Green Court Towards Ecojustice

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Abstract. Everyone has the rights to have a good and healthy environment. Through judiciary bodies is one of the ways to fulfill the rights. Research questions are how is the role of green court to implement ecojustice and access to justice to get ecojustice. The method use is normative legal research, use primary and secondary data. Datas will be analyzed in qualitative method and describe with descriptive analysis. To build green court, has to prepare the system of law which based on principle of good environmental law. The competence of green court and its formal law should be clear, judges should have environmental certified, raise the society awareness to protect the environmental. Regulations to protect the environmental defender has to be made as well as to build green court. Access to justice to get ecojustice can be made from judiciary system. Regulations about Anti Eco SLAPP has to be made, in order to protect to environmental defender. Filling lawsuit with citizen lawsuit mechanism also has to be made, this is to give opportunity to everyone to have healthy environment. Judiciary system has to make regulations that possible to build green court as judiciary body to protect the environment and Anti Eco SLAPP, citizen lawsuit which has to be developed in future.

1 Introduction

Constitution as basic law for every country to carry out the government. Jimly Assiddiqie introduced concept of environmental sovereignty [1]. This concept relates with ecocracy sovereign which is developed by constructed relationship between God, nature and human by changing the perspective from anthropocentrism become Theocentrisme, which put human and nature in balance position and connected to God. In this concept, there should triangle relations between human, nature and put God as centre. Every development made must be fair to nature, while nature has its own basic rights not to be disturbed, actually it has to be kept in balance for next generation and it should be kept through the time, and this is sustainable development. Constitution emphasized their role to keep the balance position of human and nature, by making the green regulations.

Law Number 32 of 2009 concerning Protection and Management of Environmental (hereinafter is Environmental Law) is regulates matters related to environment, since the strategic position between two continents and two oceans, it has vulnerable positions of climate change. On the other side the massive development which can cause decrease in capacity, productivity of natural resources for human life, animals. Environment protection
and management should be match with the usage plan without neglecting the human life needs. There should be regulations, policies which based on principle of good environmental principal, and supported with people’s awareness. This awareness has to be protected also by law, which can be done by judiciary bodies. Judiciary bodies as implementation of the judiciary system, has role of law enforcement and justice. They also have to maintain the fulfillment of rights of citizen as well as environment. Research result of Maret Priyanta said that environment as subject to law newly developed in the judiciary, and it should be clearly defined as state responsibility for future generation [2]. Her research was based on comparison study of constitutional between Indonesia and Equador, while in Equador put environment as subject to law in the Constitutional.

This article focuses on Administrative Court as judiciary body under Supreme Court, and has authority to examine, settle the administrative disputes. Environment disputes in administrative law are under competence of Administrative Court, because the defendant is government and/or official body, and the object of dispute is government decree issue by government and/or official body. Environmental permit has an important role to control the development, management of environmental and to cancel the permit, it goes to Administrative Court.

The research questions are how is the role of green court to implement ecojustice, and access to justice to get eco justice. This research conducts as normative legal research, using primary data and secondary data. Datas will be analyzed in qualitative method and describe with descriptive analysis.

Novelty of this research is to develop the existing judiciary bodies to become green court in order to achieve SDG’s goals. The role of judiciary bodies is strategic because for the law enforcement and human rights protection in the frame of Constitution. Access to justice to get eco justice also rights to get protection from SLAPP, which is obstruct the movement or action to speak their rights in environmental damage. Another way to access to justice is filling lawsuit using citizen lawsuit mechanism, which has not clear regulations right now in Indonesia.

2 Discussion

2.1 Green Court in Indonesia

Government has to prepare transformation about policy to protect and management of environment, also needs cooperation with private sector to develop and enhance utilization environment in such a wisdom and good way. These steps need green policy which covers major factor such as economic, education, social awareness, law enforcement, which lead to sustainable development and dynamic changes of information and technologies.

Green energy policy is a starting point to reach all the factors that may be relates and affect with the environment. Green energy policy consist of all policy aimed to synchronize the structure of country energy with the needs of sustainable development considering the absorption and the availability of natural resources [3]. According to the aim and meaning of green energy policy, government needs to coordinate with non-state actors, not only to get benefit and costs are distributed fairly, but also to keep the process of transformation goes well.

Policy which had been made by government may cause environmental dispute and it goes to court to settle the disputes, when the non-litigation process not achieved. Development of environmental disputes may vary, it needs clear arrangement to settle the disputes. This arrangement regulates from government, legalize, stipulates and implement in the public. There should be transformation in public and private sector with the prior to green policy,
without exception in the judicial body. Some government has started to have green court or
green tribunal in order to protect the sustainable development and keep the natural resources
for future generation.

For comparison in India, National Green Tribunal established in 2010 under National
Green Tribunal Act 2010. This Tribunal settle environmental cases under the principle of
natural justice and have its own procedures, since the application is different from civil suits
and writ petitions. The Tribunal prioritize fast response after the receive the application [4].

In Sweden, Environmental Code stipulated in 1999, states that all human activities can
harm environment, human health, and give environmental court for both administrative,
criminal and civil procedure also for law enforcement [5]. Land and Environmental Court
have legal jurisdiction for land use and environmental areas for civil and administrative but
not criminal matters. Panel of judges are equals in decision making process.

Italy has commitment to protect environment, natural resources, also animal proteoction
for the future generation as stated in their Constitution. Private sector has duty to protect
health, environment [6]. This shows that Government has strong commitment to protect
environment in their Constitution, in order to make everyone has a healthy life also for future
generation.

Research result of Yenehun Birlie, showed that since 2002 in Ethiopia, there are barriers
during implementation of PIEL (Public Interest Environmental Litigation) are neglected and
does not come forward [7]. According to his research, PIEL has 2 (two) important role, first
as one way to communicate for community because is possible to representatives, NGO’s to
challenge the decision making process of government and polluters in the court. Second,
PIEL is a useful instrument to give information about sustainable development, transparency,
to action of private and governmental sector that might be harm to environment.

Article Number 4 of Environmental Law stated that environmental protection and
management included planning, utilization, control, maintenance, supervision and law
enforcement. To avoid bigger damage of environment, there should be preventive and
repressive way to be done, then it goes to judiciary body for law enforcement. Environmental
disputes can be put into general court or administrative court, it is depending on the
defendant, object of disputes.

Supreme Court has issued Supreme Court Decree Number 36 / KMA/SK/II/ 2013 of
Guidelines for Handling Environmental Cases and implement for all judiciary bodies under
Supreme Court. This decree also stated that judges should have certificate as environmental
judge before examine the environmental disputes and certificate issued by Supreme Court.
Judges has to implement the principle of good environmental in the process of litigation.

To develop green court in Indonesia, based on System of Law by Lawrence Friedman,
there are structure, substance and culture of law. Legal structure is about legal bureaucracies,
role of the judiciay bodies, law making institution. Legal substance is about process of
making legal product by legislative and executive, besides that also contain of values, norms
which are exist in the society, it also about political will of government. Legal culture has an
important role as reflection of legal system [8]. The triangle between structure, substance and
culture are connected and build the system of law.

Legal structure to build green court must be emphasized about the position of the court.
Since there are 4 (four) courts under Supreme Court, more specisically only general court and
administrative court which are available to examine and settle environment disputes. It has
to support with certified judge of environmental disputes. In China and Sweden,
environmental court is under general court, but in India, National Green Tribunal as quasi-
judicial body which has limited power to settle environmental disputes. Environmental court
as above mention are depends on the system of law, culture and politics of state. It is proposed
to make green court as special court under Adminisitrative Court with thought idea, that aim
is to cancel the environmental permit and permit is an administrative action by government body or officer.

Legal substance set about the competence of green court, environmental justice system, principle of good environmental government. Environmental justice system by prioritizing the implementation of principle of good environmental governance, access to justice, eco justice. Sonny Keraf stated that good implementation of governance will impact to good environmental management, moreover without good governance it is difficult to expect good environmental governance [9]. Massive development will damage environment, if the government did not pay attention for the principle of good environmental governance. Principle of good environmental governance is the implementation of principle of good governance for protection, management of environmental. The litigation procedure to file lawsuit, requirements, parties are included in legal substance.

Culture of law about the habit of society to aware with environment. This awareness will arise society concern to maintain, protect environment, also file lawsuit to court. If there are clear regulations about the public litigation or public participation in the substance of law, it will be helpful for environment. Legal obedience is a part of culture of law, it has important role also to build an environment awareness.

2.2 Access to Justice to Get Ecojustice

Settlement of environmental disputes can be settled out of court and through courts, both have the aim of giving the community the right to obtain environmental justice. The legal route is a mechanism that can be taken by citizens with the aim of obtaining justice and legal
certainty. Strategic Lawsuit Against Public Participation (SLAPP) as an effort to stop activities aimed at freedom of expression, expression of opinion [10]. Research on SLAPP was conducted by Pring and Canan in the United States, which emphasizes freedom of expression. SLAPP can be carried out by the Government or any party with the aim of impeding freedom of expression, which should receive protection from the state. Based on the research by Eko Riyadi and Sahid Hadi, there are 3 (three) patterns of SLAPP in Indonesia, also as act which are contradict or give bad effect on the freedom of expression [11]. They also emphasized that court must present to showed that States give protection in freedom of expression. There should be judge verdict that protect everyone who experiences SLAPP in civil and criminal matters.

Based on data obtained from the Indonesia Center for Environmental Law (ICEL), regarding cases of reporting against individuals who fight for the environment, but are reported parties both civilly and criminally. Furthermore, ICEL also emphasizes to be strictly regulated regarding effective Anti-SLAPP arrangements by prioritizing the termination of SLAPP cases as early as possible [12]. There must be a clear formulation of SLAPP, especially for those who commit and compensation, restoration of good name or other efforts that can be given to parties affected by SLAPP.

Eco SLAPP is SLAPP used in the environmental sector, as stated by Pring and Canan. The results of Nadya Zahra Aulia’s research stated that the concept of Anti Eco SLAPP in Indonesia has not been well developed, because it has not been able to provide protection to environmental fighters and many cases have arisen. This situation is triggered by the lack of regulations governing Anti Eco SLAPP, the understanding of law enforcement officers is still lacking and this greatly affects the protection and legal certainty for environmental fighters, protection for environmental fighters is still limited by litigation, while in the non-legal sector, protection for environmentalists is still limited. litigation has not yet been arranged. There needs to be a firm regulation regarding Anti Eco SLAPP [13].

Raynaldo Sembiring stated that the Anti-Eco SLAPP regulation in Article 66 of the PPLH Law was counterproductive with his explanation, which stated that the requirement to provide protection was only to people who had carried out legal procedures [14]. According to Sembiring, in Article 66 of the PPLH Law, it is necessary to specify the subjects that must be protected, the limits for determining the occurrence of SLAPP, the types of SLAPP actions, the requirements for protection. The regulation in the Decree of the Supreme Court of the Republic of Indonesia Number 36 of 2013 states that Eco SLAPP can occur at any time, regardless of whether the community has taken legal procedures or not, so it is necessary to make clear regulations regarding Anti Eco SLAPP.

Anti-Eco SLAPP must be strictly regulated, because the provisions in Article 66 of the Environmental Law are still lacking in terms of substance and process [15]. The results of the study indicate that it is necessary to include an element of good faith in Article 66 of the Environmental Law, regulations regarding state responsibility to environmental fighters, joint regulations between relevant agencies, the authority of the competent institution to file a lawsuit against restoration due to environmental damage.

of the research mentioned above, the phrase “… aims to protect victims and/or complainants who take legal action…””, raises the question whether victims and/or whistleblowers who do
Based on the concept of Anti Eco SLAPP by Pring and Canan, there needs to be a regulation that explicitly regulates Anti Eco SLAPP in Indonesia, that victims and/or reported parties have the right to receive legal protection, even though they have not or have not taken legal procedures. This is to emphasize the principle of equality before the law, justice. The lack of clarity in the application of Anti Eco SLAPP can cause harm to the community, the environment and future generations. The regulation regarding SLAPP, Anti Eco SLAPP is one form of access to justice for the community.

Access to justice can be done through filing a lawsuit with the Citizen Lawsuit, Class Action mechanism. The Class Action mechanism is regulated in the Regulation of the Supreme Court of the Republic of Indonesia Number 1 of 2002 concerning Class Action Lawsuit Procedures. Class Action lawsuits are one of the mechanisms that are often used in addition to civil lawsuits and administrative lawsuits. There is no specific regulation in Indonesian legislation regarding the Citizen Lawsuit mechanism. However, from practice in the judiciary so far, the CLS mechanism is often carried out in the District Court. CLS is part of Public Interest Litigation which is known in countries with a Common Law legal system, while in countries with a Civil Law legal system the term Actio Popularis is known, however, both have something in common, namely for filing lawsuits for the public interest. In Indonesia, CLS is more often used for filing civil lawsuits.

Supreme Court Regulation Number 1 of 2002 concerning Class Action (hereinafter is Supreme Court Regulation), since there is not yet regulations about formal procedural law. These regulations were made for civil matter as stated in Article 10 of Supreme Court Regulation, other provisions that have been regulated in Procedural Law for Private Case still applies. At that time some regulations as legal basis to file lawsuit as group representative, class action. These regulations have to follow with other regulations that have the same aim, to give access to justice for everyone.

In line with the Sustainable Development Goals (SDG's), especially point 16, the CLS mechanism in Indonesia needs clearer regulations, meaning that civil and administrative lawsuits can be filed. Access to justice in the environmental sector must be expanded, considering the increasing number of environmental damage and pollution. The examination of environmental disputes so far is more often entered into general courts, both civil and criminal cases. The thing that makes it possible to accept a lawsuit using the CLS mechanism is Article 10 of Law Number 48 of 2209 concerning Judicial Power which in essence states that the Court is prohibited from refusing to examine, hear and decide on a case that is submitted, on the grounds that the law does not exist or is lacking, but obliged to examine and judge.

The right to file a citizen lawsuit against the government or known as the Citizen Lawsuit (CLS) which is carried out to sue the responsibility of state administrators who neglect their obligations in an effort to improve the welfare of citizens [16]. From the results of research by Bagus Oktavian Abrianto and friends, it is stated that if the government makes negligence that causes damage and changes the function of the environment to the community, then CLS can be proposed. The community can ask the government to take certain actions that have become their obligations [17].

Citizen's lawsuit with case number 347/Pdt.G.LH/2019/PN. Jkt.Pst regarding the poor control of air quality in Jakarta Province, is an example of the CLS lawsuit regarding the environment. In his decision, the Judge stated that the Defendants had been proven to have violated the law. Because it uses the CLS mechanism, which does not demand compensation, so the Defendants are given the obligation to carry out the judge's decision. CLS is a lawsuit based on the public interest, so according to Elly Kristen there has been a shift in the point d'interest point d'action principle, this means that those who can file a lawsuit are interested or disadvantaged parties, so that the adoption of CLS does not require the basic principle of legal interest. enough for the plaintiff [18].
According to Enrico Simanjuntak, regulations in the environmental sector require the participation of the community and the state in environmental management, thus giving the possibility that anyone can file a lawsuit to the Administrative Court [19]. It was further stated that disputes in lawsuits in the name of public interest, actually fall within the realm of public law, not being part of civil law, as has been the case in judicial practice. The implementation of CLS related to environmental issues has encountered several obstacles, there are no regulations that explicitly regulate CLS, the lack of understanding of law enforcement officers with the CLS mechanism, the lack of Judges who have Environmental Judge certification in the courts of first instance [20].

The settlement of administrative lawsuits at the State Administrative Court, so far, has been carried out, namely the cancellation of permits granted by the Government. The mechanism used is in accordance with the legislation regarding the procedural law of state administrative courts, this is confirmed in Article 93 paragraph (2) of the PPLH Law. Although Articles 90, 91, 92 have given litigation rights to the Government, Regional Government, Community and Environmental Organizations, the filing of a lawsuit with the CLS mechanism is not regulated. Considering current developments, the CLS mechanism in the procedural law system for state administrative justice needs to be regulated immediately, considering that it is the right of the community to obtain environmental justice.

3 Conclusion
References

Note: The references are cited in the text. The full list of references is not provided here.
