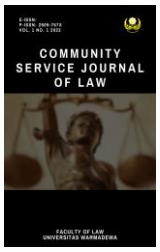

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Administrative Accountability of the Government of Indonesia in Environmental Management for Tourism Development

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ABSTRACT

A good and healthy environment is a human right of every Indonesian citizen as mandated in Chapter 28H of the 1945 Constitution of the Republic of Indonesia. Unwise environmental management contributes to aggravating the decline in the quality of the environment, therefore it is necessary to increase environmental protection and management. The government's responsibility in protecting and managing the environment is a function of public services, to ensure that all residents have a good and healthy environment. So in development and so as not to damage the environment, the government fosters tourism business actors to comply with applicable regulations. Because if there is environmental damage, the government can be held accountable administratively, when the government neglects to carry out its obligations that are not in accordance with the aspirations of the community. This research is qualified as a normative and empirical legal research, by applying several types of approaches, namely, a statutory approach, a conceptual approach, a philosophical approach, a historical approach, a comparative approach, a case approach, including a cultural approach based on local community wisdom.The results of the study show that environmental protection and management is an effort to carry out very difficult, resulting in a decrease in the quality of the environment that is increasingly real. Therefore, the enforcement of administrative law is a real first step from the government to enforce the rule of law quickly for the protection of the environment. Administrative law enforcement, integrating the values that develop in society in protecting and protecting the environment is an ideal form to protect and manage the environment wisely to realize development.If the government fails to protect and manage the environment in tourism development, the government can be held accountable administratively.

Keywords: Administrative law, Enforcement, Environment, Responsibility

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I. INTRODUCTION

A good and healthy environment is a human right of every Indonesian citizen as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia (Sudi, 2011). Unwise environmental management contributes to aggravating the decline in environmental quality because it is necessary to increase environmental protection and management (Najwan, 2010).

Tourism development can thus be an effort to grow local entrepreneurial potential, diversify tourism products, support the local community's economy, and revitalize local culture (E, 1991). Tourism development cannot be separated from the role of the government, in protecting and managing a good and healthy living environment, every actor and/or person in charge of the business must obtain an environmental permit in accordance with applicable legal provisions. This is stated in the Law and Environmental Protection (UUPPLH) No. 32 of 2009, Government Regulation no. 27 of 2012 concerning Environmental Permits, Minister of Environment Regulation No. 08 of 2013 concerning Procedures for Assessment and Examination of Environmental Documents and Issuance of Environmental Permits. An environmental permit is something that must be owned by the person in charge of a business and/or activity as an effort to supervise the government in protecting and managing the environment (Penney, 2011).

Investment, both foreign investors and domestic investors have played an important role in supporting the success and ongoing development in Indonesia, especially in realizing general welfare and improving people's living standards (Aminuddin, 2004).

The certainty of the application of environmental law is difficult to resolve and the weaknesses of normalization in Law no. 32 of 2009 concerning PPLH. So, in an effort to maximize law enforcement, it should be supported by good rules, implementing the government seriously (Soemarwoto, 2014). The problem of the tendency of regional governments to build economic facilities by exploiting natural and environmental resources to pursue regional original income (PAD), and not paying attention to the carrying capacity of the regional environment and not complying with regulations.

Enforcement of environmental sanctions also has several strategic benefits as a tool for enforcing environmental laws, namely, the monitoring stage to find out and the sanctions application stage. It is time for these two stages to need further study, especially in relation to aspects of legitimacy, internal incompatibility, juridical instruments, discretionary authority, and accumulation of sanctions.

Sustainable development is a standard that not only protects the environment but is also important for environmental policies as well as possible (Meinhard Schroder, Willink Zwolle W.E.J Tjeenk, 1996:12) According to Law No. 10 of 2009 on tourism, tourism is a variety of tourism activities and is supported by various facilities, as well as services provided by the community, businessmen, government, and local governments. The dimension of sustainable tourism development cannot be separated from the integration of the concept of harmonization between cultural and environmental preservation. This means that tourism development should not be ignored by the environment because the environment is an asset of the next generation that must be preserved. Considering that there is a lot of pollution and environmental destruction due to development whose initial goal is to increase the economy. In reality, the destruction and pollution of the environment will gradually make the next generation a relic that is not seen like before. Mattias Finger shared the same opinion that the global environmental crisis as it is today is at least caused by various things, namely wrong and failed legal policies; inefficient technologies tend to be destructive; low political commitment, ideas, and ideologies which ultimately harm the environment (Finger, 2006). Practices in countries Adhering to the Anglo-Saxon-American legal system that adheres to the subsidiarity principle and the doctrine of primary jurisdiction, such as Malaysia and England, place the legal instrument of state administration as the main legal instrument (Penney, 2011).

This damage and the environment is caused by excessive human exploitation of the environment which exceeds its recovery capacity (Mitchell, 1997) even though it has been ratified by various convention or international agreements that set out international frameworks in order to deal with environmental problems that have been produced and have been ratified by the Government of Indonesia (Kramer, 2009). Environmental law is a functional law, because it aims to prevent and overcome environmental pollution and/or destruction, so as to create a good and healthy living environment (Helmi, 2013).

Meanwhile, tourism is a travel activity carried out by a person or group of people by visiting certain places for recreational purposes, personal development, or studying the uniqueness of tourist attractions visited for a temporary period. The position of the research that will be carried out in writing is to complement the studies that have not been carried out previously, as well as examine new findings about hotel development as a means of tourism accommodation in the enforcement of Administrative environmental laws. In line with legal theories and principles of environmental law, especially for hotel development as a means of accommodation and administrative environmental law enforcement, both functions to support environmental law enforcement through administrative sanctions, as well as to increase compliance with environmental protection and sustainable management in tourism development.

The purpose of this research is to develop legal knowledge or increase knowledge in the field of law, especially environmental law related to environmental management for development and find a way out of the law against the government for decisions in environmental management in tourism development. Contribute to the government, input in the form of suggestions and feedback on the environment in tourism development.

2. METHODS

Legal research methods by type can be divided into two, namely: Normative Legal Research and Empirical Legal Research (Waluyo, 1991). The type of research carried out in the context of this writing is a combined legal research between Normative and Empirical (Mike Method).

The problem approach used includes several types of approaches which are mentioned below.

1. Legislative Approach (Statute Approach)
2. Conceptual Approach (conceptual approach)
3. Case Approach (case approach),

Sources of legal research materials are generally distinguished between legal materials obtained from statutory regulations and materials from theories and opinions of scholars and/or legal experts. normative legal research methods only recognize secondary data (Aminuddin, 2004) The secondary data consists of primary legal materials; secondary legal materials; and tertiary legal materials.

The technique of collecting legal materials is carried out using the law (card system), collecting legal materials using cards, critical analytical reading activities and making necessary notes.

After collecting primary legal materials and secondary legal materials with complete card law, it is continued with the analysis process. The analysis of the results of this study uses a logical flow in normative legal research, which is taken through the steps as described below.

The first step is to describe (explain), at this stage the description includes, the content and structure of positive law. The second stage is systematization, carried out to explain the content and structure or relationship of listeners, between related legal rules so that they can be achieved properly. with the legal issues in this research, so that as a whole it forms a unity that is interconnected logistically.

3. RESULTS AND DISCUSSION

3.1 Government Administrative Accountability in Management Environment for Tourism Development

Carrying out various actions (including legal actions) the government must rely on the principle of legality. Legal action implies the use of authority and It includes accountability. State responsibilities towards citizens or third parties are shared by almost all countries. From a public perspective, legal action is followed by law and several instruments are used, such as legislation and decisions. In addition, the government also often uses civil law instruments such as agreements in carrying out government duties. Every use of authority and application of legal instruments by government officials must have consequences, because indeed the purpose of the results is to create legal relations.

An official is a person who because of his duty and authority acts as a representative of the position, who performs actions for and on behalf of the position. While a person is referred to or referred to as an official when he carries out his duties or on behalf of a position. Based on the information above, it appears that the legal action carried out by the official in the context of carrying out his duties or taking legal action and on behalf of the position, the action is considered a legal action of the position.

Regarding the responsibility of officials there are two theories put forward by Kraenburg and Vegting, namely; first, the theory which states that losses to third parties are borne by officials who because of their actions cause losses, second, the theory which states that losses to third parties are borne by the agency of the officials concerned (HR, 2003). Quoting Logeman's opinion, the rights and obligations continue, regardless of the replacement of officials. Based on this information, it is clear that the bearer of responsibility is the position. Therefore, compensation is also charged to the agency/position, not to the official as a person. Kranenburg and Vegting said that liability is borne by corporations (agencies, positions) if an unlawful act committed by the official is objective, and the official concerned is independent if there is no subjective error. On the other hand, the official or employee is responsible for making subjective mistakes.

For other violations of law, only fully representative; he has abused the situation, in which he is a representative, by committing his own immoral acts against the interests of third parties. In such case, the official has made a mistake or committed maladministration.

The government's administrative responsibility in the event that the decision is not in accordance with the aspirations of the community in environmental law has been regulated in

UUPPLH, especially in Article 91 concerning the Rights of the Community to sue in the event that the community is harmed, Article 92 concerning the right to sue people who are members of Environmental Organizations and Article 93 of the UUPPLH grants the rights of everyone. in the community can file a lawsuit against the government's decision if:

a. state agency or administration issues environmental permits businesses and/or activities that are obligated to amdal but do not equipped with amdal documents;
b. state administrative agency or official issues environmental permit which are mandatory for UKL-UPL, but are not equipped with document activities UKL-UPL; and/or
c. state agency or administration that issues business and/or activity permits that are not equipped with environmental permits.

3.2 Administrative legal consequences for the government for decisions in environmental management for tourism development

There are several reasons why citizens must receive legal protection from government actions, as a form of responsibility to provide community protection, namely:

a) Because in many ways citizens and civil legal entities depend on government decisions, such as the need for permits needed for trading, corporate or mining businesses. Therefore, citizens and legal entities need to be protected by law.
b) The relationship between the government and citizens does not run in an equal position, and citizens are on the weak side in this regard.
c) Various visits by citizens with the government are entitled to decisions, as an instrument of the government that has special authority in determining interventions to the lives of citizens.

In Indonesia, there are several possibilities for legal protection for the people due to government legal action, depending on the legal instruments used by the government. Government legal instruments commonly used are statutory regulations and decisions. the law as a result of the issuance of applicable laws and regulations through the Supreme Court, by means of a judicial review, in accordance with Article 5 paragraph (2) of MPR Decree No. III/MPR/2000 concerning Sources of Law and the Order of Legislation, which affirms that “the Supreme Court examines statutory regulations under the law”.

Especially regarding regional laws and regulations, they are often planned for spontaneous implementation, namely starting from the initial initiative of the declared organ, without going through a judicial process. Article 145 of Law no. 32 of 2004 concerning Regional Government, there are the following provisions:

1) Perda submitted to the government no later than 7 days after being enacted.
2) Local regulations as referred to in paragraph (1) that are contrary to the public interest and/or higher laws and regulations may be canceled by the government.
3) The Regional Regulation decision as referred to in paragraph (2) is stipulated by a Presidential Regulation no later than 60 days after the receipt of the Regional Regulation as referred to in paragraph (1).
4) No later than days after the decision is determined as referred to in paragraph (3), the regional head in question.
5) If the province/regency/city cannot accept the decision of the regional regulation as referred to in paragraph (3) for reasons that can be justified by the laws and regulations, the regional head can submit an application to the Supreme Court.
6) If it is intended as referred to in paragraph (5) to be partially or completely granted, the decision of the Supreme Court declares that the Presidential Regulation is null and void and has no legal force.
7) If the Government does not issue a Presidential Regulation to raise the Regional Regulation as referred to in paragraph (3), the Regional Regulation is declared to be valid.

Based on these provisions, it appears that the statutory regions have a judicial review right mechanism that is different from the central level legislation, namely through a route that is taken in the form of pending or before it is achieved through the Supreme Court.

law as a result of the issuance of decisions reached through two possibilities, namely administrative law courts and administrative legal remedies. There is a difference between

administrative law courts and administrative efforts is that the word judiciary indicates that this involves the judicial process in government through independent agencies.

Based on Law no. 5 of 1986 concerning the State Administrative Court protection due to the issuance of a decision that can be achieved through two channels, namely through administrative efforts and through the Administrative Court. In Article 48 it is stated as follows:

1) In the event that a State Administration Agency or Official is authorized by or based on statutory regulations to administratively settle a particular state administrative dispute, the said state administrative dispute must be resolved through available administrative measures.
2) The court will only examine, decide and settle the state administrative dispute as referred to in paragraph (1) if all the relevant administrative measures have been used.

There are two kinds of administrative efforts, namely administrative and objection procedures. Administrative appeal is the settlement of administrative disputes carried out by superior agencies or other agencies from the disputed decision. While the state procedure is the settlement of administrative disputes carried out by the agency that issued the relevant decision.

Provisions regarding state administrative disputes through PTUN contained in Article 53 paragraph (1) of Law no. 5 of 1986 which reads:

> a person or civil legal entity who feels aggrieved by a TUN decision may file a lawsuit to the court containing a lawsuit so that the TUN decision declared void or invalid, with or without compensation and/or rehabilitation.

The provisions of Article 53 paragraph (2) mention the benchmarks for assessing the KTUN being sued in the Administrative Court, which are as follows:

1) The TUN decision being sued is contrary to the applicable laws and regulations
2) The TUN agency or official at the time of issuing the decision as referred to in paragraph (1) has used his authority for purposes other than the granting of such authority.
3) The TUN Agency or Official at the time of issuing or not issuing the decision as referred to in paragraph (1) after considering all the interests involved in the decision should not reach the decision making.

UU no. 9 of 2004 concerning Amendments to Law no. 5 of 1986 concerning the Administrative Court, the reasons for filing a lawsuit contained in Article 53 paragraph (2) there are changes, namely: The reasons that can be used in the lawsuit as referred to in paragraph (1) are:

1) The TUN decision being sued is contrary to the applicable laws and regulations
2) The TUN decision being sued is contrary to the general principles of good governance.

This amendment to Article 53 paragraph (2) has consequences:

1. Recognition of the existence of general principles of good governance (AAUPB) in the administrative justice system in Indonesia.
2. There is a reason for filing a lawsuit to the Administrative Court. The principle of the prohibition of authority and the principle of arbitrary prohibition are part of the AAUPB.

According to Sjachran Basah (HR, 2003). Legal protection and law enforcement are qonditio sine qua non to realize the function of the law itself. The legal functions in question are as follows:

1. Directive, as a guide in building to form a society to be achieved in accordance with the goals of state life.
2. Integrative, as a builder of national unity
3. Stability, as a custodian and maintainer of harmony, harmony and balance in the life of the
4. state and society.
5. Perfection, as a complement.
6. Corrective, as a correction for the attitude of good administration State and citizens in the event of rights and obligation to get justice.

There are four elements of sanctions in state administrative law, namely instruments of power, of a public law nature, used by the government, and as a reaction to non-compliance. In terms of targets, in state administrative law, it is known that there are two types of sanctions, namely reparatory sanctions and punitive sanctions.

Reparatory sanctions are sanctions that are given as a reaction to the violation of norms, which are aimed at restoring the original condition before it occurred Thing. While punitive sanctions are sanctions that are solely intended to punish someone. In addition, there is also what is referred to as regressive sanctions, namely sanctions that are applied as a reaction to non-compliance.

Whereas the planned research schedule is regulated as follows: Types of Activities; Month, Compilation of progress reports from research achieved whether it has met expectations as planned, the following month; Writing follow-up reports according to the plan, to improve research results in the form of results reports, the preparation of these reports can be held in seminars to get various inputs in the form of criticism, and suggestions in efforts to resolve, as well as improve research results so that the results really have value in accordance with the objectives What you want to achieve is that you have just made a report on the results of the seminar, in this case the various inputs obtained in the seminar are used as material for improving research results in the form of scientific reports, the month of submission of research reports.

The final result of this series of scientific research will be turned into a scientific journal as the final output.

4. CONCLUSION AND SUGGESTIONS

4.1 Conclusion

Environment in tourism development, if it is not in accordance with the applicable legal provisions, it can be asked for administrative legal responsibility. Accountability of the government from the administration Based on the decision, based on Law no. 9 of 2004 concerning Amendments to Law no. 5 of 1986 concerning PTUN In this regard, the government is responsible for making decisions that are not in accordance with the rules of environmental law, can be held accountable administratively, both personally and institutionally, if it causes damage, environmental pollution.

Administrative Law on government decisions in environmental management that are not in accordance with UUPPLH No. 32 of 2009, providing legal, administrative, court proceedings regulated in Article 85, Article 86 and in court related to compensation, environmental restoration and other actions. Regarding the right to sue the community who are members of Environmental Organizations and Article 93 of the UUPPLH gives the right of everyone in the community to file an administrative lawsuit against the government's decision.

Administrative legal consequences for the government for decisions in environmental management for tourism development. Based on Law no. 5 of 1986 concerning the State Administrative Court protection due to the issuance of a decision that can be achieved through two channels, namely through administrative efforts and through the PTUN, even though it is aimed at tourism development. Especially regarding regional laws and regulations, they are often planned for spontaneous implementation, namely starting from the initial initiative of the declared organ, without going through a judicial process. Article 145 of Law no. 32 of 2004 concerning Regional Government

4.2 Suggestion

The development of government public services to society is increasingly modern, so various aspects of life are increasingly complex. Therefore, the government works carefully, carefully, based on the law, and policies that are in accordance with the principles of justice by referring to the General Principles of Good Governance.

If the government acts not in accordance with the applicable legal rules and is not in accordance with appropriateness in carrying out its policies, so that it causes harm to the community, it can certainly be held accountable both administratively. Therefore, the government must act carefully in carrying out the rules, obeying the rules, and obeying the applicable rules.

REFERENCES

Aminuddin, I. (2004). *Hukum Penanaman Modal di Indonesia*. Kencana.

E, I. (1991). *Tourism Planning, and Integrated and Sustainable Development Approach*. Van

Nostrand Reinhold.
Finger, M. (2006). "Which Governance for Sustainable Development? An Organizational and Institutional Perspective." *Routledge*.
Helmi. (2013). *Hukum Lingkungan Dalam Negara Hukum Kesejahteraan*.
HR, R. (2003). *Hukum Administrasi Negara*. UII Press.
Kramer, L. (2009). European Community Environmental Law.
Mitchell, B. (1997). *Resources and Environmental Management* (1 (ed.); Indonesia). Eddison Wesley Longman Limited.
Najwan, O. (2010). Perlindungan dan Pengelolaan Lingkung-an Hidup dJalam Perspektif Hukum Islam. *Inovatif Jurnal Hukum*, *2*(4). i
Penney, M. (2011). Application Of The Primary Jurisdiction Doctrine To Clean Air Act Citizen. *Lawreviews/Meta- Elements / Journals*.
Soemarwoto, O. (2014). Analisis Mengenai Dampak Lingkungan. *Gadjah Mada University Press*.
Sudi, F. (2011). Asas Tanggung Jawab Negara Sebagai Dasar Pelaksanaan Perlindungan dan Pengelolaan Lingkungan Hidup. *Jurnal Hukum*, *18*(2).
Waluyo, B. (1991). *Penelitian Hukum Dalam Praktek*. Sinar Grafika.