Building A Legal Reasoning Based on Environmental Conservation in Indonesia

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Abstract. Judges in Indonesia can base their considerations on international legal rules regarding environmental law which are seen as *jus cogen* which has attained strength as a *peremptory norm.* The purpose of this research is to analyze the process of legal reasoning by judges and to develop legal reasoning based on environmental conservation. The approach method used in this research is juridical-normative. The results of the study show that the *legal reasoning* of judges in handling environmental cases, especially in Indonesia, has so far focused on legal positivism which emphasizes the value of legal certainty which has implications for case enforcement which is limited to imposing sanctions on the accused/perpetrator. Environmental conservation should be the main focus for judges to carry out *legal reasoning* so that legal benefits can be realized with certainty since environmental conservation means protecting various interests including the interests of individuals who interact with the environment.

Keywords: Legal Reasoning, Judges, Environmental Conservation, Environmental Law Enforcement

1 Introduction

The environment plays an essential role in human life and the existence of all living things on planet earth. Earth is home to different living species, and we all depend on the environment for food, air, water, and other needs. Therefore, every individual needs to care for, save and protect the environment. Because humans have the human right to live in a healthy environment, and this confirms that humans and the environment are two inseparable entities [1].

On the other hand, the rapid development of technology-driven by science in the world has contributed to an increase in cases of environmental pollution. Due to modernization, industrialization, and increasing use of technology, the environment has been negatively affected [2].

Humans cut down trees and plants to meet human needs without considering the long-term impact on the environment and the sustainability of natural resources. This human activity has caused a lot of harm to the environment. Not only that, but human activities have also affected the atmosphere, and the hydrosphere (earth's layer), increasing the earth's temperature and the problem of global warming. This threat is dangerous for human health and the continuity of life on earth [3].

Indonesia is one of the developing countries in Southeast Asia, which has issues regarding high population density and rapid industrialization processes. Meanwhile, on the other hand, environmental problems often need to be given priority by the government. This is due to high

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poverty rates and poor resource management, causing the government to pay less attention to environmental issues. Environmental problems encountered in Indonesia include large-scale deforestation (mostly illegal) and forest fires that cause thick haze in western Indonesia, Malaysia, and Singapore. Excessive exploitation of marine resources; and environmental problems associated with rapid urbanization and economic development, including air pollution, traffic congestion, waste management, and inadequate water and wastewater services.

Handling environmental problems is part of the state's responsibility and the government's duties. The state must be present to overcome environmental issues and the environmental crisis in Indonesia. The state is obliged to guarantee the sustainability of a good and healthy environment for every Indonesian citizen as mandated in the Indonesian constitution, namely in Article 28 H of the 1945 Constitution of the Republic of Indonesia. This mandate is further confirmed in several laws and regulations under the form, namely among them No. 32 of 2009 concerning Environmental Management and Protection (UUPPLH), Law no. 11 of 2020 concerning Job Creation Government Regulation No. 27 of 2012 concerning Environmental Permits, Minister of Environment Regulation No. 08 of 2013 regarding Procedures for Assessment and Examination of Environmental Documents and Issuance of Environmental Permits, to a series of regional regulations in every region in Indonesia. This series of rules is one form of the government's commitment to follow up on the United Nations (UN) Declaration on *Environment and Development (UNCED/Eart Summit)* in Rio de Janeiro, Brazil, in 1992, commonly called the Declaration of Rio [4].

Environmental management, including prevention, control of damage and pollution, and restoration of environmental quality, has required the development of various policies and programs, and activities supported by other environmental management support systems, including aspects of law enforcement. In Indonesia, environmental law enforcement can be pursued through criminal justice, civil justice, and administrative justice. Problems in environmental civil liability consist of acts against the law as stipulated in the provisions of Article 13653 of the Civil Code (KUHPerdata) and the application of the principle of *strict liability* (absolute responsibility) specified in the provisions of Article 884 UUPPLH [5]. Meanwhile, in the criminal law accountability system for the perpetrators of Environmental Crimes (TPLH)/*milieudelicten* as stipulated in Law no. 32 of 2009, adheres to the principle of "*schuld aansprakelijkheid*"/*liability based on fault* followed by threats of ultimum remedium criminal sanctions [6]. Articles 71-75 UUPPLH regulates accountability in administrative law with the threat of criminal sanctions against Officials or State Administrative Bodies in the case of *onrehctmatige overheidsdaad* (Action against the law by the Government).

Environmental enforcement in Indonesia has several challenges. This is due to the unique characteristics possessed by environmental law. Judges in Indonesia can base their considerations on international legal rules regarding environmental law, which are seen as *jus cogen,* which has attained strength as a *peremptory norm* [7]. So, in judicial practice in Indonesia, inconsistencies in decisions from each decision are often found. To overcome the problem of inconsistency in decisions, the role of judges is needed to maintain the consistency of decisions. Because if the phenomenon of inconsistency in this decision continues, it will result in a weakening of environmental law enforcement in Indonesia.

One of the efforts to maintain the consistency of decisions is to maintain the consistency of the *ratio decidendi* in decisions that legal reasoning by judges strongly supports. Judges should be able to maintain *ratio decidendi* in cases that have the same issues and facts. This is based on the precedent doctrine often found in *common law system countries*. However, awareness and knowledge of the importance of maintaining a consistent *ratio decidendi* and how to carry out *legal reasoning* by judges has not been fully mastered by judges throughout Indonesia [8].

The aspects of substance, culture, and legal structure in law enforcement in Indonesia need to provide sufficient stimulation for judges to realize how important it is to practice *legal reasoning* to maintain *ratio decidendi consistency.*

Based on the background above, this research aims to analyze the legal reasoning process by judges and develop *legal reasoning* based on environmental conservation.

2 Research Method

This article hermeneutically and dialectically uses methodological principles typical of legal research with a juridical-normative approach, especially through a literature *review*. The acknowledgment that law is synonymous with written norms made by the authorities, so far, the law has been made as a normative system that is autonomous and closed and detached from community life [9], merupakan is a methodological center of normative-juridical research. Schemes, motives, *and legal reasoning* based on environmental conservation will be revealed. Hopefully, this effort will contribute to a broad understanding of how to build *legal reasoning* based on environmental conservation in Indonesia in the future.

3 Result and Discussion

3.1 Judge's Legal Reasoning Process

Judges can be said to be the spearhead of law enforcement without belittling the role of other law enforcers. This argument is based on the authority of the judge to decide on a legal case, and the judge also has the authority to determine in the end what is right and wrong in a legal case [10]. This authority is, of course, inseparable from great responsibility. The judge must give a decision that reflects the values of justice, benefit, and legal certainty. To present such a decision, judges must have the ability to conduct legal reasoning, which includes considerations with a strong and rational basis. Thus, for judges, a strong understanding of legal reasoning in giving legal considerations (*ratio decidendi*) in formulating a decision is a necessity that must be realized. That judge's reasoning (*judicial reasoning*) is the most concrete form of *legal reasoning* [11].

Etymologically, the judge means the person who decides the law; in this sense, the judge is identical and is the main element in the court. In the prevailing judicial system in Indonesia, the judge is the sole decision-maker [12]. To realize justice and optimal law enforcement, the court, as the main pillar of law enforcement through the role of judges as the main actors, must maintain integrity, hone conscience, and professionalism in carrying out their duties. Judges carrying out law enforcement authorities have a great responsibility in making decisions on a case [13], both for the parties to the case (in this case humans).

The decision handed down by the judge must be based on clear and sufficient considerations. The judge's considerations are the reasons for imposing the law carried out by the judge stated in the judge's decision. This is confirmed in Article 50 of Law no. 48 of 2009 concerning Judicial Power which confirms that in addition to having to contain the reasons and basis for the decision, court decisions also contain certain articles of the relevant laws and regulations or unwritten sources of law which are used as a basis for adjudicating [14].

Based on Article 5, paragraph (1) of Law Number 48 of 2009 concerning Judicial Power reads, "Judges and constitutional judges are obliged to explore, follow, and understand the legal

values and sense of justice that live in society." Based on the explanatory article, this provision is intended so that the decisions of judges and constitutional judges comply with the law and the people's sense of justice [15]. For this reason, in deciding a case or legal issue, a judge as a law enforcer must also know the legal bases that will be used in deciding the case. To have the necessary foundations, judges should understand the legal values that live in society [12].

Law enforcement is an empirical process of implementing law in society that involves the ability of law enforcers to interpret the law [15]. The meaning of law occurs when legal reviewers or law enforcers carry out the process of building legal arguments on the empirical reality that occurs. To build legal arguments, a law enforcer needs legal reasoning [16]. Legal *reasoning* is an attempt to obtain legal truth through a thought process so that the truth can be found by reasoning. Neil MacCormick defines legal reasoning as:

> " *...one branch of practical reasoning, which is the application by humans of their reason to deciding how it is right to conduct themselves in situations of choice*" [17].

Following this definition, *legal reasoning is* a systematic problematic thinking activity (*gesystematiseerd problememdenken*) of legal subjects (humans) as individuals and social beings within their cultural circles. Legal reasoning can be defined as thinking activities that intersect with multi-aspect (multidimensional and multi-faceted) legal meanings [18].

According to Wasis Susetio, *legal reasoning* is an activity to find a legal basis contained in a legal event, whether it is a legal action (agreement, trade transaction, etc.) or a case of violation of the law (civil or administrative crime), and evaluates it. Through existing laws. The concrete form of legal reasoning can be seen from the syllogism (deductive inference), which starts from the major premise, minor premise, and conclusion [19]. Thomas Halper stated that legal reasoning is not liked by legal people. Legal issues are considered not logical issues [20]. Logic contains standard and inelastic signals about complex legal and constitutional issues. According to Halper, a legal issue and decision should not be limited to the meaning of a proposition that is only considered logical by ignoring the context and purpose of the law [20]. In the given context, judges in making legal decisions should not be limited to analogical reasoning but must also be made with common sense and logic [18].

The existence of logic can strengthen the value of objectivity in law enforcement. Thus, when a judge fully utilizes his ability to conduct legal reasoning truthfully, then a legal event can be truly understood; it can also be measured rationally so that not only the judge himself can interpret the legal event, but the party -Other parties too. Objectivity in law enforcement is said to have a strong connection with the realization of legal objectives because, with such a position, the only interest that is fought for in law enforcement is the realization of legal or legal objectives that are certain and provide benefits [11].

Judges, through their legal reasoning abilities, are required to make decisions that follow the law and society's sense of justice. Of course, the judge's conscience cannot be separated in making the decision [21]. In every decision, the essence of legal arguments in legal considerations is the judge's reasons for making decisions determined by statutory regulations. Referring to the provisions of Article 50, paragraph (1) of Law Number 48 of 2009 stated the judge's decision must contain the reasons and basis for the decision, articles of certain laws and regulations, or unwritten sources of law which form the basis for judges. The existence of legal arguments in the legal considerations of a decision is absolute. Therefore, the absence or absence of legal arguments in a legal consideration can impact the decision's cancellation. Legal considerations are the responsibility of the judge for justice seekers [22].

The substance of the legal considerations of a decision lies in consideration of the legal argument, while the quality of the legal argument depends on; simple reasoning, easy to digest and understand and understandable to anyone, including justice seekers [16].

It has been stated that *legal reasoning* occupies an important position in realizing fair law enforcement. However, a movement was not anticipated, namely prioritizing the value of legal certainty compared to other legal values, especially expediency [16]. In this movement, law enforcement merely enters input into a system, and the resulting output is only an iterative process of something that has been programmed. Consequently, the resulting decisions will not always be able to reflect the objectives of the law when the cases decided have differences from other cases, so to provide the expected legal values, there must be a balance between certainty and legal benefits. The value of justice will, in turn, be realized when the enforced law provides benefits [23].

Mainstreaming legal certainty in law enforcement can be observed, especially in cases of environmental destruction. For example, burning peatlands for industrial purposes is done intentionally. The “person” suspected of being responsible for the legal event is punished based on the applicable laws and regulations. In the context of legal certainty, there is no mistake in making such a decision. Still, in the context of benefits, there is no significant benefit brought by such a decision, both to humans and the environment, who, in that case, can be said to be victims or seekers of justice [24].

In the proposition there are legal concepts that are woven and that this proposition is already available in positive law. Although in reality this is not the case, positive law only presents legal concepts that must be interpreted through a ratio-based intellectual process. The ratio in question can be a legal goal to be realized, and of course that goal is justice [25]. For a moment, the existence of legal reasoning should be used as a vehicle to turn on positive law that prioritizes "certainty" so that the law loses its "life" presenting legal reasoning in every judge's decision-making is a concrete step in the contextualization of law into legal reality so that law can get his "life" back so that it can be used in presenting justice [26].

3.2 Building Legal Reasoning Based on Environmental Conservation Law Enforcement in Environmental Cases

Environmental cases have different characteristics from other cases. The difference often lies in the actual victims in environmental cases and the complexity of the legal events. Often there is a blurry line about who is the victim of these environmental cases. In addition, environmental cases can also be categorized as structural cases that confront vertically between parties with greater access to resources and those with limited access [27]. So, *the law enforcement process* in environmental cases is not easy; besides the complicated proof, judges in handling environmental cases are not enough to apply legal provisions that have existed before, but *judicial activism* with legal findings. And the creation of law through its decisions to realize justice for humans and the environment so that a good and healthy environment can be maintained, which guarantees the realization of a balance in the ecosystem [28].

The breadth of coverage in the PPLH Law, which has criminal and civil law dimensions, demands law enforcement skills in formulating decisions, especially judges. Even so, referring to the theory of the legal system postulated by Friedman that the legal system includes three main components, namely legal *substance*, *legal structure, and legal culture, which*, when correlated with the presence of judges, judges have a position significant at the systemic level in question [29]. In the context of the broad scope of environmental law in Indonesia, judges are required to be able to narrow the context, which refers to the actualization of law in

environmental cases. Concerning the enforcement of environmental cases currently being carried out, judges must have the awareness and courage to carry out a paradigm shift in which environmental law enforcement is not only sufficient to do by imposing legal sanctions on the perpetrators [30]. More than that, judges are also required to be able to do inclusion on environmental conservation issues.

Environmental conservation in the context of enforcing environmental law is a paradigm that judges must understand as law enforcers. If the paradigm in question is not realized, justice may be delayed, which will not reflect justice in law enforcement. If judges still adhere to legal positivism, then with the existing environmental case regulations, justice in environmental law enforcement will never be realized [26].

It can be said that current environmental law policies are absurd. The 2009 UUPPLH recognizes perpetrators of criminal acts other than humans as legal subjects, namely legal entities, associations, foundations, or other organizations. In contrast, according to the Criminal Code, the perpetrators are only individual human beings [31]. This can be said to be a challenge for judges to make legal discovery efforts since there is no content of certainty in statutory regulations which are used as references in enforcing environmental cases. This goal can only be realized through strong legal reasoning by judges.

An environment is a spatial unit with all objects, power, circumstances, and living things, including humans and their behavior, which affect nature, the continuity of life, and the welfare of humans and other living things. The judicial task of the court that must be carried out in holding state power in the judicial field is to uphold justice based on legal truth. Applying the law by the court must be accountable to the public so that the court's decision is demanded to be following common *sense* [32]. It is required that court decisions must be authoritative in deciding cases related to the environment and must also contain efficiency because they must remember the principle of *justice delayed is justice denied* (justice that is delayed will be an injustice) [33].

One indicator of the quality of a court decision is the existence of proper and correct legal considerations [15]. Considerations in court decisions regarding *facts* or legal facts, *rules* or legal regulations, and *jurisprudence* or previous court decisions that have permanent legal force and are followed by the truth. This also requires the professionalism of judges to explore the values of justice that live in society [34]. Even so, the values that live in society are localization; the thing that can be done to expand in this context is to introduce universally accepted values, namely environmental conservation [35].

Legal reasoning based on environmental conservation is carried out by placing long-term interests to be achieved, namely the balance between humans and the environment. So the judge must place his rationale in that interest. In this aim, judges must set aside the value of legal certainty and prioritize the benefits to be realized to conserve the environment. Judges in environmental law enforcement must also pay attention to *judicial activism*. *Judicial Activism* is a philosophy of making judicial decisions in which judges base their judgments on decisions, among other things, on judges' views on new developments in handling environmental cases. This means there must be a broad view of the good principles of the environment, the importance of the environment, and the legal environment [10].

Enforcement of environmental cases must be kept in the legal system. Historically, the legal system consisted of four structural elements: person, property, consensual duty, and delict liability. This arrangement recognizes and protects individual interests [36]. The first two elements describe the competition rules, and the last two limit rules. If the matter is in public rather than private interest, property rights translate to the right to be sovereign. The judiciary plays an important role in managing these legal arrangements and ensuring compliance with the

rule of law. Apart from individual interests in environmental issues, the emergence of collective interests in the environment has been the catalyst for introducing new legal doctrines [37].

Although the function of civil and common law is to protect individual interests and the function of national law is to protect the nation's interests, each of these systems certainly recognizes and protects the equal interests of all individuals and nations [38]. In other words, what is done by one individual or nation can impact others. One of the functions of the legal system is to protect the interests of individuals or the nation-state from the consequences of the activities of other individuals or nation-states that go beyond the limits set by the legal system: for example, what is reasonable, or only. These standards are defined according to the structure, form, and language of the rules that describe them. These standards are restrictive rules that impact how the competency rules are applied.

Legal reasoning by judges in handling environmental cases can be carried out using a method that is no different from the *legal reasoning* that has been done so far; however, the paradigm in which the punishment of the accused is insufficient to fulfill the purpose of law enforcement. Judges can make legal analogies (*argumentum per analogiam*); *argumentum a contrario*; legal narrowing (*rechtsverfijning*); and legal fiction with the key that legal benefits are the main focus in handling environmental cases [39]. The benefit in question is how to conserve the environment.

4 Conclusion

Through the discussion provided, it is illustrated that the *legal reasoning* of judges in handling environmental cases, especially in Indonesia, has so far focused on legal positivism, which emphasizes the value of legal certainty, which has implications for case enforcement which is limited to imposing sanctions on the accused/perpetrator. In this perspective, there are limitations in fully realizing the goals of upholding the law, especially the neglect of the benefits of the law. The implications that arise with the maintenance of legal positivism in judges carrying out *legal reasoning*, namely the plenary of environmental cases, which are only carried out by imposing criminal or civil sanctions on the perpetrators while environmental damage cannot be covered or returned to its initial condition by such a judge's decision.

The role of judges in enforcing the law on environmental matters is becoming more important, bearing in mind that the legal basis for environmental law in Indonesia still needs to be solid enough to protect human rights and the continuity and sustainability of the environment. Under these conditions, judges should not be able to adjust their reasoning to the actual conditions and existing legal requirements. Environmental conservation should be the main focus for judges to carry out *legal reasoning* so that legal benefits can be realized with certainty since environmental conservation means protecting various interests, including those of individuals interacting with the environment.

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