
**ADMINISTRATIVE ACCOUNTABILITY OF THE INDONESIAN
GOVERNMENT IN ENVIRONMENTAL MANAGEMENT
FOR TOURISM DEVELOPMENT**

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Abstract

A good and healthy living environment is the right of every Indonesian citizen as mandated in Article 28H of the 1945 Constitution of the Indonesian Republic. Unwise environmental management will aggravate the degradation of the environment, and therefore, improving the protection and management of the environment becomes necessary. Government accountability in environmental protection and management is a part of their public service function to ensure that people have a good and healthy environment. Thus, the purposes of this research are to examine the administrative accountability in environmental management for tourism development and to find a way to resolve legal consequences the government can face for its decision in environmental management in tourism development. This research is normative and empirical legal research and applied several approaches: statute approach, conceptual approach, philosophical approach, historical approach, comparative approach, case approach, and cultural approach based on local wisdom. The results show that the protection and management of the environment are efforts to take on a difficult responsibility, making environmental degradation more evident. Therefore, administrative law enforcement is the first step for the government to enforce the law immediately for environmental protection. The enforcement of administrative law and the integration of the values that grow in society in protecting and preserving the environment is ideal forms of wise environmental protection and management to realize tourism development. However, if the government fails to protect and manage the environment in developing tourism, the government can be held administratively accountable.

Keywords: Accountability, Administrative Law Enforcement, Environment

I. INTRODUCTION

A good and healthy environment is the right of every Indonesian citizen as mandated in Article 28H of the 1945 Constitution of the Indonesian Republic (Fahmi, 2011). Unwise environmental management will aggravate environmental degradation, which causes improving environmental protection and management necessary (Najwan, 2010).

Tourism development can be one of the efforts to foster local entrepreneurial potential, diversify tourism products, sustain the local economy, and revitalize local culture (Inskip, 1987). Tourism development and the role of the government are inseparable. In protecting and managing a good and healthy environment, every business and/or person in charge of a business must obtain an environmental

permit as per the applicable law. That is stated in the Environmental Protection and Management Law (EPML) No. 32 of 2009, Government Regulation No. 27 of 2012 on Environmental Permits, and Regulation of the Minister of Environment No. 08 of 2013 on the Procedures for Assessment and Examination of Environmental Documents and Environmental Permit Issuance. Owning an environmental permit is a must for every person in charge of a business and/or activity as a part of supervision efforts by the government in environmental protection and management. Investors, both foreign and domestic investors, have a significant role in supporting the success and process of development in Indonesia, particularly in realizing people's welfare and improving people's standard of living (Ilmar, 2004:15).

The certainty of the implementation of the environmental law is difficult to resolve, and there are some weaknesses in Law No. 32 of 2009 on Environmental Protection and Management. Therefore, the efforts to strengthen law enforcement must be supported by a good regulation and serious implementation by the government (Soemarwoto, 1999:76). The problem lies in the tendency of regional governments to exploit natural resources and the environment in building economic facilities to pursue local own-source revenue and, in the process, the governments disregard environmental carrying capacity and disobey the regulation.

Sustainable development is a standard that protects the environment and plays a significant role in good environmental policy. According to Law No. 10 of 2009 on Tourism, tourism is various tourist activities supported by various facilities and services provided by the community, entrepreneurs, government, and regional governments. Dimensions of sustainable tourism are inseparable from the integration and the harmonization of cultural preservation and the environment. It means that tourism development should not disregard environmental preservation as the environment is an asset passed down from one generation to another that must be protected. It is also worth considering that environmental pollution and destruction are a result of development, of which the initial purpose is to improve the economy. The destruction and pollution will be passed down to future generations. The environment as heritage is not well protected. Mattias Finger shared the same opinion that various factors cause today's global environmental crisis: incorrect and failed legal policies; inefficient or even destructive technology; low political commitment, ideas, and ideologies that ultimately harm the environment (Park et al., 2008).

In some countries using the Anglo-Saxon American legal system, which adheres to the principle of subsidiarity and the doctrine of primary jurisdiction, such as Malaysia and England, the state administrative legal instruments are regarded as the primary legal instruments (Michael Penney, 2011:32). Environmental destruction and pollution are a result of human exploitation that exceeds the resilience of the environment (Mitchell, 1997:9), although various conventions or international agreements have established an international framework for handling environmental problems, some of which have been ratified by the Indonesian government (Kramer, 2003). Environmental Law is a functional legal subject as it aims to prevent and resolve environmental pollution and/or destruction to realize a good and healthy environment (Helmi, 2013:26).

II. RESEARCH METHODS

By type, there are two methods of legal research: normative legal research and empirical legal research (Waluyo, 1991:13). However, this research combines normative and empirical legal research (Mike Method). Additionally, some approaches applied in this research include the statute approach, conceptual approach, and case approach. Sources of legal materials for this research are generally distinguished between legal materials obtained from laws and regulations and theories and opinions of scholars and/or jurists. Normative legal research knows only secondary data (Amirudin & Asikin, 2004). These secondary data consist of primary, secondary, and tertiary legal materials.

Legal materials were collected using the card system. In this technique of collecting legal materials, critical and analytical reading was conducted, and necessary notes were made. After collecting primary and secondary legal materials using the card system begins the analysis process. The results of

this research were analyzed using the flow of logic in normative legal research as elaborated in the following:

The first stage is the description. 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 hierarchal relationship between related rules of law so that they are well understood. The third stage is the explanation. At this stage, there is an analysis of the meaning contained in the rules of law that concerns the legal issues in this research to form a unit with logical interconnection.

III. RESULTS AND DISCUSSION

1. Administrative Accountability of the Government in Environmental Management for Tourism Development

In taking various actions (including legal actions), the government must follow the principle of legality. Legal action implies the exercise of authority and accountability therein. Almost all states believe that they are accountable to citizens or third parties. From the perspective of public law, the government's actions are contained and used in many legal instruments and policies such as laws and regulations, and decisions. In addition, the government also often uses civil legal instruments such as agreements in carrying out government duties. Any exercise of authority and application of legal instruments by government officials must have legal consequences as the purpose is to create legal relations and legal consequences.

An official is a person who, by his/her duties and authority, acts as a representative of the office and takes actions for and on behalf of the office. A person is considered an official when he/she exercises authority for or on behalf of the office. Based on the previous information, it appears that legal actions taken by an official in exercising the authority of his/her office or legal actions taken for and on behalf of his/her office are considered legal actions of the office.

On officials' accountability, Kraenburg and Vegting presented two theories: first, *fautes personnelles*, a theory stating that the harm to a third party is charged to the official who caused harm due to his/her actions; and second, *fautes de services*, a theory that states that the loss suffered by the third party is charged to the official's agency (Ridwan, 2003:303-318). Referring to Logeman's notion, rights and obligations continue regardless of the replacement of officials. Based on the previous information, it is clear that accountability is held by the office. Therefore, compensation is also charged to the agency/office, not to the officials as a person. As Kraenburg and Vegting said, corporations (agency, office) are held accountable if an unlawful act committed by an official is objective. The official concerned will not be held accountable if there is no subjective error. However, the official or the employee concerned will be held accountable if he/she makes a subjective error. For other unlawful acts, only the representative is fully accountable; he/she has abused the situation, in which he/she is the representative, by committing immoral acts against the interests of third parties. In such a case, the official has committed a subjective error or maladministration.

The government can be held accountable if it makes a decision that does not fulfill people's aspirations. In environmental law, the government administrative accountability is regulated in the EPML, specifically in Article 91 on the Legal Standing of Communities if they suffer from losses and Article 92 on the Legal Standing of Environmental Organizations. Additionally, Article 93 of the EPML gives people the right to file an administrative lawsuit against the government's decision if:

- a. state administration agencies or officials issuing environmental permits to businesses and/or activities that require Environmental Impact Assessment but do not have the Environmental Impact Assessment document;
- b. state administration agencies or officials issuing environmental permits to activities that require Environmental Management Efforts and Environmental Monitoring Efforts, but do not have the documents of Environmental Management Efforts and Environmental Monitoring Effort; and/or

- c. state administration agencies or officials issuing business and/or activity permits that do not have environmental permits.

2. Administrative Legal Consequences for the Government for Decisions in Environmental Management for Tourism Development

There are several reasons why citizens should get legal protection from the government actions as a form of responsibility to protect the community:

- a. Citizens and civil law entities depend on government decisions for various matters, such as obtaining permits for trading businesses, enterprises, or mining businesses. Therefore, citizens and civil law entities need legal protection.
- b. The relationship between the government and citizens does not run parallel. On this matter, citizens are the weaker party.
- c. Various disputes between citizens and the government are resolved with a decision as an instrument of the government that has unilateral authority in determining interventions in citizens' lives.

In Indonesia, there are some possibilities concerning legal protection for citizens from the government's legal action, depending on the legal instruments used by the government. Legal instruments commonly used by the government are laws and regulations and decisions. Legal protection due to the issuance of laws and regulations is pursued through the Supreme Court through judicial review according to Article 5 Paragraph (2) of Resolutions of the People's Consultative Assembly No. III/MPR/2000 on Legal Sources and Hierarchy of Laws and Regulations, which affirms that "the Supreme Court is authorized to examine laws and regulations under laws."

On regional laws and regulations, revocation is often interpreted as spontaneous revocation, a revocation based on the initiative of the organ authorized to declare revocation without going through a judicial process. Article 145 of Law No. 32 of 2004 on Regional Government contains the following provisions:

- 1) Regional Regulation is submitted to the government no later than 7 days after issuance.
- 2) The government can cancel the Regional Regulation that is referred to in paragraph (1) if it contradicts public interest and/or higher laws and regulations.
- 3) The revocation of Regional Regulation as referred to in paragraph (2) is issued in Presidential Regulation no later than 60 days from the receipt of Regional Regulation as referred to in paragraph (1).
- 4) No later than 7 days after the revocation as referred to in paragraph (3), the head of the region must stop the implementation of the regional regulation. Then, the Regional People's Representative Council and the head of the region revoke the regional regulation.
- 5) If the Province/Regency/City cannot accept the revocation of Regional Regulation as referred to in paragraph (3) on grounds justified by the laws and regulations, the head of the region may submit an objection to the Supreme Court.
- 6) If the objection as referred to in paragraph (5) is granted partially or completely, the Supreme Court decision declares the Presidential Regulation to be void and has no legal force.
- 7) If the government does not issue a Presidential Regulation to cancel the Regional Regulation as referred to in paragraph (3), the Regional Regulation shall be declared effective.

Based on these provisions, it appears that regional-level laws and regulations have a different mechanism of judicial review from the central-level laws and regulations, which uses the path of the government in the form of delay or revocation before being taken to the Supreme Court.

There are two methods to obtain legal protection due to the issuance of a decision: administrative judiciary and administrative legal efforts. Administrative judiciary differs from administrative legal efforts. The word "judiciary" indicates that it concerns judicial proceedings in the government through independent agencies.

According to Law No. 5 of 1986 on Administrative Court, legal protection due to the issuance of a decision can be obtained through two methods: administrative efforts and administrative court. Article 48 stated as follows:

- 1) If an administrative body or official is authorized by or under the laws and regulations to provide an administrative settlement to a particular administrative dispute, the dispute must be settled through available administrative efforts.
- 2) The court only gets the authorization to examine, decide, and settle administrative disputes as referred to in paragraph (1) if all administrative efforts have been taken.

There are two kinds of administrative efforts: administrative appeals and objections. An administrative appeal is the settlement of administrative disputes handled by a higher agency or a different agency from the one that issued the disputed decision. An objection is the settlement of administrative disputes handled by the agency that issued the decision.

The provisions regarding the settlement of administrative disputes through the Administrative Court are in Article 53 paragraph (1) of Law No. 5 of 1986. It stated:

a person or a civil legal entity whose interests are harmed by a state administrative decision may file a written lawsuit to the authorized court, demanding that the disputed decision be declared void or invalid, with or without a claim for compensation and/or rehabilitation.

The provisions in Article 53 paragraph (2) mentioned the criteria for assessing administrative decisions disputed in Administrative Court. Those criteria are as follows:

- 1) The disputed administrative decisions contradict the applicable laws and regulations.
- 2) The administrative body or official at the time of issuing the decision as referred to in paragraph (1) has exercised the authority for purposes other than the one for which it was granted.
- 3) The state administrative body or official at the time of issuing or not issuing the decision as referred to in paragraph (1), after considering all interests involved in the decision, should not make the decision.

The grounds for filing a lawsuit as referred to in Article 53 paragraph (2) saw some amendments. These amendments are detailed further in Law No. 9 of 2004 on the Amendment of Law no. 5 of 1986 on Administrative Court. The grounds that can be used in a lawsuit as referred to in paragraph (1) are:

- 1) The disputed administrative decisions contradict the applicable laws and regulations.
- 2) The disputed administrative decisions contradict the General Principles of Proper Administration.

The amendment to Article 53 paragraph (2) has two consequences:

- 1) Recognition of General Principles of Proper Administration (GPPA) in the system of the administrative judiciary in Indonesia.
- 2) The grounds for filing a lawsuit to the Administrative Court become broader. The prohibition of misuse of power and the prohibition of arbitrary actions are two principles of the GPPA.

According to Sjachran Basah (Ridwan, 2003: 291), legal protection and law enforcement are *conditio sine qua non* for realizing the functions of the law. These functions are:

- 1) Directives, in which law acts as a directive in developing the desired society that accords with the purpose of the life of the nation.
- 2) Integrative, in which law develops national unity
- 3) Stabilizing, in which law maintains and protects harmony and balance in the life of the nation and the people.
- 4) Perfective, in which law completes the actions of state administration and the people.
- 5) Corrective, in which law corrects the attitude and actions of state administration and the people in the event of a conflict of rights and obligations to achieve justice.

There are four elements of sanctions in Administrative Law: the tool of power, of public law nature, used by the government, and a reaction to disobedience. In terms of their objectives,

Administrative Law has two types of sanctions: restorative sanctions and punitive sanctions. Restorative sanction is imposed as a reaction to the violation of the norms and aims to restore the original condition, which is the condition before the violation occurred. A punitive sanction, however, solely aims to punish a person. There is also regressive sanction, which is imposed as a reaction to disobedience. The research schedule is arranged as follows: Type of activity; Month, Organizing the report on research progress to see if the research has achieved the expected target, the next month; writing a follow-up report according to the plan to refine the results of the research in result report. It is so that the results of this research can be published in a seminar and get feedback, in the effort to refine the form of scientific paper and research results to ensure that the results match the goals. Next is organizing a report on seminar results. All feedback obtained in the seminar is used to refine research results in the form of scientific papers, the sixth month is submitting the research report. The final result of this scientific research will manifest as a scientific journal article as the final output.

IV. CONCLUSION AND SUGGESTION

1. Conclusion

Based on the explanation above, we can conclude that:

1. Administrative Accountability of the Indonesian Government in Environmental Management in Tourism Development. The government can be held accountable if its actions are not according to the law. Government accountability from the administration, According to Law No. 9 of 2004 on the Amendment of Law No. 5 of 1986 on Administrative Court, if the government makes a decision that is not according to environmental law, it can be held accountable individually and institutionally if causing environmental destruction and pollution. Administrative consequences for the government for making decisions in environmental management that are not following the EPML No. 32 of 2009, providing legal routes, administration, out-of-court settlement as stipulated in Article 85 and Article 86, and in-court settlement concerning compensation, environmental recovery, and other actions. On the legal standing of environmental organizations and Article 93 of the EPML, anyone can file an administrative lawsuit against the government's decisions.
2. Administrative Legal Consequences for the Government for Decisions in Environmental Management for Tourism Development. According to Law No. 5 of 1986 on Administrative Court, legal protection due to the issuance of a decision can be obtained through two methods: administrative efforts and administrative court, although the intention is good for the development of tourism. On regional laws and regulations, revocation is often interpreted as spontaneous revocation, a revocation based on the initiative of the organ authorized to declare revocation without going through a judicial process. Article 145 of Law No. 32 of 2004 on Regional Government.

2. Suggestions

From this research, the researcher has some suggestions for related parties.

1. On the development of government public services to the society, the more modern society is, the more complex the demands of various aspects of life. Therefore, the government must work carefully and always follows the law. Additionally, the policies made must accord with the principle of justice, guided by the General Principles of Proper Administration, and must be improved continuously if the government does not want to be held accountable by the public from the perspectives of administrative law, and civil law, and criminal law.
2. If the government does not act according to the law and acts inappropriately in implementing its policies, which causes harm to the people, the government can be held administratively accountable. Therefore, the government must act carefully in implementing the rules, obey the rules, and obey the principles of applicable law.

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