

The Concept of the Principles of Legal Certainty, Benefit and Justice in Environmental Management

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Abstract: Every human interaction both among humans and with the environment will have an impact on the environment, both positive and negative. Therefore, a legal rule is designed to regulate the balance of humans and the environment in which they live. Environmental law regulates environmental patterns and all devices and conditions with humans who live and affect the environment. This research was designed in the form of library research using various sources of literature as a source of research data. This research is a study related to the thought of a character in a certain time, so methodologically the approach used is the content approach (library). If the legal norms are only written and neatly arranged, but there is no serious handling of the law enforcement apparatus and the culture is indifferent from the community, then the legal norm is only an artificial norm. Lawless practices must be submerged in order to maintain legal certainty, justice, and benefit. In environmental law, stipulated provisions, and norms to regulate human actions with the aim of protecting the environment from damage and deterioration of its quality to ensure its sustainability so that it can be directly used by current and future generations. Environmental law is oriented to the environment, so that its nature and timing also follow the nature and character of the environment.

Keywords: Environmental Law, Environment Regulates, Legal Security, Legal Instruments.

I. INTRODUCTION

The order of life based on norms is built because of obedience to the surrounding laws, both religious, social, and state law. Plato defined law as a system of positive rules organized or formulated, binding on all individuals in the state. This is true, law as a form of regulation in the life of society universally regardless of who did it and the principle of firmness in the sanctions given according to the violation [1]. Sanctions are given as the final decision for every violation committed by citizens as a form of responsibility for all their actions. Sanctions are a derivative of regulations which follow as a deterrent effect of violations of the law if they are not done again. In principle, the sanctions given are as guidance, empowerment, and education for citizens who provide lessons and experiences so that they become a good thing [2]. The trick is to change the value order that exists in individuals in the future with the hope of becoming better citizens.

Seeking and finding harmony in law is neither difficult nor easy. The difficulty in achieving the ideal law is the parties in dispute or dealing with the law in achieving satisfaction or results that are accepted gracefully [3]. Ease of reaching the

ideal law if there is harmony between theory and practice. In addition, law is expected to develop rapidly in line with the current development of the times to regulate all actions or actions that have the potential for disputes, both small and large disputes. Allowing theory or practice to run independently without complementing each other will affect the performance of the law itself. It is no less important when the law is left behind by the times, where the flow of change continues to follow the growth rate of society, it will have an impact on the existence of law and the level of public trust in the law [4].

In principle, law was created to give trust to society (humans) in the different interests that humans have from one another with the aim of creating welfare. The law comprehensively regulates the conduct of human activities, both human-human relations, human-legal entities, and humans with nature (environmental ecosystem). Through the law, it is hoped that the attainment of human ideals (legal subjects) can be achieved, as stated by Gustav Radburch that law in its achievement cannot be separated from justice, certainty, and benefits. The existence of the law in question is both passive law (statutory regulations) and active law (judges in court) [5].

The concept of legal certainty includes several interrelated aspects. One aspect of legal certainty is the protection given to individuals against the arbitrariness of other individuals, judges, and administration (government) [6]. It is a belief in legal certainty that should be attributed to individuals regarding what individuals can expect the ruler to do, including belief in the consistency of judges' or administrative (government) decisions. Legal certainty is a feature that cannot be separated from law, especially for written legal norms [7]. Law without certainty values will lose its meaning because it cannot be used as a code of conduct for everyone. Apeldoorn said that legal certainty has two aspects, namely that the law can be determined in tangible terms and legal security [8].

Certainty is a matter (condition) that is certain, provisions or provisions. The law must be sure and fair in essence. Certainly, as a code of conduct and fairness because the code of conduct must support an order that is considered reasonable. Only because it is fair and implemented with certainty can the law carry out its function. Legal certainty is a question that can only be answered normatively, not sociologically. According to Kelsen [9], law is a system of

norms. Norms are statements that emphasize the “should” or *das sollen* aspects, by including some rules about what to do. Norms are deliberative products and human action. Laws containing general rules serve as guidelines for individuals behaving in society, both in relationships with fellow individuals and in relation to society. These rules become a limitation for society in burdening or acting against individuals. The existence of these rules and the implementation of these rules creates legal certainty.

Normative legal certainty is when a regulation is made and promulgated because it regulates clearly and logically [7]. It is clear in the sense that it does not cause doubts (multiple interpretations) and is logical. It is clear in the sense that it becomes a norm system with other norms so that it does not clash or create norms conflict [10]. Legal certainty refers to a clear, permanent, consistent, and consequent enforcement of the law, the implementation of which cannot be influenced by conditions that are subjective in nature. Certainty and justice are not just moral demands, but factually characterize the law [11]. A law that is uncertain and does not want to be just is not just a bad law [12].

This doctrine of legal certainty comes from juridical-dogmatic teachings which are based on a positivistic school of thought in the world of law, which tends to see law as something that is autonomous, independent, because for adherents of this thought, law is nothing but a collection of rules. For adherents of this sect, the purpose of law is nothing more than just ensuring the realization of legal certainty. Legal certainty is manifested by law with its nature that only makes general legal rules [13]. The general nature of legal rules proves that law does not aim to bring about justice or benefit, but solely for certainty [14].

Legal certainty is a guarantee regarding the law which contains justice. The norms which promote justice must really function as rules to be obeyed. According to Gustav Radbruch [5, 15], justice and legal certainty are permanent parts of law. He argues that justice and legal certainty must be considered, legal certainty must be maintained for the sake of security and order of a country. Finally, positive law must always be obeyed. Based on the theory of legal certainty and the value to be achieved, namely the value of justice and happiness

The derivative law on the environment regulates environmental management which is related to the legal subject as the executor and guardian of the environmental ecosystem. Law Number 32 Year 2009 concerning Environmental Protection and Management Article 3 states that the objectives of environmental protection and management include protecting the territory of the Unitary State of the Republic of Indonesia from environmental pollution and/or damage; guarantee the safety, health, and life of humans; ensure the survival of living things and the preservation of ecosystems; as well as preserving environmental functions. Maintain unlimited protection and safety from activities carried out, including forest

exploitation. Humans make the need for survival the reason for cutting or cutting trees. What is contained in the forest is exploited, such as tree roots and small and large trees. The land that becomes fertile for trees becomes land that is exploited by dredging natural products in it. The environment that should be preserved, the cutting of trees based on age is suitable for cutting, the growth of plants and animals according to their habitat, all of which are lost due to activities that are only concerned with personal or group interests. Often humans cut trees illegally so that it affects the absorption of CO₂ in the air, burning forests, causing air pollution, and triggering respiratory disease (ISPA). Forest exploitation carried out by humans should provide benefits to increase economic growth and housing development, in fact it gives injustice to other living things (plants and animals).

As a legal subject, humans have an essential role in achieving justice, legal certainty, and benefit. Humans can control as they want, but still within the signs of legal norms, so they don't get out of the way they should. Humans who are also part of living things (plants, animals, and humans) have the responsibility to protect the environment, so that other living things participate in protecting nature, because there is a life cycle, namely in the food chain where mutual care is what is their rights and obligations. In environmental management, there are regulations on environmental management that regulate humans to protect nature (environmental ecosystem) from the damage caused by other living things, because allowing the environment to be damaged will have an impact on the extinction of the ecosystem itself.

This research uses normative legal research methods. This research was conducted with the intention of providing legal arguments as the basis for determining whether an event was right or wrong and how the event should be according to law. Therefore, knowing normative legal studies is important to do. The terms of reference used are the basic understanding in the legal system. the meaning of the basic meaning is legal community, legal subjects, rights and obligations, legal events, legal relations, and legal objects. As well as conducting a literature review of supporting references.

II. RESEARCH METHOD

A. *Research Approach*

This research was designed in the form of library research using various sources of literature as a source of research data. This research is a study related to the thought of a character in a certain time, so methodologically the approach used is the content approach (library). The point is that research is closely related to the thoughts expressed in the work or book (content); that is, research talks about a character's view of the proper state in building a proper state based on a systematized concept which is then connected with the state or condition of an object, place, and state.

This study also uses a descriptive technique approach, which is a form of research aimed at describing existing phenomena,

both natural and man-made. This phenomenon can be in the form of forms, activities, characteristics, changes, relationships, similarities, and differences between one phenomenon and another. The descriptive approach is research that attempts to describe and interpret a developing opinion. Descriptive research is research designed to obtain information about the status of a symptom when the research was conducted. In descriptive research, no treatment is given or controlled [16].

B. Data Sources

To collect the research data needed in this discussion, the author uses the library research method i.e., research whose main object is literature books that are related to the subject matter and other supporting sources. This research is called library research; therefore, the data sources are obtained in two forms of data, namely primary data, and secondary data.

1. Primary data; Data obtained directly by interviewing sources or experts in their fields.
2. Secondary data; Data obtained indirectly through library research either by collecting and inventorying techniques of books, scientific papers, and articles from the internet that have to do with the issues to be discussed in this paper and legal materials consisting of legislation in binding law, including the Criminal Code and the Indonesian Criminal Code, which include matters relating to the handling of embezzlement by weighting the problem

C. Data Analysis Technique

All data collected, both primary data and secondary data, will be analyzed qualitatively, namely a description according to quality, which applies to the fact that primary data is associated with secondary data theories. The data are presented descriptively, namely by explaining and collecting the problems associated with this research.

III. RESULT AND DISCUSSION

A. Legal Certainty

In fact, the existence of this principle is interpreted as a situation where the law is certain because of the concrete strength of the law in question. The existence of the principle of legal certainty is a form of protection for justiciable (justice seekers) against arbitrary actions, which means that a person will and can get something that is expected in certain circumstances. This statement is in line with what Van Apeldoorn said that legal certainty has two aspects, namely the determination of the law in concrete terms and legal security. This means that those who seek justice want to know what constitutes law in a certain matter before starting a case and protection for justice seekers. Even though it is said that the principle of law is the heart of legal regulation, however, it cannot be equated between legal principles and legal norms in the form of positive law.

Legal principles only have the character of regulating and explaining (explanation), where the aim is only to provide an overview and not normative [17]. Therefore, the principle of law does not include positive law and certainly cannot be applied directly to resolve legal disputes. Van Eikema Hommes expressly states that legal principles should not be considered as concrete legal norms, but are general foundations or guidelines for applicable law [18]. In the realm of law, there are many principles that form the basis for forming legal regulations. At this writing, we will not discuss the principles of forming legal regulations comprehensively, but the discussion will focus on one of the principles which according to Gustav Radbruch can be said to be a basic legal value, namely Legal Certainty [15].

The dynamics of development bring about changes, especially from the results of forest management with an environmental perspective or for purely interest. There are two factors to the dynamics of development which will have an impact on the environment. First, benefits as goals and factors desired by development itself, and secondly, the losses that come from development activities. He continued, these factors are undesirable, but still exist, depending on the management factors carried out according to the system. Productivity of forest management is needed both through regulation and the role of legal subjects so that the system can maintain a good environmental order. To explicitly guarantee legal certainty for environmental violations or crimes, it is regulated in Law no. 32 of 2009 concerning Environmental Protection and Management with the aim of overcoming environmental pollution and destruction through preventive and repressive measures. These precautions are inseparable from environmental problems such as: deforestation, critical land, depletion of the ozone layer, global warming of oil spills at sea, dead fish in tributaries due to chemicals, and the extinction of certain species. The complexity of the problem if it is not accommodated by norms, it will only cause harm to the environment. Therefore, legal certainty is related to legal effectiveness. So that legal certainty is only guaranteed, if the State government has sufficient means to ensure existing regulations. To accommodate forests in regulation, forestry law aims to ensure that forestry is carried out for the greatest prosperity of the people in a just and sustainable manner.

Responding to this reality, the office holders can identify violation practices that have been regulated in laws and regulations. Stake holders should not only be conceptual in nature, but must be more executive in nature in order to guarantee legal certainty and provide social comfort. One aspect of the principle of legal certainty is law enforcement. The comprehensive role of law enforcement officers cannot be ignored [19, 20]. The component consisting of the Police, Attorney, Advocate, and Judge has their respective main duties and functions. There needs to be a synergy in formulating the law when it is implemented so that there are no gaps when practicing the law inside and outside the court. The maximum achievement when handling cases such as

forest management by individuals who do not pay attention to the surrounding conditions (environment) can be charged under the prevailing laws and regulations. The implementation of the law based on the rules will directly affect the legal system both vertically and horizontally [21]. This means that the duties and authorities of law enforcers can provide a proportional (vertical) guarantee of legal certainty for offenders or victims. Meanwhile, on the other hand, a good legal reflection can be seen when a set of laws jointly compromise the law, of course, based on their in carrying out norms well (horizontally). This is to avoid overlaps and gaps between law enforcement officials in implementing written law and the community as the target of these norms.

Indonesia is manifested as a constitutional state. Indonesian legal products are still inherent from the Dutch colonial era so that the legal system applied is the European Continental legal system. This legal system is based on positive law which adheres to the principle of legality. Legal certainty is a well-known jargon, this axiom can be felt because it introduces the terms put forward by Julius Stahl [22], mentioning the main elements in the Continental European system, namely: a). Recognizing and protecting human rights; b). To protect these human rights, state administration must be based on the trias politic theory (separation); c). In carrying out its duties, the government is based on law (*welmatighbestuur*); and d). If in carrying out its duties based on government law, the government still violates human rights (government interference in a person's personal life), a court will resolve it. Based on these elements, legal certainty is an expression of this legal system. No action against crimes or violations was carried out prior to the existence of regulations governing them.

The legal implications for the existence of law in advance, today can be evaluated carefully. Population growth coupled with technological sophistication makes it easier for the law to harmonize with field conditions. Violations or criminal acts allow freedom from legal observation, because they are caused by regulations which in fact are rigid. Legislations that are made do not necessarily accommodate all components that affect arbitrariness. Attempts against perpetrators of crimes against forest and environmental management can be ignored when they argue about the necessities of life or fundamental needs for humans. It should be possible to be charged under the law because returning to the elements of legal certainty, the perpetrator can be released due to legal rigidity so that gaps in existing regulations cannot be avoided anymore.

B. Benefit

The existence of law aims to provide security and order as well as to ensure the welfare of the people from the State as the umbrella for society [23]. The rule of law in addition to the interests of humans against the dangers that threaten them also regulates relationships between humans. Identifying each

problem is the duty of the law to guarantee legal certainty [24]. Society develops rapidly in the world of its community or in a state, this is influenced by the times so that the needs must be met according to the era. This enforcement has no direct relevance with legal certainty; therefore, the law will be static without any adjustments between the law and the current society's behavior or legal confusion. For that we need a contextual law, in the sense that it can accommodate social practices in society by being regulated by legal norms. The legal teachings that can be applied to create a correlation between law and society, namely social law that is stronger and more advanced than the teachings created by individual law. This law articulation will create laws that are in line with the ideals of society [25]. Therefore, the estuary of law is not only justice and legal certainty, but also aspects of benefit must be fulfilled. Utilitarianism adherents to the third goal of law, besides justice and legal certainty. The purpose of the law is for the benefit of all people. Various triggers for environmental damage can be seen ranging from weak government oversight, laws, and regulations to inconsistency in environmental enforcement. The last trigger is fundamental in a rule of law.

Forest exploitation tends to mask society. Land for shelter, farming and other community interests are the arguments used. The community is used as a sacrifice in order to save corporate interests. Environmental regulations are conceptualized in detail, containing administrative sanctions, civil sanctions, and criminal sanctions. However, the formation of the law does not explicitly see the hopes and aspirations of the community so that it becomes the weakest point of law enforcement, especially in the deterioration of environmental functions. Legal instruments, supra structure (Legislative, Executive, Judiciary) if they work professionally and proportionally, will provide legal benefits to a holistic society. So far, elements of legal certainty have transformed Indonesian law. so that the role of law enforcement seems passive and rigid. In this context, an active and dynamic law enforcer is needed. Given the discretion of the government indicates that it takes sides with the bourgeoisie. If statutory regulations and law enforcement are not dynamic, then forest exploitation under various pretexts of people's interests will mushroom openly. There must be trimming regulation from the bottom before taking root to the highest peak. Of course, regulations that prioritize the people by providing the best possible benefits to the environment.

Benefit is a legal objective that has a legal role during the adjudication process by ignoring justice and legal certainty. He said that a good law is if the application of legal norms provides good benefits to the community and creates welfare for other communities [13]. For this reason, law enforcers can implement laws and regulations on the environment by prioritizing the people and paying attention to the environment and other components as best as possible.

C. Justice

Every country has binding regulations for all its citizens in the social order to be obeyed and applied in the life of the nation and state therefore in various concrete actions in accordance with the contributions built. The value order in society is determined by norms that govern forcibly for the interests and goals of the state as the organizer of the government and regulate society fairly in a professional and accountable law enforcement. Law as the basis of rules for a democratic state is the most important part that cannot be separated, because its existence has an important role in various actions taken by citizens with legal provisions [26, 27]. The existence of law in the context of a democratic state that must be enforced during the freedom of society in its social reality which provides a large enough scope and scope for its aspirations with the level of wants and needs as well as demands. The principle of justice in law often becomes an opening for people to ask for fair treatment to the state as law enforcer and government implementer. Justice is often transformed in a frame that is wrong in its interpretation, resulting in negative effects with poor learning for other societies [28, 29].

Hart argues that the general principle of justice in law is equality and inconsistency [30]. This means that the same thing is treated in a similar way, while for different things it is treated in a different way. This view gives the perception that equality of individuals should be treated the same as other individuals, becomes relative if equality differs from what is done in the way it is treated, as well as treating similar things in a similar way. Justice as a basic principle in law cannot be ignored in practice, being a just person is neither easy nor difficult, if the individual binds his soul to behave fairly [31]. Because, basically justice returns to the person who carries out the judicial process to the person being tried. This means that not everyone who is equal is said to be fair, depending on the substantive principles of the actions being performed. The reality that occurs in the social life of society becomes untrue if what is done by an individual is said to be unfair, even though it is in accordance with applicable regulations [32]. People sometimes do not understand the meaning of justice itself, because as a substance of law that is carried out fairly, it is not necessarily fair for others, and vice versa. Therefore, justice contains the concept of relativism both in terms of judgment, vision, feeling, and perception, to find the true meaning of justice. Justice cannot be a feeling, desire, and hope, but in the conscience of each one that cannot be clearly expressed [23].

Justice in the legal context is closely related to the meaning of legality. It is said to be fair if the regulations made apply equally, equally and without discrimination, the law is applied to all cases which according to the rules must be applied [33]. The legality of legally enforced regulations has the same implications for all actions carried out with the principle of referring to the content of the act itself, and it is said to be unfair if the application of the rules is not applied to the same act in different places.

Justice is one of the most discussed objectives of law in the history of legal philosophy [34]. The most fundamental thing when talking about law cannot be separated from the justice of the Greek goddess of justice. From the Greek era to the modern era, experts have disparities in the concept of justice, this is due to the conditions at that time. In this context, as explained in the introduction, it does not holistically provide a definition of justice from every expert in his time but will be delivered partially according to the writing done. Meanwhile, for benefits, Jeremy Bentham said that to achieve happiness in law does not only discuss justice and certainty, but also benefits [35]. It is also said that a norm is said to be good if it contains the happiness that is felt by the dominant society (legal subjects). In environmental management, benefits cannot be separated from the function of forests in a holistic sense. The government and other interested parties can jointly use forest products for public interest, not for private or group interests. Environmental management that is done well will run well and happiness will be achieved.

Proportionally good forest management can maintain stability between rights and obligations when exploiting these forest products. The role of justice when managing forests is seen when how much forest products in the form of trees are exploited by adjusting the amount needed. Nowadays, logging does not consider the condition of the surrounding environment, because it is motivated by an interest. With this activity it causes damage to the forest so that environmental conditions will be at a nadir point. Salim is of the view that another cause of forest destruction is the large number of people who steal wood in protected forest areas, production forests and other forests.

The environment looks simply, but if it is ignored, the negative impact will be large, especially on social conditions, in terms of justice aspects. In this context, social justice can also be placed within the framework of the notion of justice which is our starting point. If we understand justice as giving to everyone who is due, then social justice can be realized, if social rights are fulfilled.

Forest and environment have synergy which is expected to run in a balanced manner. The legitimacy of both (forest and environment) is a manifestation of people's representatives. Implicitly, their performance is focused on accommodating the expectations of the community in general and protecting other living things as the essence of God's creation. If one of the components is not met, the balance is not accommodated. This means that there is an injustice in the application in the field, because environmental management dominates environmental factors so that it has an impact on environmental ecosystems. The entity of the chaotic real conditions intersects with the sociological aspect, namely the tranquility and conduciveness of living.

IV. CONCLUSION

The concept of law has implications for the order in which people live as citizens, especially in a democratic country that

upholds freedom of expression and creation in order to form a good and modern state. State democracy is determined by the existence of the principle of justice in it, so that a democratic country becomes a general paradigm. When democracy is associated with justice, it is not merely fair in relation to the binding legal order, but fair in the souls of justice enforcers and individual human souls who are required to be fair. At a minimum, justice is formed from within the community itself with the economic principles it has. On legal justice, rights, and obligations in doing environmental management is substantially a legal subject prioritizing balance in carrying out environmental management through forest exploitation. Social society becomes fulfilled with a sense of justice when the social division is balanced. In order to fulfill justice, it cannot be separated from the role played by the government as an authorized institution to carry out laws and regulations. As the government as the guardian and / or implementer of laws on environmental protection and management, gives a fair sense of carrying out environmental management when forest exploitation is carried out. The government oversees supervising the subject law that implements forest exploitation while maintaining the cultural elements inherent in the local community as a barrier to arbitrariness and flexibility in maintaining embedded values.

In the aspect of legal certainty, forest exploitation through logging trees and other forest products can be seen in a formal legalistic manner, in accordance with the characteristics of Indonesian law, namely inherent in the characteristics of Continental Europe. The aim is none other than to help provide legal certainty for related legal subjects, be they individuals and / or legal entities (corporations). Seeing the existence of forests and their contents which are very helpful in supporting the economy, legal certainty is a sign of action, because without legal norms there will be potential for material loss (quantity of trees) and immaterial (degradation of living things). Therefore, to maintain a balance between economic growth and an environmentally sound environment, it can uphold legal certainty. A norm will not run effectively if it is not followed by law enforcement. Legal norms and law enforcement are like coins with different sides, where forest management is carried out under the supervision of legal norms and law enforcers. Law enforcers will carry out an investigation, investigation, and prosecution in accordance with the laws and regulations, in this case Law Number 32 of 2009 concerning Environmental Protection and Management. Law enforcers become a sign of enforcement of environmental laws so that the legal subject of forest exploitation permit holders can always be aware of their activities. Considering that forest exploitation often occurs in customary areas, parties such as the executive, legislative, judiciary and customary officials can discuss which areas can and cannot be exploited. This supports the implementation of legal certainty in the framework of environmental management.

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