the environmental permit or keeping it on, given the urge of Rembang people who remain firm in opposing the mining in the area with the main reason about the natural sustainability in Kendeng. Decree of the Governor of Central Java Number 660.1./17 of 2012 on Environmental Permit for Mining and Construction of Cement Plant by PT Semen Gresik (Persero) Tbk reaping resistance from the people of Rembang. The decree is deemed to be contradictory with the socialization of EIA and the determination of groundwater basin area as a water catchment area and the use of geological protected forest area that is considered not fulfill the principle of sustainable development. In this dispute, the Governor of Central Java as the defendant I and the second defendant namely PT Semen Indonesia (SI) Persero Tbk in Rembang. The plaintiff, in this case, is Rembang citizen represented by Joko Prihanto along with Wahana Lingkungan Hidup Indonesia. Rembang case that has reached the cassation up to the PK seized the public’s attention and invited the demonstration action from the people of Rembang. It’s because of the post-Supreme Court ruling. 99 PK / TUN / 2016 dated October 5, 2016, did not make the operation of the cement plant stop but the Governor re-issued environmental permit for PT Semen Indonesia.

Methodology: This study was studied using a socio-legal approach that describes social and legal reality, and seeks to understand and explain the logic of logical connection between both. Type of research used by the author in this research is descriptive research. In this study, the authors focus on the case of cement disputes on karst mining activities in Rembang, Central Java. The analytical method used is using deductive logic used to draw conclusions from general terms into individual cases.

Results: The dispute over the Rembang cement case stems from the decree of the Governor of Central Java giving the environmental permit to PT Semen Indonesia in 2012.

Implications/Applications: This reaps the demands of the people of Rembang demanding that the environmental permit along with the factory business permit is revoked and stopped. This dispute is still continuing and continues to be guarded by the people of Rembang to defend their agrarian rights and rights as farmers and also for the sake of nature sanctuary of Kendeng from mining threat.

Keywords: Environmental Permit, Responsive Law, Cement Rembang, Governor Decree

INTRODUCTION

Background

The increasing cases of environmental disputes both due to pollution and environmental destruction in Indonesia prove the truth Rachel Carson stated in her book "The Silent Spring", which describes the beautifully beautiful spring, described as a lonely and frightening spring (Carson, 1990; Suleri and Cavagnaro, 2016).

Increasing environmental disputes are closely linked to business activities undertaken without regard to natural norms or environmental sovereignty. One of the disputes that concern the public is related to the case of Rembang Community lawsuit against PT. Semen Indonesia Tbk.

This was originated from the decree of the Governor of Central Java which granted an environmental permit to PT Semen Indonesia in 2012 ago. Decree of the Governor of Central Java Number 660.1./17 of 2012 on Environmental Permit for Mining and Construction of Cement Plant by PT Semen Gresik (Persero) Tbk reaping resistance from the people of Rembang. The decree is deemed to be contradictory with the socialization of EIA and the determination of groundwater basin area as a water catchment area and the use of geological protected forest area that is considered not...
fulfill the principle of sustainable development.

In this dispute, the Governor of Central Java as the defendant I and the second defendant namely PT Semen Indonesia (SI) Persero Tbk in Rembang. The Plaintiff, in this case, is the Rembang citizen represented by Joko Prihanto Together with the Indonesian Forum for Environment. Rembang case that has reached the cassation up to the PK seized the public’s attention and invited the demonstration action from the people of Rembang. Because of the post-Supreme Court ruling. 99 PK / TUN / 2016 dated October 5, 2016, did not make the operation of the cement plant stop but the Governor re-issued environmental permit for PT Semen Indonesia. This reaps a demo from Rembang community demanding that the environmental permit along with the factory business permit is revoked and stopped. Finally, the Governor also submitted the decision to revoke the environmental permit through the Governor’s Decree No. SK. 6601/4 Year 2017 dated January 16, 2017, as a step in executing the decision of the Supreme Court.

Thus, the Decision of the Governor of Central Java. 668.1 / 17 of 2012 as already amended in Decree No. 660.1 / 30 of 2016 concerning an environmental permit for mining activities of cement raw materials and the construction and operation of the Indonesian Cement plant in Rembang becomes null and void.

The lawsuit was initially submitted by Joko Prianto and Rembang residents who rejected the establishment of PT Semen Indonesia factory in Rembang against the Governor of Central Java as a defendant I and PT Semen Indonesia (Persero) Tbk as defendant II. The object of lawsuit in the form of Decree of Governor of Central Java Number 660.1 / 17/2012 dated June 7, 2012, about environmental permit of miner activity from the construction of the cement factory of PT Semen Indonesia. At the first level in the State Administrative Court of Semarang, the lawsuit was rejected by a judge on April 16, 2015. In its legal considerations, the judges declared the lawsuit to be considered expired. The object of the claim filed has exceeded the grace period of 90 days, as Article 55 of Law Number 51 Year 2009 concerning the Second Amendment to Law Number 5 Year 1986 concerning the State Administrative Court. Furthermore, residents of Rembang appealed in the High Administrative Court of Surabaya. But the court rejected the appeal filed by Rembang residents.

A copy of the verdict, the judge’s chairman Santer Sitorus, with members Djoko Dwi Hartanto and Riyanto, upheld the verdict of the PTUN Semarang judge No. 64 / G / 2014 / PTUN.SMG dated April 16, 2015. The struggle did not stop. Residents who rejected the establishment of PT Semen Indonesia’s factory in Rembang filed cassation after the appeal. Again, they lost. A review submitted on May 4, 2016, after Rembang residents found novum (new evidence) finally reaped the favorable outcome of the Rembang people’s victory (Iravani and ShekarchiZade, 2014; Selasa, 2016).

Based on this, it is found the disorder that caused chaos among Rembang residents who protested in refusing the construction of a cement factory in Rembang. This is closely related to the attitude and authority of the regional head in this case; the Governor of Central Java in addressing the verdict of the PK by revoking the environmental permit or keeping it on, given the urge of Rembang people who remain firm in opposing the mining in the area with the main reason about the natural conservation in Kendeng.

Based on the background explanation, this will be studied and discussed further by the writer about how the irregularity of law occurs in society can be seen as an alternative in understanding the workings of law in society so that it will be examined how enforcement of environmental law can be realized by the existence of legal irregularities applying in the Rembang community.

**Formulation of Problem**

Based on this background, the following problems can be formulated:

1. What is the concept of disorder law in understanding the workings of law enforcement in society?

2. How does legal irregularities (chaos) as an alternative in understanding the enforcement of environmental law in Rembang society in case of Rembang community lawsuit against PT. Cement Indonesia?

**Research Objectives**

The purpose of this study are:

1. To analyze and describe the concept of legal irregularity (disorder law) in understanding the workings of law enforcement in the community

2. To describing legal irregularity (chaos) as an alternative in understanding the enforcement of environmental law in Rembang community in case of Rembang community lawsuit against PT. Cement Indonesia
RESEARCH METHODS

Methodological Approach

This study was studied using a socio-legal approach that describes social and legal reality and seeks to understand and explain the logic of the logical connection between both (Rahardjo, 1980: 17). This research belongs to the type of non-doctrinal legal research, by examining the enactment of the law in society and the relationship between the two. So this research is based on the sociological conditions related to the dispute over the cement case of Rembang community against PT. Cement Indonesia.

Types of Research

Type of research used by the author in this research is descriptive research (Mollaei et al., 2014; Soekanto, 2005). Descriptive research is a problem-solving procedure that is investigated by describing the state of the subject or object of research at the present moment based on the facts that appear (Dimyati and Wardiono, 2015). So that it can be obtained analysis and facts carefully, thoroughly, and clearly related to the issues studied namely in the case of the Rembang community lawsuit against PT. Semen Indonesia Tbk.

Data Types

The data presented from the data sources include primary and secondary data. The explanation as follows:

1. Primary Data
   Namely, the data obtained in the form of fact or description of the results of research directed at the location of research that serves as the main data in solving the issues raised.

2. Secondary Data
   The data required in this study is secondary data in the form of legal materials consisting of primary legal materials, namely binding legal materials and secondary legal materials (Soerjono dan Abdul Rahman, 2003). Primary legal materials are legal materials that are authoritative norms, basic rules, and legislation. In this study, the primary legal materials used are the 1945 Constitution, Law no. 32 of 2009 on the Protection and Management of the Environment, Law no. 30 year 2014 on Government Administration, PP RI No. 27 of 2012 on Environmental Permit, Environmental Permit Decree No.660.1 / 30 on November 9, 2016, Governor’s Decree No. SK. 6601/4 Year 2017, Central Java Governor’s Decree No. 660.1/17 of 2012 concerning Environmental Permit for Mining and Construction of Cement Plant by PT Semen Gresik (Persero) Tbk and Supreme Court Decision No. 99 PK / TUN /2016.

While the secondary legal materials in the form of all publications about the law that is not an official document, which provides an explanation of the primary legal materials in the form of literature and journals related to the issues studied (Pu-triayanti, 2015)

Method of Data Analysis

In relation to the type of normative legal research that becomes the reference, the approach used is the approach of law (statute approach), concept approach (conceptual approach). The analysis also using deductive logic is used to draw conclusions from general to individual cases. The process of data analysis obtained from field research and library study is then analyzed qualitatively. The results of the analysis are then presented descriptively, to be compiled as conclusions in answering the problems related to the disorder of law as an alternative to environmental law enforcement (a case study of the Rembang community lawsuit against PT Semen Indonesia).

RESULTS AND ANALYSIS

A. The Concept of Law Disorder in Understanding the Working of Law Enforcement in Society Charles Shamford in his book The Disorder of Law, A Critique of Legal Theory, proposed a theory of legal theories built on the concept of system or the order. According to Shamford, not always the legal theory is based on the theory of the legal system, because basically, the relationships that occur in society indicate asymmetrical relationship (asymmetric) (Shamford, 1989). This is the characteristic of social relations, social relations are perceived differently by the parties. Thus what is said appears to be orderly, clear, and definite, in fact, full of uncertainty. Some sociological theories base their concepts on the disorder, they see the law or society, not as systematic matter.

In connection with this, Satjipto Rahardjo expressed his comments when discussing the concept of Charles Shamford as
Shamford departs from the social base of the law of asymmetrical relationships. These are the characteristics of all social relations, the social relations perceived differently by the parties. Thus what is said appears to be orderly, orderly, clear, surely full of uncertainty. Such irregularities and uncertainties are caused by relationships in society that are based on power relations. This power relationship is not reflected in the formal relationship in society. Then there is the gap between the relationships formal and real relationships based on strength. This is what causes the irregularities (Rahardjo, 1980; Villegas and Hidalgo, 2018).

Shamford invests through his view of the law as a chaotic situation. Shamford begins his idea by rereading what positivists think in terms of the law. Legitimate positivists perceive law as a logical-rational institution and for the sake of its ideal law is value-free, neutral, and even must mask itself from non-juridical qualities. Understanding law Legally-positivistically law-based would not want to look at legal and social realities in complex situations where Shamford uses the terms "social melee" and "legal melee" as a means of exposing the complexities of the law (Faisal, 2014). Shamford sees that human relationships are melee, whether, from social or legal life, that law is something that flows in society.

At first, chaos was first traced in ancient Greek civilizations. The ancient Greeks strongly believed that chaos precedes order, in other words, order arises from disorder. Chaos theory is a very old phenomenon, as old as the development of the universe itself. Chaos is not something to be feared and avoided. There are opportunities and possibilities that can arise and can be developed into order when all parties have a sense of chaos. Chaos theory contains a rejection of the positivistic paradigm that the law is full of irregularities often called Shamford with the word "legal melee" which means something fluid.

Shamford offers the idea by explaining that society is basically without a system or in asymmetrical conditions or disorder with what he calls social melee (liquid) and the law is part of the condition of society, the law is always in melee condition (legal melee). Shamford’s thoughts stem from the ontological basis of seeing social and legal reality in the reality of melee. Melee is identical with liquid, unpredictable, always dynamic, not systematic and mechanical. Shamford sees that human intercourse is melee, whether social or legal. At the end that appears is a complex state, flexible and full of irregularity.

B. Legal Chaos as an Alternative in Understanding the Enforcement of Environmental Laws in Rembang Society in Rembang Community against PT. Cement Indonesia

Tuesday, January 17, 2017, is a 60-day deadline for Central Java Governor Ganjar Pranowo to revoke the environmental permit scheme in accordance with the decision of the Supreme Court over the lawsuit of PK Citizen of Kendeng and WALHI against PT.

Cement Indonesia after the previous Governor of Central Java instead issued a new permit in environmental permit No. SK. 660.1 / 30 on November 9, 2016, concerning the mining activities of cement raw materials and the construction and operation of cement plants which constitute a waiver of the law.

Residents of Rembang who later won the lawsuit to cancel the environmental permit of PT Semen Indonesia in the stage of Review in the Supreme Court, where the object of dispute in the lawsuit between the citizens of Rembang and WALHI against the Governor of Central Java and PT Semen Indonesia Tbk is about Central Java Governor Decree No. 660.1 / 17 of 2012 on environmental permit for mining activities and the construction of a cement plant by PT Semen Gresik Tbk in Rembang regency of Central Java.

Responding to the verdict of the PK, the Governor of Central Java in 2016 then issued a new environmental permit for PT. Cement Indonesia, although it has been revoked at the insistence of Rembang citizens who demonstrate demanding that the decision of the Supreme Court be respected.

In the Decree of the Governor of Central Java. 660.1 / 30 year 2016 about environmental permit of mining activity of cement raw material and development and operation of cement factory of PT. Semen Indonesia Tbk. In Kabupaten Rembang, Central Java Province, the issuance of permits both for environmental permit and business license is the authority of the government. Related to the environmental permit in Article 36-41 of the Law on Environmental Protection and Management then referred to as UUPPLH stipulates that every person to obtain business license or activity is required to have amdal or UKL-UPL and have an environmental permit. It is stipulated in the UUPPLH that "in the event that the environmental permit is revoked, the business license and/or activity is canceled (Article 40 paragraph (1)), and in case business and/or activity is amended, the responsible person of business and/or activity shall renew the environmental permit.

It should be based on the Act, related to the Governor’s Decree no. 17 of 2012 which has been revoked based on the decision of the Supreme Court, the government does not re-issue new environmental permits by reason of changes in environmental management and monitoring as in the determination of FOURTH and SIXTH. The implication of the
cancellation of environmental permit stipulated in Article 40 paragraph (2) UUPPLH that “in case of the environmental permit is revoked, business license or activity is canceled.” This means that all activities undertaken by PT Semen Gresik are canceled. Thus the penalty for cancellation of permits remains inherent. This is in contrast to the fact that although the environmental permit has been revoked, cement mining business activities and the construction and operation of the cement factory of PT Semen Indonesia are still ongoing and running until now. This is contrary to the legislation and general principles of good governance with no legal certainty for the citizens of Rembang who have been won in the Supreme Court’s decision.  

In protest of the rejection of the construction of the cement plant, on March 14, 2017, peasants of Kendeng mountains and other areas such as Rembang, Pati, Gerobokan and Blora staged a leg action in demanding the withdrawal of regulatory regulations made by Governor Ganjar about PT Semen Indonesia’s environmental permit. Patmi (48), a peasant woman from the Kendeng Mountains area who did the foot casting action in front of the state palace died on Tuesday 21 March 2017 in the morning. Patmi suffered a heart attack and died on her way from LBH Jakarta office to Saint Carolus Hospital, Salemba, Central Jakarta. Sri Wahyuni, fellow Patmi from the resident of Kayen, Pati, said that Patmi a persistent figure in fighting for the sustainability of the Kendeng Mountains. The concrete that handcuffed the foot of nine women farmers from Kendeng Central Java Mountains was finally dismantled because there is news that President Jokowi will send a representative of Presidential Staff Teten Masduki to meet the nine female farmers.  

As a form of Rembang community guard on this case, representatives of the Civil Society Coalition in realizing Kendeng Justice put forward the following demands:  

1. Central Java Governor, Ganjar Pranowo as the licensor to comply with the decision of the Supreme Court, immediately withdraw the Decree of the Governor of Central Java. 660.1/ 17 of 2012 related to an environmental permit for PT Semen Gresik Tbk. In Rembang regency of CentralJava;  

2. Revoke the derivative permit from environmental permit no. 660.1 / 17 of 2012 related to business license and construction permit. Thus the entire process of preparing activities for cement mining in Kabupaten Rembang should be stopped;  

3. Reminding the consequences of non-compliance with the criminal penalty as stipulated in Article 111 paragraph(1) UUPPLH is correlated with environmental permit number 01/30 year 2016;  

4. President Joko Widodo, as the highest government leader, guarantees and ensures his apparatus under the Governor To comply with the Supreme Court’s decision, to protect the rights of agrarian and environment of Rembang citizens, as well as to give reprimand and sanction to the Governor for the effort to negate the law and political agreement of President on Rembanga case;  

5. The President or Minister of Home Affairs shall immediately revoke the Governor’s Decree on new environmental permit no. 660.1 / 30 dated November 30, 2016, which provides legal and political legitimacy to the operations of a cement company in Rembang;  

6. President Jokowi, Governor and Regent shall ensure the priority of fulfillment and respect for the basic rights of Rembang citizens on the agrarian wealth as a source of sustainability and sustainability of their life either as farmers around Kendeng Mountains as regulated by the constitution;  

7. All forms of development aimed at promoting economic growth shall be in harmony, not even denying, with other development plans that hold the principles of justice, prosperity and sustainability, namely the principles of agrarian justice, food sovereignty and the protection of peasant rights; Protection of farmers’rights;  

Based on these demands, it should be enough to make the regional head, in this case, the Governor of Central Java in responding to the aspirations of the citizens of Rembang to revoke the environmental permit and revoke the legal legitimacy of the operation of cement in Rembang. For more than a week of guarding and demos conducted in search for justice in the Kendeng Mountains, according to Shamford’s theory of law-making as a social relationship that seemed to be orderly, clear, but in fact full of uncertainties similar to the Rembang problem. Such irregularities and uncertainties are caused by relationships in society that are based on power relations. The gap between formal relationships and real relationships based on conflicting forces in which substantive justice that has been regulated in the UUPLH can be played and side with the interests of certain parties that conflict with the rights of the people of Rembang. The settlement of the Rembang dispute with various legal remedies to the level of PK but turns again on the interests of the entrepreneurs with the release of the new environmental permit is a representation of the repressive legal character in which the interests of the competent institution are so strongly tied to the social and political environment.
Law enforcement which in Friedman concept includes elements of law substance, structure, and culture are three things that are closely structure and substance of the law would not have survived. This environment is more or less the behavior and practice of law. The legal culture is to see the interaction between humans, this is in line with what Shamford is trying to offer, that the schemes and legal relations formulated explicitly in the rule of law do not diminish the nature of the melee behind it; there is interaction between humans that determine the meaning behind the legal text. Reinterpreted by context. In such a situation, the text of the law can not go on its own by maintaining a level of mathematical certainty, instead, it must confront a context of improbability. Not that it weakens the legal position but will go beyond the way of thinking that is all-round and spell laws. For chaos theory, the reality of law is an asymmetrical, uncertain, and the disorganized reality that is the essence of relations in social society (Singh et al., 2018; Susanto, 2010). Chaos that happened up to the foot cast event by 9 Kendeng farmers is a form of the asymmetrical situation in Rembang society in voicing its aspiration. The interaction that surrounds WALHI, OLH, Kendeng Kendal Community Care Network unites to voice to the President related to farmers’ justice in Rembang as a form of protest the establishment of a cement factory in the area that can harm the natural preservation of Kendeng Mountains.

CONCLUSION

Based on the results of research and analysis above can be concluded things as follows:

1. Charles Shamford who put forward the theory of legal theories built on the concept of system or regularity. According to Shamford, not always legal theory is based on the theory of the legal system, because basically, the relationships that occur in society indicate a relationship that is asymmetrical (asymmetric). Shamford saw that human intercourse was melee, whether social or legal. Ultimately what comes up is the complex, fluid and irregular state that is the beginning of the order itself

2. To the chaos conditions that occur in Rembang, should make the Government can respond to the aspirations of the Kendeng community. The granting of licenses for the construction of the Indonesian Cement plant in Rembang should be revoked and canceled by prioritizing the principles of social-ecological justice, equity, and sustainability of nature. This is the essence of the responsive policy towards the enforcement of environmental law on the case of the Rembang community lawsuit against PT Semen Indonesia in order to realize substantive justice in accordance with the spirit of the constitution and UUPPLH in order to preserve the function of environment and sustainable-development

3. Should be based on the Act, related to Governor’s Decree No. 660.1 / 17 of 2012 which has been revoked based on the decision of the Supreme Court, the Governor does not re-issue a new environmental permit on the grounds of changes in the management and monitoring of the environment as. So that the business license and all forms of operation after the removal of the environmental permit must be completely revoked

4. The government should stand in enforcing the law in Rembang is to remain consistent in revoking environmental permits including covering the busines license of PT. Semen Indonesia Tbk. That the demands of Kendeng people who are members of various coalitions both from WALHI, Civil Society Coalition and from Kendeng Kendal Community Care Network must be fulfilled in realizing substantive justice. The law is time to respond to the demands of the people who related in the enforcement of environmental law in the case of Rembang. In particular, the legal culture that serves to provide the environment for the functioning of the structure and substance of the law. Without a living environment called this legal culture, the demand that agrarian justice for the citizens of Rembang can be established in guarding the results of the decision of the Supreme Court.

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