

# Principle of Good Faith in Environment Pollution Case Study of Indonesia Supreme Court Decision No.2281 K/Pid.Sus/2015

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**Abstract:** *This research aims to find out the concept of good faith in alleged environmental pollution listed in The Indonesian Supreme Court decision no.2281 K / Pid.Sus / 2015. The study uses a juridical-normative approach. The source of legal materials used in this study uses 3 legal materials, namely Primary, Secondary and Tertiary legal materials. The technique of collecting legal materials is by using literature studies by using analysis of legal materials in the form of content analysis in qualitative descriptive. Research shows that the good faith that has been shown by the Defendant, to try to comply with all existing provisions and applicable in the alleged environmental pollution in the case of Supreme Court Decision No.2281 K/Pid. Sus/2015 is the basis for consideration from the Panel of Judges at both the First and Cassation levels to acquit them of charges. The absence of regulations does not make the Defendant then commit reckless actions that result in environmental pollution in the place where Defendant conduct their business activities. From this, it can be seen if the Panel of Judges has used the principle of justice appropriately.*

**Keywords:** Pollution, compliance, good faith

## 1.Introduction

In accordance with Article 3 of Law No.32 of 2009 on Environmental Protection and Management, it is stated: Environmental protection and management have it aims: <sup>1</sup>

1. Protect the territory of the Unitary State of the Republic of Indonesia from pollution and/or environmental damage;
2. Ensuring the safety, health, and life of human;
3. Ensuring the survival of living things and the preservation of ecosystems;
4. Maintaining the sustainability of environmental functions;
5. Achieve harmony, harmony, and balance of the environment;
6. Ensuring the fulfillment of the justice of present and future generations;
7. Ensuring the fulfillment and protection of the right to the environment as part of human rights;
8. Controlling the judicious use of natural resources;
9. Sustainable development; and
10. Anticipate global environmental issues.

In line with the development of Science and Technology that occurred, the development was carried out with the aim of improving the quality of life. These developments will eventually change the human lifestyle towards the surrounding environment. Environmental-related regulations affect environmental sustainability, one of which is the use of products that produce waste that is categorized as Hazardous and Toxic materials (HTm). " These activities demand the development of safe disposal systems with minimum risk to the environment, health,

and survival of humans and other living things. <sup>2</sup> In addition to producing products that bring benefits to the community, industrial activities also often cause adverse effects, such as the production of hazardous and toxic waste materials. The waste itself, when directly disposed of to the environment, will certainly threaten the environment, health, and survival of humans and other living things. <sup>3</sup>

Disputes rises related to alleged environmental pollution related to alleged business activities that produced Hazardous and Toxic materials Waste (HTm Waste), and stored without sufficient permits such as happened in the area of Magelang city, Central Java Province. In the ruling, LTS as President Director of PT LTJ was charged with storing HTm Waste without permission in a Temporary Storage Area located at its business site. At the beginning, PT LTJ in its daily activities as a tanning industry, using heaters machine that use diesel fuel. As well as to meet its business needs, PT LTJ uses ground water to support their business activities. In the development of its business activities, PT LTJ then switched to using Coal for their Boiler machine. PT LTJ, filled permits applications to the Local Government, related to their intension for use of Coal and also the use of Groundwater in its business activities.

When using the Coal, the resulting waste is then handed over to the HTm Waste Company who has a HTm Waste Management Permit. Coal waste in the form of *fly ash* and *bottom ash*, stored in the Temporary Storage Site at the PT LTJ site. The activities of PT LTJ also resulting HTm waste in the form of sludge. PT LTJ has cooperated with the Waste Management Company (PT TLI which domiciled in Tangerang) for the handling of their HTm waste. Related to HTm Waste Storage and Groundwater

<sup>1</sup>Law No. 32 of 2009 on Environmental Protection and Management.

<sup>2</sup>Explanation of Law No. 32 of 2009 on Protection dan Environmental Management

<sup>3</sup>*Ibid.*

use, PT LTJ has applied for a permit to the local government, but until the trial begins, the requested permit is not granted by Local Government. The un-granted action, base on logical thinking that there is no local regulation that can be applied as a legal basis for granting the request permit from applicant. Nevertheless, PT LTJ then made a payment of the Groundwater Levy and cooperated with the HTm waste manager to deal with the waste generated by PT LTJ.<sup>4</sup>

Semarang District Court Statement Number 52/Pid. Sus/2015/PN. Smg dated May 25, 2015 then made a verdict that essentially declared the Defendant, not proven legally and convincingly guilty of committing the criminal act of carrying out waste management HTm without permission and then release Defendant from the Indictment. The ruling was later strengthened by the Supreme Court in decision no.2281 K/Pid. Sus/2015, which rejected the cassation application from the Public Prosecutor.<sup>5</sup>

It is very interesting when reading the verdict of the Panel of Judges who decided the case, because according to the Public Prosecutor, the defendant's actions are very clear, namely storing HTm Waste without the existence of permission, using groundwater without permission and even the Defendant admits in the trial if the Defendant is guilty.

## 2.Problem

After reading the description in the ruling, the author raised the legal issue of how the concept of justice in environmental pollution charges in the Supreme Court decision no.2281 K / Pi., Sus / 2015?

## 3.Research Methods

This research is normative juridical research using a statutory approach, and a conceptual approach. This research is normative juridical with a literary approach that is by studying journals, books, legislation and other documents related to this research. Normative law is directly related to the practice of law that concerns two main aspects, namely about the formation of law and about the application of law.<sup>6</sup> This approach views the law as synonymous with written norms created and announced by official institutions or officials.

In this study there were 3 (three) legal materials: primary, secondary and tertiary. Primary legal material that is a provision or legislation related to the concept of recovery in environmental pollution. Secondary legal material is all publications about the law that are not official documents (books, dictionaries, journals, court rulings), while tertiary legal materials are: large dictionaries Indonesian,

Dictionary law, encyclopedias, and others. Techniques of collecting legal materials using a literature study model.<sup>7</sup>

The legal material analysis technique used is *content analysis* (content analysis technique). Content analysis is any systematic procedure that is encouraged to review the content of the information obtained. This analysis focuses on all secondary data obtained. After obtaining the necessary data, this writing analyzes the data logically, systematically and juridically. Logical means that the data collected is analyzed in accordance with the principle of deductive logic that draws conclusions from a problem that is general to the concrete problems faced. Systematic means to analyze data by linking one data with another that is interconnected and dependent. Furthermore, the data is analyzed juridically, namely based on the existing regulations and is associated with the positive laws that are currently in force.

## 4.Analyze

The policy related to environmental management was carried out by the Government by issuing Law No.23 of 1997, which was enhanced through the issuance of Law No.32 of 2009 on Environmental Protection and Management. Law No.32 of 2009 is aimed at strengthening aspects of planning and enforcement of environmental law.<sup>8</sup>

Pollution and destruction of the environment will be an act that will endanger humans, and the potential for such harm will increase the number of pollution and / or environmental destruction carried out by Industry players in their activities, often use chemicals aimed at shortening the results of the process of industrial activities. On the other hand, the use of these chemicals has the potential to increase the production of hazardous and toxic waste materials. Therefore, the aspect of law enforcement towards the production of waste needs to get more or special attention from the Government, both centrally and in the region.

Prevention of Environmental Pollution is expressly mentioned in Law No.32 of 2009 which in Article 13, which states:

### Article 13

- (1) Control of pollution and/or environmental damage is carried out in order to preserve environmental functions.
- (2) Control of pollution and/or environmental damage as referred to in paragraph (1) includes:

- a. prevention;
- b. countermeasures; and
- c. recovery.

<sup>4</sup>Copy of the Verdict Number 2281 K/Pid.Sus/2015.

<sup>5</sup>*Ibid.*

<sup>6</sup>Rusli, Hardijan." Normative Legal Research Methods: How?", *Law Review Faculty of Law Universitas Pelita Harapan*, Volume V No. 3 of 2006, p. 50.

<sup>7</sup>Ibrahim, Jhonny. 2006. *Theory and Methodology of Normative Legal Research*. Malang: Banyumedia Publishing.

<sup>8</sup>Adnan, ZA. 2009. *Clinical Practical Reumatology, Diagnosis and Therapy 1*. Surakarta: UNS Press.

(3) Control of pollution and/or environmental damage as referred to in paragraph (1) is carried out by the Government, Local Government, and the person in charge of business and/or activities in accordance with their respective authorities, roles, and responsibilities<sup>9</sup>.

In addition, Law no 32 year 2009 article 14, mentioned about the instruments that will be used in order to prevent pollution, namely:

#### Article 14

Instruments for the prevention of pollution and/or environmental damage consist of:

- a. KLHS;
- b. spatial planning;
- c. standard environmental quality;
- d. standard criteria for environmental damage;
- e. amdal (analysis of Environmental Impact study);
- f. UKL-UPL (Environment Documents);
- g. permits;
- h. environmental economic instruments;
- i. environmentally based laws and regulations;
- j. environmental-based budget;
- k. environmental risk analysis;
- l. environmental audit; and other instruments in accordance with the needs and /or development of science.<sup>10</sup>

According to Law no.32 of 2009 article 1 regarding general provisions, mentioned on the interpretation of Waste and Waste Management that can be used as a basis to understand waste management activities.

22. Hazardous and toxic waste materials hereinafter referred to as Hazardous and Toxic materials (HTm) Waste are the remnants of a business and/or activity containing hazardous and Toxic materials.

23. HTm waste management is an activity that includes reduction, storage, collection, transportation, utilization, processing, and/or hoarding.<sup>11</sup>

In addition, HTm waste management efforts are described in article 22 of Law No.11 of 2020 concerning Work Creation which reads:

#### Article 59:

(1) Everyone who produces HTm Waste is obliged to do the HTm Waste Management it produces.

(2) In the event that HTm as referred to in Article 58 paragraph (1) has expired, the management follows the provisions of HTm Waste Management.

<sup>9</sup> Law No. 32 of 2009 on Environmental Protection and Management.

<sup>10</sup> *ibid*

<sup>11</sup> Law No. 32 of 2009 on Environmental Protection and Management.

(3) In the event that each person referred to in paragraph (1) is unable to conduct his own HTm Waste Management, the management is left to another party.

(4) HTm Waste Management must get The Permission to Try, or the approval of the Central Government or Local Government.

(5) The Government of PRESIDENT REPUBLIK INDONESIA, The Central Government or Local Government shall include environmental requirements that must be met and obligations that must be adhered to by HTm waste managers in The Licensing of Efforts, or approval of the Central Government or Local Government.

(6) The decision to grant a License to Strive must be announced.

(7) Further provisions regarding HTm Waste Management are regulated in government regulations.<sup>12</sup>

Related to the case of alleged environmental pollution committed by PT LTJ, in accordance with the Supreme Court Decision number 2281 K / Pid. Sus / 2015, stated that PT LTJ was not proven to commit Environmental Crimes as alleged by the Prosecutor.

That it is true that PT LTJ through its President Director has admitted guilt in the trial, but the Judge in making the verdict should not be based on the defendant's confession solely. The verdict must be made based on sufficient evidence and there must be at least 2 valid evidence tools. Based on the evidence and testimony of witnesses presented in the trial, information was obtained that:

- That the HTM waste is stored in temporary storage (TPS) after the amount is taken by a third party that is PT. TLI;
- That PT. LTJ in February 2010 has applied for a permit in HTm waste management and submitted / repeated in 2012 but the permit has not released;
- That PT. LTJ since 2010 already has a TPS building and has been 2 times verified by Environment Body of Magelang city;

• 1<sup>st</sup> Verification with evidence: Activity Report document No.739/0609. d/15/2012, dated November 19, 2012;

• 2<sup>nd</sup> Verification with evidence: Activity Report document No.739/0609. d/15/2013, dated 11 November 2013;

those verification concluded that PT LTJ has declared as "no violation of waste management provisions";

- That, in their processing of such raw materials (leathers) using Coal since 2010. Average daily consuming Coal around 1 to 2 tons;

- That PT LTJ submitted an application for a HTm waste management permit to Local Government in 2012 together with an application for a drilling permit, but until now the requested permit has not been issued by Local Government.

<sup>12</sup> Law No. 11 of 2020 on Work Creation.

- According to PT LTJ that HTm waste management is handed over to the 3<sup>rd</sup> party, that is PT. TLI Tangerang West Java;
- That the incident began when the Police Team conducted a search and seizure at PT LTJ in Magelang Regency and found 77 plastics sacks of HTm waste in the type of fly ash and bottom ash, 22 plastic sacks of HTm sludge of Waste water treatment plant, stored in a building that is used as a temporary storage area. It was concluded as rest of HTm waste handling, after the HTm waste has been handled by PT. TLI Tangerang Barat as HTm waste company. Also found 1 drill well to support machine of tanning operational activities;
- That regarding the HTm waste management, according to experts based on the results of the examination by expertise, it is concluded that the management of HTm waste by PT LTJ does not interfere with any environment regulations. There is no violation conducted by PT LTJ. Eventhough, PT LTJ has not obtained the permit, it is happened due to the Local Government cannot gave such permission on the basis of the absence of local regulation;
- That in accordance with the provisions if the applicant has applied for an environmental management permit but the permit has not released, based on the Environmental Regulation of 2009 Article 9, then within 40 days the permit has not been issued then it is considered a valid permit application.<sup>13</sup>

Related to the obligation of business actors to conduct HTm waste management that they produce in accordance with Law No.32 of 2009 and Law no.11 of 2021 concerning Work Copyright, business actors have carry out their good faith by applying for an Environmental Permit to the local government.

This application for an Environmental permit is in line with the applicable provisions in the existing Regulations. All the regulations have been fulfilled, and it turns out that the Local Government that did not issue the permit on the basis that there is no Regional Regulation that can be used as a basis for granting permits as requested. Therefore, the Panel of Judges stated that in accordance with the existing Ministry Regulation, the Application for Permission that did not get a response from the Government, then after the period of 40 days, will be considered to have been granted by the Government.

In addition, Panel of Judges also sees, that HTm Waste Management efforts, have been maximally carried out by Business Actor. They gave their HTm Waster to the HTm Waste Company who has a permit of HTm management. This action is in line with the provisions in Law no.11 of 2021 jo Law no.32 of 2009 article 59 paragraph 1 and paragraph 3, which states:

- (1) Everyone who produces HTm Waste is obliged to do the HTm Waste Management it produces.
- (3) In the event that each person referred to in paragraph (1) is unable to conduct his own HTm Waste

Management, such the management can conduct through to other party.

Therefore, it is appropriate decision when the Panel of Judges argues that the Business Actor already has Good Faith by trying to meet all existing regulations related to the HTm Waste. Thus, the absence of a required environmental permit is not the responsibility of Business Actors anymore, but becomes the responsibility of the Government (Central or the Region).

## 5. Conclusion

Court's decision has been final and binding and it has reinforce the recognition of the principle of Good Faith in the Law. Judges use it as basis for them to declare it as their Conviction when making decision in a case. Thus, it is clearly seen, that existence of document of permits, which is using as an formal evidences of the said approval from the Government, will be examined. Therefore the Judge's decision in this case should be appreciated.

## References

- [1] Adnan, ZA.2009. *Clinical Practical Rhumatology, Diagnosis and Therapy* 1. Surakarta: UNS Press.
- [2] Alvi Syahrin, *Several Issues of Criminal Environmental Law*, Revised Prints, PT. Sofmedia, Jakarta, May 2009.
- [3] Hunter, D., Salzman, J. E., Durwood, Z., *International Environmental Law and Policy*, Foundation Press, New Jersey, 2002.
- [4] Ibrahim, Jhonny.2006. *Normative Legal Research Theory and Methodology*. Malang: Banyumedia Publishing.
- [5] Rusli, Hardijan. "Normative Legal Research Methods: How?", *Law Review of The Faculty of Law, Pelita Harapan University*, Volume V No.3 in 2006.
- [6] Law No.11 of 2020 on Work Creation.
- [7] Law No.32 of 2009 on Environmental Protection and Management.

<sup>13</sup> Copy of the Verdict 2281 K/Pid.Sus/2015, *Op.cit.*