Legal Interpretation in Judicial Decision Making on Environmental Cases: Judges in the Domination of Civil Law System

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Abstract. The law enforcement environment must support the sustainability of environmental management, both through the judiciary and outside the court, whether civil, criminal, or administrative. The purpose of this study is to find out the problems of environmental law enforcement in Indonesia and how judges, in making decisions, use the interpretation of the law. In providing justice, judges are required to look for la bouche de la loi and actively explore the meaning behind these regulations to produce decisions that provide justice for the litigants. However, the tradition of the civil law system, which is still influenced by legalism, limits the space for judges to exercise discretion and is only based on the principle of legality. Using jus cogens in most environmental case decisions will be more effective if judges dare to use legal interpretation.

Keywords: Judicial Decision Making, Legal Interpretation, Environmental Cases

1 Introduction

Judge decisions are a product of the judge's authority, where the decision is subjective, influenced by the judge's way of thinking in making a decision by being limited by what is considered appropriate based on the principle of propriety. The judge's decision must be found on the evidence presented in the trial, such as written evidence, namely letter evidence, and other written evidence, besides that it is also based on the testimonies of witnesses who are presented before the trial by taking the oath first and can also be found on statements. An expert whose testimony was also brought before the court by being sworn in [1]. All of these things are framed in a court process called the evidentiary process [2]. All of this evidence is assessed by the judge regarding the strength of the evidence; based on this, the judge considers the case being tried and then makes a decision [3].

In this regard, Indonesia is one of the countries dominated by the tradition of *civil law*, and the benchmark that limits judges in making decisions is statutory regulations (written law). Tradition *civil law* adopted and applied in Indonesia in the context of making decisions by judges means that judges, in making decisions on a case being examined, must be based on the applicable laws and regulations relating to the case being examined by the judge. The family tradition of the *civil law system*, placing positive norms in the statutory system, is seen as the most crucial formal source of law. In this realm of thought, written law becomes essential. The meaning of written law is limited in denotation, namely only in the form of law. As a result,

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the law needs to be made as complete as possible in order to be able to accommodate and anticipate any behavior that violates the law.

A country's legal system has undoubtedly provided guidelines for the relationship between these sources of law. Meanwhile, legal principles, generally not formulated in the form of different norms in the law, can be used as a basis for judges to carry out legal discovery activities *(rechtsvinding)*. The legal principle in the form of value is behind the provisions of positive legal norms [4].

In examining, adjudicating, and deciding a case, judges must use written law as the basis for their decision. If the written law is not sufficient, it is not appropriate to the problem in a case, then the judge seeks and finds his law from other legal sources such as jurisprudence, doctrine, treaties, customs, or unwritten law. If a case has no legal rules that specifically regulate it, the judge must carry out *rectsvinding* (legal discovery by judges) [5]. Based on this, judges are not only mouthpieces of the law, meaning that judges are not only implementers of the law [6], but more than that, judges must be able to find new laws in order to make decisions that can create a sense of justice for the disputing parties.

Rechtsvinding in positive law has become the obligation of a judge when faced with a case that has not been regulated in particular positive law. The provisions of Law no. 48 of 2009 concerning Judicial Power states that judges must seek and find the law themselves if there are no laws and regulations governing legal issues being tried or the legal arguments are unclear (Article 10 paragraph (1)). The article has required a judge to explore the law based on the values prevailing in society. Judges must explore, follow and understand society's legal values and sense of justice [7]. Therefore, judges must make legal discoveries by exploring, following, and understanding legal values and a sense of justice in society (Article 5 paragraph (1)). In deciding a case, that is the judge who creates a sense of justice in the community through his decisions. Judges, in this case, play an essential role in creating a sense of justice in the community. A judge has a great responsibility to create law for a case being examined and decided by the judge.

The obligation to explore legal values that live in society shows that the law exists amid society, but it is still unclear and vague, so it becomes a big challenge when applied in concrete cases. In principle, the law does not exist in a vacuum and lives amid society. The community is the basis for the law's operation and the subject that moves the law [8]. However, when the law, in this case, a statutory regulation, is faced with a concrete legal event that occurs in the community. This will make the law unclear because it differs between what is regulated and what is happening in society.

In reality, a law in its application to a particular legal event that occurs in the community is not easy to apply; there needs to be legal interpretation and analysis by law enforcement so that a law can be applied to certain legal events even though it is known that the Act is a legal form that can be seen and read. When faced with the reality that no law regulates these legal events, what is applied is the values that live in society. Value is an abstract form of law, where its application requires a reasonable and correct interpretation by law enforcement so that a long process of interpretation is needed to find the proper law for the legal event.

In contrast to written legal regulations that are clear and concrete and can be directly applied to a case (legal event), the values that live in society must be well understood by judges to recognize and apply them in their decisions. So that a judge must have a good and correct understanding of the law and be willing to constantly learn, explore and understand the values that live and develop in society[10].

The traditional *civil law system* that dominates the legal system in Indonesia has a long history and development, considering that this legal tradition is the oldest legal system in the

world. Traditional *civil law systems* developed within the legal system in Indonesia dominate because many civil law events occur in Indonesia. Civil law events in Indonesian society are related to conflicts between individuals, groups, and individuals and groups in society [11].

In the tradition of *civil law*, the role of judges in making laws is minimal, with a background of political reasons; this is because, in the civil law legal system, judges must decide based on the law governing the examined case. The law is a political product and was formed based on political considerations [12]. So in deciding a case, a civil law legal system judge is based on political reasons in the form of law. Although judges in countries that adhere to *civil law* only base their decisions on the law, judges still have to interpret it. This implies that even countries with a tradition of civil law systems cannot be separated from the practice of interpreting the law, including Indonesia. However, the law in law enforcement in society is often different from what it aspired to. Although there have been practices of interpreting the law by judges in Indonesia, many judges are still reluctant and afraid to interpret the law.

One concrete example of law enforcement in society is law enforcement in the environmental field. Environmental management sustainability must be supported by environmental law enforcement, both through the judiciary and outside the judiciary, whether civil, criminal, or administrative. The judge remains in his position where in his judgment gives the reason that a national judge can also use a provision of international law if it has been seen as "jus cogen" so that the judge himself judges that it is not wrong to apply the law in the country which the judge himself adopted from the provisions of international law.

The judge's considerations are appropriate in applying the precautionary principle even though Law Number 23 of 1997 has not been adopted by the precautionary principle as has been adopted by Law Number 32 of 2009 concerning environmental protection and management. However, environmental law itself is, in general, quite a lot based on the provisions that exist in international law and judges itself based on its decisions based on justice for the community, the existence *of jus cogens* environmental*,* and the possibility of expanding the norms adhered to into the environmental domain. The Court found that *jus cogens* norms include those aimed at protecting international peace, the right of states to self-determination, and 'fundamental human rights such as core norms to protect the environment.

Based on the description above, this study aims to determine the problems of environmental law enforcement in Indonesia and how judges making decisions use legal interpretation.

2 Result and Discussion

2.1 Environmental Law Enforcement Issues in Indonesia

Law does not exist in a vacuum, and law works in society. Society is the basis for the operation of the law [13]. The operation of law in society cannot be separated from the participation of law enforcement. The working process of the law in society is called law enforcement [14]. Law and law enforcement should be an inseparable units, and law enforcement should always be in line to achieve legal goals, namely justice and community welfare [15]. Laws are obeyed because they provide guidelines for human behavior. The state is an association of humans with rules regulating humans; that is why the state is identical to the law. However, in practice, the law, in this case, a statutory regulation (*das sollen*), is often not in line with law enforcement in society (*das Sein*). The relationship between *das sollen* and *das sein*, for example: If there is an act against the law, then the act should be followed by

punishment, even though, in reality, this is not always the case. Because the sanctions imposed on someone who violates the law depend on the determination of state agencies, the legal norms drawn up for the general public still require interpretation and interpretation by law enforcers [16].

The need for an activity of interpreting the law by law enforcers, in this case, is a judge because, in its regulation, the judge must judge based on the law further, in carrying out his duties, a judge may not refuse to adjudicate a case submitted to him because the law is incomplete or unclear. The law regulates it but is obliged to prosecute it. The obligation of judges to adjudicate cases for which the statutory rules are not clear indicates that the judge needs to interpret the statutory regulations to be able to adjudicate cases brought to him. Judges, as law enforcers and justice, are obliged to explore, follow, and understand the legal values that live in society. This means that a judge must have the ability and activity to find the law *(Rechtsvinding)* [17]. What is meant by *Rechtsvinding*is the process of law formation by judges/other law enforcement officers in the application of general regulations to concrete legal events, and the results of legal findings are the basis for making decisions [18]. The judge's obligation to carry out *rechtsvinding* includes matters relating to the environment in Indonesia.

The discovery of the law is the main activity of the judge in implementing the law in the event of a concrete event. The law, as a general rule, is to protect human interests. Therefore it must be implemented/enforced. In order to fulfill the principle that everyone is considered to know the law, the law must be disseminated and clear. Even if the law is impossible and complete, the law cannot regulate all human life wholly and entirely because there are so many human activities. In addition, the law results from the work of humans whose abilities are minimal [19]. Every legal regulation is abstract and passive. Abstract because it is very general and passive because it will not cause legal consequences if there are no concrete events. Abstract legal events require active stimulation to be applied to their events. Interpretation (interpretation) is one legal discovery method that explains the act's text so that the method's scope is applied to the event.

The need for legal interpretation by judges because the laws and regulations generalize legal events that occur. For example, Article 98 of Law no. 32 of 2009 concerning Environmental Protection and Management states that anyone who intentionally commits an act that results in exceeding the ambient air quality standard, water quality standard, seawater quality standard, or standard criteria for environmental damage, is threatened with a minimum imprisonment of 3 (three) years. three) years, a maximum of 10 (ten) years, and a fine of at least Rp. 3,000,000,000.00 (three billion rupiahs) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah). This article is general and abstract because it refers to the subject 'anyone,' which means anyone regardless of gender and origin. The person concerned must have deliberately committed the act. The word intentional implies that the action was pre-planned.

The element of unlawful acts in the article contains the same meaning as the elements of unlawful acts in general. According to Satochid Kartanegara's opinion, unlawful acts in criminal acts against the law *(Wederrechtelijk)* in criminal law are divided into two: Wederrechtelijk formal and namely if an act is prohibited and is threatened with punishment by law. *Wederrechtelijk Material*, namely an act that may be *wederrechtelijk*, although it is not expressly prohibited and is threatened with punishment by law. Nevertheless, the general principles contained in the legal field *(beginnings algemen)*. An unlawful act is an objective assessment of the act and not of the maker. An act is said to be against the law if the act is included in the formulation of the offense as formulated in the law. Acts against the law are also included [20].

Furthermore, the intentional element has three forms of *dolus/opzet* (deliberate). The first is intended as an intention *(opzet also oogmerk)* where the actions are taken, and the consequences are indeed the perpetrators' goals. The second is intentionally as aware of certainty/deliberately aware of necessity *(opzet Bij zekerheids-bewustzijn)* where the result is not the result that is the goal but to achieve a result that is intended, it must be done other actions so that in this case, the action produces 2 (two) consequences, namely: the first effect as a desired result of the perpetrator and the second result as an undesirable result of the perpetrator but must occur so that the first effect (the desired effect) occurs theoretically, deliberately as a conscious possibility is a situation where the perpetrator is ultimately deemed to have "approved" of the possible consequences. Deliberately aware of the possibility/deliberately aware of the condition *(dolus eventualis/voorwadelijk opzet/opzet Bij mogelijkheids bewustzijn)* whereby committing an act, the perpetrator is aware of the possibility of other consequences that are not desired. However, awareness of the possibility of other consequences does not make the perpetrator cancel, and it turns out that the unintended result happened. In other words, the perpetrator had thought about the possible consequences prohibited by law, but he ignored it, and the possibility turned out to happen [21].

The planning element in a criminal act is related to evil intentions, men's *rea,* or *Evil minds. Mens rea* is the inner attitude of the perpetrator when he commits an act or evil intention of an offender. *Mens Rea* is a criterion that must exist in a criminal act. Because to account for a criminal act from someone is very much determined by the existence of *Mens Rea* [22]. Back to the context of Article 98 of Law no. 32 of 2009 concerning the Protection and Management of the Environment, the element of "deliberately" is not further explained in the explanation of the law. This means that a judge who will use the article in deciding an environmental case must be able to interpret it. The law itself does not specify what the planning will look like. To be submitted to law enforcement officials to be determined in the prosecution until the decision in court. Likewise, "actions that result in exceeding ambient air quality standards, water quality standards, seawater quality standards, or environmental damage standard criteria" are not specified individually.

These things will cause difficulties in law enforcement practice. For example, the element "actions that result in exceeding ambient air quality standards, water quality standards, seawater quality standards, or environmental damage standard criteria" this element will cause problems in law enforcement practices. This problem arises because there are no definite boundaries or benchmarks regarding what actions are included in these elements. How is the proof of actions that result in exceeding ambient air quality standards, water quality standards, seawater quality standards, or environmental damage standard criteria? Furthermore, what kind of environmental damage is included in these elements? These questions then create problems when the judge interprets them. The panel of judges consists of 3 (three) people: the chairperson, judges from the first panel, and judges from the second panel. The three may have different interpretations of the meaning of the element "actions that result in exceeding ambient air quality standards, water quality standards, seawater quality standards, or environmental damage standard criteria." These generalizations are open to meaning depending on the concrete events that will occur. Because laws and regulations are general and abstract, sentence formulations are often not clear enough when dealing with concrete events that occur.

This, of course, requires a judge to have extensive knowledge of the law and have good interpretation skills of the elements of the articles in the legislation, including the Articles governing environmental pollution. Another element that creates problems in enforcing

environmental law in Indonesia is the "whoever." Do this element raise questions in law enforcement, such as whether this element also includes a business entity or a corporation? Furthermore, what sanctions will be imposed if a business entity or corporation is included? Furthermore, who (corporate organ) will be responsible if a corporation carries out the pollution? [23].

The word "whoever" above, for example, includes a person who is not yet an adult or includes a business entity. To answer this question, it is necessary to master the method of legal discovery. Based on the explanation above, it appears that the problem of environmental law enforcement in Indonesia is due to the many elements of the articles in the law on environmental protection and management, which are not specified by the legislators so that the correct interpretation and interpretation is needed from the judge when faced with concrete events regarding environmental crimes in Indonesia.

The author takes one example of an environmental crime case in the Bandung District Court decision No: 980/Pid.B/LH/2021/PN Bdg, which involves PT. Ibara Lioho Indonesia (from Japan) as the Defendant, represented by Rikinosuke Fujishiro as the President Director. In the indictment of the Public Prosecutor, PT. Ibara Lioho is threatened with criminal sanctions in Article 104 in conjunction with Article 60 and Article 116, paragraph 1 letter, and Article 118 of Law No. RI. 32 of 2009 concerning the Protection and Management of the Environment as amended by the Law of the Republic of Indonesia No. 11 of 2020 concerning Job Creation. In the decision, the Panel of Judges decided that it had been legally and convincingly proven guilty of committing an environmental crime, namely dumping waste and materials into environmental media without a permit, carried out by, for, or on behalf of a business entity, namely PT. Ibara Lioho, represented by Rikinosuke Fujishiro as President and Director. The Panel of Judges imposed a criminal fine of Rp. 75,000,000- (seventy-five million wages) provided that if within 1 (one) month the fine is not paid, the company's assets/assets and profits are confiscated following the provisions of the legislation to pay the amount in question.

In its consideration, the Panel of Judges interprets the element of 'everyone' mentioned in Article 1 Number 2 of Law no. 32 of 2009 concerning Environmental Protection and Management. According to the Panel of Judges, individuals or business entities, both legal entities and non-legal entities, which in this case is PT. Ibara Lioho Indonesia, represented by Rikinosuke Fujishiro as President and Director, is a legal subject who is physically and mentally healthy and able to take responsibility for his actions. So that the corporate responsibility of PT. Ibara Lioho, in this case, is represented by Rikinosuke Fujishiro as the President Director who leads and runs the corporation. The panel of judges determined that Rikinosuke Fujishiro fulfills the element of 'everyone' as regulated in Article 1 Number 2 of Law no. 32 of 2009.

This is why it is so essential for a judge to be able to interpret the law in handling a case because the contents of the legislation are general and abstract, so it requires the ability to interpret the law for the legal panel to make it clear, transparent, and unbiased. It is proven in the decision of the environmental crime case in the Bandung District Court decision No: 980/Pid.B/LH/2021/PN Bdg, the Panel of Judges, has carried out a legal interpretation in making the decision.

2.2 Legal Interpretation Used by Judges in Decision Making

Indonesia is a state of the law as mandated in the Indonesian constitution (Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia after the amendment). According to Jimly Assihidique, a legal state consists of three elements in its legal system:

law-making*, law administration, and law adjudicating (law enforcement*) [24]. The Supreme Court, as one of the institutions that carry out the *law adjudicating* in Indonesia that is mandated in the Indonesian constitution (Article 24 paragraph (2) of the 1945 Constitution of the Republic of Indonesia after the amendment), plays a vital role in the pillars of the legal system in Indonesia. The presence of the Supreme Court provides justice for justice *seekers* as mandated in Article 1 (one) of Law no. 48 of 2009 concerning Judicial Power. The Judicial Power is here to administer justice to uphold law and justice based on Pancasila to implement the constitutional state of the Republic of Indonesia. Therefore, Article 5 paragraph (1) of Law no. 48 of 2009 concerning Judicial Power requires Judges (Supreme Court Judges and Constitutional Court judges) to explore, follow and understand legal values and a sense of justice that live in society. So that if there is a legal case that is not or is not clear, then the judge is obliged to interpret the law or legislation. If there is no written law/law that regulates a case, the judge must find the law by exploring and following the legal values that live in society.

The interpretation of the law by the judge is carried out when the judge examines cases for which there are statutory provisions. However, when the legal event has not been regulated explicitly in a statutory regulation, the judge needs to make a legal discovery known as *Rechtsvinding,* which means the process of law formation by judges in the application of specific laws and regulations to concrete legal events and the results of legal findings. Be the basis for making decisions. In the context of this research, *Rectsvinding* means the process of discovering or establishing environmental law by judges against legal events, namely environmental crimes; the goal is that judges can use the law as a guide in deciding environmental crime cases. *Rechtsvinding* requires a judge to have the ability and activity to find the law. In conducting *Rechtsvinding*, judges use interpretive methods of the law such as interpretation according to language, historical interpretation, systematic interpretation, teleological/sociological interpretation, authentic interpretation, extensive interpretation, restrictive interpretation, interpretation by analogy, interpretation by *argumentative a contrario* [26].

Regarding the issue of the limitation of the element "who" is included in it, whether it includes people who are not yet adults or who are adults. The next thing that raises the problem as well as the question is what is the age limit for adults regulated in environmental regulations in Indonesia? Something like this requires a process of legal interpretation by the judge. The solution to this problem is the need for understanding; namely, people who want to answer this question may have to find out through the provisions of the explanation of Article 41 or previous articles (e.g., Article 1 number 24). If these findings are insufficient, he must look at the provisions regarding the age of maturity in the Criminal Code (KUHP) or pay attention to the doctrines that have developed so far or through court decisions.

In making a decision, the judge must pay attention to and be based on the laws and regulations that apply to the event to be decided. Suppose the laws and regulations are not clear. In that case, the judge is obliged to explore the values in the community to seek and find the correct law to be used as a basis for deciding environmental issues to be determined. He may also seek answers to the prevailing habits in society. Judges deciding cases of ecological crimes must be able to understand the customs and cultural values of the surrounding community. This is done so that the decision will later create a sense of justice in the community, especially regarding their environment.

A national judge can also use a provision of international law if it has been seen as *jus cogen* so that the judge himself considers himself innocent in applying the law where the judge himself adopts the provisions of international law. In addition to exploring cultural

values and habits that live in society to become the legal basis for deciding an environmental case in Indonesia, judges also need to find out international law that can be used to determine ecological issues that are examined and will be resolved.

Of course, if a judge decides on an environmental crime case using international legal instruments, a correct interpretation is needed because international law is more general and abstract. So that judges need to make profound interpretations to be able to apply these international regulations to environmental crimes cases in Indonesia.

The judge's consideration in applying the precautionary principle is appropriate even though Law Number 23 of 1997 has not adopted the precautionary principle as adopted by Law Number 32 of 2009. In deciding an environmental case, judges must also base and be guided by the principle of caution. This is intended so that all Indonesian people can well receive the judge's decision on ecological crime cases and so that the Indonesian people feel justice, especially in the field of a comfortable and pleasing environment. However, environmental law itself is generally sufficient based on the provisions of international law and its judge. Based on the description above, the process of interpreting environmental law by judges is essential so that judges can decide on environmental crime cases correctly, and their decisions can create a sense of justice in Indonesian society.

3 Conclusion

Based on the description above, it is concluded that; On paper, Indonesia is a country that is still dominated by the tradition of the civil law system. Until the provisions of the Law on Judicial Power appeared, which required judges to explore the values that live in society, this, of course, is in stark contrast to the notion of legalism, which significantly influences the tradition of the civil law system, where written regulations are considered the only source of law. However, the development of the practice of the civil law system is slowly weakening and is colored by the influence of the tradition of the standard law system. Therefore, this is also a factor that causes the practice of using legal interpretation (interpretation) by judges in Indonesia to increase, including in the decisions of environmental law cases. The legislation generalizes legal events that occur. However, to apply jus cogens, judges apply international law as the Precautionary Principle, espoused by Law no. 32 of 2009. This is important because international law is involved in many environmental law cases.

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