

LEGAL PROTECTION OF FORESTS AND FOREST AREAS IN SUMBAWA REGENCY, WEST NUSA TENGARA PROVINCE

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ABSTRACT

This research aims to analyze the causes of ineffectiveness of law enforcement in forest protection; and to analyze the legal construction of forest protection and management models. This research is an empirical legal research with approach of legislation and sociological approach. The type of data used in addition to secondary data (library data) also primary data (field data). The data are then analyzed qualitatively starting from reduction of data, display of data and summarizing data in accordance with the facts in the field. The research results showed that, the factors causing illegal logging include: (1) regulatory factor is the lack of local regulation on forest protection and management; (2) legal structural factors are the weak role of legal institutions in the process of licensing, supervision and law enforcement of forestry; and 3) the legal culture factor is the lack of awareness of community law in forest management. The legal protection efforts are preventive, among others, through the socialization activities of forest protection programs, licensing mechanisms, guidance apparatus and law enforcement officers; supervision of forest management. While repressive protection covers the application of administrative sanctions, civil sanctions and criminal sanctions against conductors of forest destruction.

Keywords: Legal Construction, Forest Protection.

INTRODUCTION

The forestry sector is one of the most potential sectors in supporting the national economy of Indonesia. Utilization of forest resources should be balanced with the protection and preservation of its functions. Therefore, the protection of forest resources is absolutely necessary, because the forest is a gift of God Almighty, and as one of the natural wealth that has provided benefits for the nation of Indonesia.

According to Ir. Hartina, Head of Forest Office of West Nusa Tenggara Province, the condition of forest resources in Sumbawa Regency this time is very worrying due to the increasing of illegal logging and timber smuggling (Antara, 2009). Based on the data, the critical forest area in Sumbawa Regency and West Sumbawa Regency amounted to 193,997.90 ha; consist of critical forest in 51,124.90 ha forest area and outside forest area of 142,873.00 ha (Forestry Data, 2014).

Forest exploitation activities in Sumbawa Regency have been conducted continuously both with legal and illegal license. The activity resulted in the destruction of thousands hectares of agricultural land, so that many farmers who failed to harvest; as well as the settlement of the population also suffered damage. Based on the data of the Regional Disaster Management

Agency of Sumbawa Regency on February 9, 2017, the number of victims including floods, such as in Moyo Hilir District, 730 households (2,952 persons) and in North Moyo 1,372 families (5,518 persons) (Sood, 2017).

Various legal instruments in forest protection effort have been issued by Government such as, Law Number 32 of 2009 on Environmental Protection and Management, Law Number 41 of 1999 on Forestry; Law Number 5 of 1990 on the Conservation of Natural Resources and Ecosystems, and Governmental Regulation Number 45 of 2004 on Forest Protection. However, illegal logging activities are still going on.

Based on the description above, it can be formulated the problem that is, Why law enforcement in forest protection is not running effectively so that forestry issues still occur (Soekanto, 1993); and what is the model of legal protection for forest management in Sumbawa Regency?

RESEARCH METHODOLOGY

This research is an empirical law study, which analyzes the implementation of law on forest protection and management model in Sumbawa Regency, with approach of legislation and sociological approach. Types of data used in addition to secondary data obtained through literature study are also primary data obtained through observation and interviews with informants and respondents, then the data are analyzed qualitatively.

RESULTS AND DISCUSSION

Factors Causing Ineffectiveness of Law Enforcement in Forest Protection

According to Friedman (1975), the effectiveness of law enforcement can be analyzed from the legal system itself, including three sub-systems, namely, the substance of the law is a regulation consisting of substantive rules and rules on how institutions should act; the Legal structure is a pattern that shows how a legal institution works, how they play its role; and Legal culture are patterned attitudes, values, principles, ideas or opinions held by individuals at the level of individuals and groups of people.

Based on the theory, various factors causing Ineffectiveness of law enforcement, in forest protection, in Sumbawa Regency are as follows:

1. Substance Factors Law (Regulation), because up to now there has been no regional regulation on forest protection which prioritizes the development of local community participation in environmental protection and management in the Sumbawa Regency.
2. Legal Structure Factors (Legal Institutions).

Various weaknesses regarding the role of legal institutions in forest protection efforts, such as: lack of socialization regarding efforts to improve public awareness about the importance of forest functions; lack of fostering of field officers in the implementation of functions, duties and authorities of forest protection, and no coordination and good cooperation; lack of supervision in forest protection efforts so that illegal logging actors feel free to deforest; the licensing procedures on forest utilization and management often do not refer to applicable regulations that accelerate the reduction of forest areas into non-forest areas; and weak law enforcement in handling cases of illegal logging, both in the process of investigation, prosecution

in court, as well as sanctions given very light, so as not to cause a bright effect for the perpetrators of illegal logging.

Factors of Legal Culture

Some of the causes of non-implementation of the rule as a result of the weakness of the legal culture, such as weak mentality of law enforcers in law enforcement, whether in the process of licensing and forests monitoring, as well as in case resolution; low awareness of business actors and the community about the importance of forest functions for human life; and the people still think that forests belong to themselves, so they feel free to plunder the forest without realizing that the act is against the law.

Models of Forest Protection in Sumbawa Regency

The form of legal protection is essentially an effort to the law enforce as a harmonious relationship of values that are elaborated in the rules and attitudes of acts as a translation of values to create and maintain peace in the association of life (Soekanto, 1982). Law enforcement efforts are inseparable from legal ideals that are regulated into the instruments of various positive legal rules, legal institutions, and processes (bureaucratic behavior of government and citizens; Sidarta, 1999). Next Sudikno Mertokusumo, states that, the law enforcement there are three elements of legal certainty, legal benefits, and justice (Mertokusumo, 1993). Legal protection in forest protection efforts can be done preventively and repressively, this can be explained as follows:

Preventive legal protection

Preventive legal protection can be done by formulation of regulations including the creation of local regulations on the environment that regulate communities involvement in the protection and preservation of environment; the guidance of government institutions should be conducted in an integrated manner in an effort to improve morality, and its capacity in the implementation of functions, duties and authorities in protection of forests and forest areas; socialization and guidance of business license holders, and communities on the importance of forest protection and conservation of forest functions in their areas; supervision in the context of protection and management of forests should continue to be undertaken by the government for conservation, protection and production forests; and the controlling of forest management license, it is intended that before the business license is issued it must first undertake the process of environmental impact analysis in the protection and conservation of the forest.

Repressive legal protection consists of:

Implementation of administrative sanctions

Implementation of administrative sanctions against illegal logging actors has been carried out by Forestry and Plantation Officials, beginning from giving warning, temporary suspension of forest management activities, to revocation of forest management business license. The application of administrative sanctions to holders of forest management business license is regulated by Article 80 section (2) of Law Number 41 of 1999 on Forestry, states that, "Every

holder of area utilization license, environmental service utilization license, forest product utilization license, that regulated in this law, if violating provisions outside the criminal provisions as regulated in Article 78 shall be liable to administrative sanctions in the form of fines, revocation of licenses, suspension of activities and/or reduction of forest management area”.

Implementation of civil sanction

Civil sanctions towards business actors or communities that undertake forest destruction is in the form of obligations to pay compensation and imposition of forest restoration costs have also been implemented. This refers to the provisions of Article 80 section (1) of Law Number 4 of 1999 concerning Forestry, which states that, any act that violates the law regulated in this law by not reducing criminal sanctions, obliges the person in charge of the act to pay loss in accordance with the extent of damage or consequences incurred to the state, for rehabilitation costs, restoration of forest conditions, or any other necessary action.

Implementation of criminal sanctions

The imposition of criminal sanctions on forest crime actors is regulated in Article 50-78 of Law Number 4 of 1999 concerning Forestry, with imprisonment of at least 1 year and fine of Rp. 50,000,000 up to 10 years imprisonment and or a fine of Rp. 5,000,000,000. From a number of cases submitted to the state prosecutor's office by investigators from the Forestry and Plantation Office and the Sumbawa Police Station in 2015 there have been 8 cases processed in court, 5 cases of which have been criminal and varying fine, while 3 other cases are still in trial process at the Sumbawa District Court.

CONCLUSIONS

Causes factors of ineffectiveness of law enforcement in forest protection effort in Sumbawa Regency, namely: (1) Law substance factor, because there is no Local Regulation on Forest Protection and Management that can accommodate the local community in forest protection effort; b) Legal structure factors, namely the weak role of legal institutions, mainly in the process of licensing, supervision and law enforcement of forestry; and c) Legal culture factor that is, still low community awareness about the importance of forest for human life.

Forms of legal protection applied in forest protection in Sumbawa Regency are:

Preventive Legal Protection among Others

The need for a Local Regulation as a reference in protection and management of forests in the Sumbawa regency; Guidance on government institutions is conducted in an integrated manner to improve the morality and capability of the authorities in forest protection efforts; Guidance on license holders to have knowledge of licensing procedures, forest management planning, forest utilization, forest development and forest restoration; Socialization to the community to increase their legal awareness on the importance of forest protection efforts in its territory; Government controlling of forest areas should be conducted routinely to observe the

implementation of forest management, in order to avoid illegal logging activities that cause forest destruction.

Repressive Legal Protection Includes

1. Application of administrative sanctions against business actors who do forest destruction has been done starting from giving a warning, suspension, and revocation of forest management business license.
2. Applications of civil sanctions against business actors or communities have also been conducted, in the form of obligation to pay compensation and /or conduct certain actions in the form of recovery cost to the state.
3. Application of criminal sanction, either in the form of imprisonment, or fines penalty. Variety cases handed over to the prosecutor's office, 8 cases have been processed in court, 5 cases of which have been decided in prison and fine in variety, while the other three cases are still in the process of trial.

SUGGESTIONS

In forest protection effort, the Government of Sumbawa Regency should be cooperation with law enforcement officers to review carefully the causes of the destruction of forests; and think of the solution by involving all parties including academics, either through forestry research activities, forestry socialization to the community, or in designing legal drafting of local regulations on forest protection and management.

To law enforcement agencies to be able to enforce the law quickly and decisively in effort of rescue and protection of forests, beginning from investigation, prosecution in court, and provide maximum sanction to illegal logging actors in accordance with applicable regulations.

In effort to restore the function of forests, either ecological, economic, or social-cultural functions, rehabilitation of forests is required through reforestation program (reforestation) as a whole, especially on state lands, including the state lands controlled by society illegally.

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