DIFFERENCES PERCEPTION AND INTEREST IN PEATLAND MANAGEMENT POLICY IN INDONESIA

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Abstract: This paper analyzes peatland management policies in Indonesia in general. Contradictions in the regulations and their application will also be an integral part of this discussion. From this contradiction, it is hoped that some general conditions can be understood that are important to underline when looking at the legality of peatland management. The structure of this discussion will begin with an introduction to several regulations related to peat in Indonesia. The research method used is qualitative with a descriptive approach. The analysis used is policy analysis from a legal perspective. The results of the study indicate that peatland management policies have not achieved the desired goals and objectives in their efforts to protect them from damage and extinction. Peatland management has not been followed by changes in the behavior of the community and other stakeholders to preserve biodiversity and implement sustainable development. This is presumably because there are still differences in vision, interests, and perceptions among stakeholders regarding the existence of the peatlands.

Keywords: policies, regulations, peatlands, stakeholder interests

Abstrak: Tulisan ini menganalisa kebijakan pengelolaan lahan gambut di Indonesia secara umum. Kontradiksi dalam peraturan maupun penerapannya juga akan menjadi bagian yang tidak terpisahkan dalam bahasan ini. Dari kontradiksi ini, diharapkan bisa dipahami beberapa kondisi umum yang penting untuk digarisbawahi dalam melihat legalitas pengelolaan lahan gambut. Susunan bahasan ini akan dimulai dari pengenalan mengenai beberapa peraturan terkait dengan gambut di Indonesia. Metode penelitian yang digunakan adalah kualitatif dengan pendekatan deskriptif. Analisis yang digunakan adalah analisis kebijakan dalam perspektif hukum. Hasil penelitian menunjukkan bahwa kebijakan pengelolaan lahan gambut belum mencapai sasaran dan tujuan yang diinginkan dalam upaya perlindungannya dari kerusakan dan kepunahan. Pengelolaan lahan gambut belum diikuti perubahan perilaku masyarakat dan stakeholders lainnya untuk melestarikan keanekaragaman hayati dan melaksanakan pembangunan berkelanjutan. Hal ini diduga karena masih adanya perbedaan visi, kepentingan, dan persepsi di antara stakeholders tentang keberadaan lahan gambut tersebut.

Kata kunci: kebijakan, peraturan, lahan gambut, kepentingan stakeholder

INTRODUCTION

Legally, there are several laws and regulations related to peat in Indonesia. Although not all of them are directly related, they have indirect implications. Because of that, not all of the regulations presented directly mention the phrase "Peat/Peat Ecosystem". At the legal level, Law no. 5 of 1990 will be related to peat that is in conservation areas (national parks, nature reserves, etc.). Likewise, Law no. 41 of 1999 which will be related to peat in forest areas. As for the plantation sector, Law no. 18 of 2004 will be a reference for plantation commodities on peatlands (eg oil palm). On the spatial aspect, Law no. 27 of 2007 will have implications for the hydrological unity of peat and its suitability with spatial planning. Of all of them, Law no. 32 of 2009 which is the most closely related and becomes the umbrella rule for the peat ecosystem.

At the Government Regulation level, there are at least eight government regulations that are directly or indirectly related to peat. It begins with government regulations concerning nature reserves and nature conservation areas which are the basis for ecosystem protection. Planning for forestry and forest protection that will be related to peat that functions as a protection and is located in forest areas is also regulated through government regulations. In addition, government regulations on environmental permits will also be related to the utilization of peat ecosystems that are in the cultivation function. In the case of peat ecosystems located in swamps, government

regulations regarding swamps will also be relevant in several settings. Finally, in 2014 the Government issued a regulation on the protection and management of peat ecosystems which specifically provide regulations related to peat.

At the lowest level, there are Presidential Decrees, Presidential Instructions and also Ministerial Regulations that regulate several matters related to peat. Even though its level in the hierarchy of laws and regulations in Indonesia is under the laws and government regulations. However, in the context of peat, the initial regulation that is directly related is Presidential Decree no. 32 of 1990 and provides a fairly basic regulation of peat ecosystems, namely provisions regarding the depth of peat that needs to be protected. This provision will continue to be the basis for peat protection in the future. The Presidential Decree also turned out to provide a very strong foundation for the clearing of a million hectares of peatland which was later realized to be the biggest mistake in the policy context.

For a long time, the peat ecosystem has always been seen as an ecosystem that does not have a "parent". This means that the management of peatlands always collides with the scope of authority of a sector. For example, the Ministry of Forestry (now the Ministry of Environment and Forestry) will take care of peat ecosystems located in forest areas. Meanwhile, the Ministry of Agriculture will take care of the peat ecosystem located in the APL (Non-Forest Area) area, as well as other ministries (sectors) will take care of the peat ecosystem in their respective areas. At this point, it is felt that regulation of peatlands is very necessary. Bureaucracies that tend to be sectoral need to be clarified, so that the protection and management of peatlands will also have a clear position on the development agenda. Regulations related to peatlands will also provide legal certainty and strengthen the basis for their protection. Finally, the arrangement will provide a clear corridor for laying the relationship between humans and ecosystems.

The legal aspect of peatland management in Indonesia refers to several regulations related to protected areas and begins with Presidential Regulation No. 32 of 1990 concerning Protected Areas. In this Presidential Decree, there are three areas of regulation that are quite striking and specialize in peat, namely the definition of peat areas, protection of peat areas, and protection criteria for peat. The last point, until now has provided a separator between peat with protected status and peat with cultivation status. However, debates related to these criteria also continue to roll in various circles.

This Convention contains provisions for the conservation of wetlands and concerning the approval of wetland sites of international importance. In this ratification, the Government of Indonesia has proposed Berbak National Park in Jambi and Sembilan National Park in South Sumatra as wetlands/peat swamp ecosystems that have important values to be protected internationally.

In its development, in 2014 a government regulation was issued which specifically regulates the management and protection of peat ecosystems. When compared with the previous Presidential Decree. In the scope of the regulation, it is seen that in the context of the protection criteria there is a striking difference and it is more detailed in nature. However, it still uses the 3 meter criteria to be one of the criteria for peatland protection. On the other hand, this regulation has begun to make adjustments to the provisions of spatial planning and also forestry which requires 30% as a protected area.

After looking at the two legal bases that cover peat in its use and protection, it can be seen that there are some striking things, namely that there are several terms/definitions used. This will have implications for the consequences applied to peatlands. There are at least five terms that need to be underlined, namely 1) Peat areas stated in Presidential Decree No. 32 of 1990, 2) Peatlands which are stated in several presidential decrees and also ministerial regulations, 3) Peatlands which are stated and defined in Ministerial Regulation no. 14 of 2009, 4) peat ecosystems, and 5) peat hydrological units as stated in PP no. 57 Year 2016.

Of the several differences in terms used, there are some notes that need to be considered.

In the term Peat Area used in Presidential Decree 32 of 1990 the emphasis is on ecosystem elements and the substance (elements) of peat. This understanding is very general and opens up great opportunities for debate from a scientific point of view. For the term peat area used in Permentan No. 14 of 2009, the jurisdictional context between "forest area" and "non-forest area". While the term Peatland, although it has been used in several regulations, its definition can only be found in the Ministry of Agriculture 14 of 2009.

However, the understanding contained in this regulation makes the understanding of other regulations inconsistent. Because it only limits the cultivation of oil palm plantations. Perhaps the drafters of this regulation will argue that because this regulation is intended for oil palm plantations, the understanding is also limited to oil palm development. However this means that the term peatland has several meanings in some regulations. The last terms contained in the regulations in Indonesia are Peat Ecosystem and Peat Hydrological Unit. The term is basically in line with the spirit of ecoregion as mandated in the law on environmental protection and management.

METHOD

This study uses a qualitative method used to describe and explain. The reason for choosing this method is the desire to analyze and recognize the problem and get justification for the current situation and practices as well as verifying and then obtaining results, for making plans in the future. Qualitative method is basically a research procedure that produces descriptive data in the form of written or spoken words from people and observed behavior. The qualitative approach is rooted in data, and the theories related to the approach are defined as rules and rules to explain propositions or sets of propositions that can be formulated descriptively or proportionally. The technique used in obtaining the informants of this research is the snowball sampling technique, which is a technique for determining the source of information such as a rolling snowball to find the most appropriate source of information in providing responses. After the data is collected from each research informant, then a triangulation method will be used with check and cross check on the results of the responses given by the research informants.

RESULT AND DISCUSSION

The various definitions and scopes of peatland in practice have generated a lot of scientific and legal debate. The inconsistency of definitions contained in several regulations results in a very large opportunity for destruction. From the legal aspect, this difference can be resolved through several theories of interpretation and legal arguments. However, from a pro-ecosystem policy perspective, this condition will be very detrimental.

The criteria for a depth of 3 meters is so important, because basically this provision is a "differentiator" between peat with protected or unprotected status. Based on these arrangements, it can be understood that not all peat areas are protected, areas can be utilized when the depth is less than 3 meters, peat will be protected if the depth is more than 3 meters. In PP 57/2016 the regulation related to peat depth and peat hydrological unit gets more detailed regulation. Regarding the requirements for a depth of more than 3 meters (protected) and less than 3 meters (usable) as stated in the regulation, no clear reason for determining this depth could be found. Even today, the reason for determining the depth is still a conversation that always appears in several discussions related to peat.

From the dynamics of policies and regulations on peat, Indonesia has had its ups and downs. There are two variables that show the policy position on peat in Indonesia, namely the variable that emphasizes the value of sustainability (sustainable value) and the variable that emphasizes the value of development (development value). In 1990, regulations related to peat were initiated in the spirit of protecting peat, followed by the ratification of the wetland convention in 1991. However, five years later (1995) the government issued a policy that completely negated the initial policy and tended to clear a million hectares of peatland. Even after

the fall of the New Order government, this policy was continued by issuing general guidelines.

The peculiarity of this policy is that general guidelines were drawn up long after the land clearing policy was published. These two policies have brought Indonesia to a dark point in peat management because it only focuses on the value of "development" and abandons the value of sustainability. But finally, only in 2007, the government began to pay attention to the rehabilitation of peat that had been cleared. This policy was continued until various other policies emerged that emphasized the sustainability of the peat ecosystem.

In 2007, the government began to develop a concept to repair damaged peatlands. Several studies consisting of experts compiled a development directive that pays more attention to the vulnerability of peatlands but also looks for ways (guidelines) to continue to use peatlands. This research then becomes the basis for the formation of policies that contain guidelines for cultivating oil palm on peatlands. Finally, in 2016 the government issued a government regulation that regulates in more detail related to the protection and management of peatlands. Although there are still some important notes, this PP needs to be seen as a new step in peatland management in Indonesia. NGOs, practitioners and even businessmen are still involved in the debate about the pros and cons of this government regulation. So it is appropriate for all parties to also pay attention to and improve this government regulation in the future.

In terms of protection, Indonesia's policy dictates that peat with a thickness of more than 3 meters, found in the upper reaches of rivers and swamps must be protected. This element is cumulative and not alternative. This means that all of them must be met to be categorized as protected peatland so that its application becomes quite difficult. However, currently these criteria have been refined through PP no. 57 of 2016. The "temporary" total protection was carried out from 2011 to 2015 through a policy of delaying new permits or better known as the moratorium policy. This policy no longer distinguishes between peat with a thickness of 3 meters or less than 3 meters, all of which are protected from concession permits issued by the government. However, this moratorium policy still contains significant gaps. Because it regulates various exceptions that weaken the essence of the original purpose of the moratorium. In the end, policies and laws and regulations in Indonesia have never clearly positioned peatlands because they are more often the object of compromising interests. The policy regarding peat thickness (3 meters) is still a debate in scientific circles to this day. This condition is important to be resolved because it will affect the effectiveness of the implementation of regulations and the sustainability of peat.

In 2009, Bappenas published a study that emphasized the policy options that can be taken to address the complex problems of peat management in Indonesia. This study underscores that in Indonesia there are already several policies and regulations that provide protection to peat, but their implementation cannot be maximized due to a sectoral approach. In addition, this study also emphasizes that in making decisions related to peat, social considerations are needed. Where this cannot be released because many peatlands are already inhabited by the community. In this study, there are several scenarios that can be taken by the Indonesian government in the context of the Protection and Management of peatlands so that they can be in accordance with the principles of sustainability.

In addition to the study prepared by Bappenas, UKP-4 together with KemKumHAM developed a roadmap document for updating laws and regulations to encourage improvements in forest and peatland governance within the REDD+ framework. Although promoting REDD+, the basic problems faced in peatland management (from both a normative and practical perspective) are comprehensively described in this document. The sectoral approach to peat management is again a concern in this study, and it is hoped that this can be resolved through the emergence of PP no. 57 of 2016. Although these two study documents (Bappenas Study and UKP-PPP) are not formal

policies, they need to be used as the basis for the issuance of formal policies. Because both are official studies published by government agencies.

From the two previous studies, this PP on the protection and management of peat ecosystems has become the most awaited policy. In particular, to be able to answer several problems related to sectoral approaches that are still found in peat management. Although this PP is not directly mandated by Law no. 32 of 2009, but the criteria for protection and quality standards for damage to peat are indeed needed. So that it is possible to formulate the two regulatory requirements through a government regulation. Since the beginning of its preparation, this PP has invited various pros and cons. Initially this PP was merged into one with the arrangement regarding the swamp. However, because there are political dynamics in the context of regulatory jurisdictional authority related to swamps, which are more closely related to water resources. So finally PP related to swamp and peat is poured separately.

There are 5 important initial points that need attention from Government Regulation no. 57 of 2016. These points are social aspects, consistency, sectoral approach, monitoring and retroactive principles. These five aspects will affect the effectiveness of peat protection if not given serious attention. Protection of peatlands will be limited and not optimal. These points are to be seen as a start, and are likely to develop in the future. The social aspects referred to here are aspects related to the relationship between the community and efforts to protect and manage peat.

In a position paper published by the HuMA Association in April 2014, one of the objections raised was related to the lack of regulation of social aspects in this PP. For example, in the regulation regarding the determination of the final map of the hydrological unit of peat, all aspects required are technical aspects, without considering any social aspects. The compilers of this PP will argue that the social aspect is not included in the preparation of the peat hydrological unit map because this provision is technical and has nothing to do with social aspects. However, this argument is not appropriate when looking at peat through an ecosystem approach which underlines that stakeholders who live in the ecosystem are in decision making.

The social aspect will also be important in determining the final hydrological map of peat because basically, this map will be used to determine the function and the Peat Ecosystem Protection and Management Plan (RPPEG). So that in the early stages, social aspects are not included in the determination. So in the next process, the social aspect cannot be considered comprehensively.

The second note that needs to be underlined in PP No. 57 of 2016 is the aspect of consistency. There are at least 3 laws and regulations that require an inventory, namely the Law on Environmental Protection and Management, the Forestry Law, and Government Regulation No. 57 this. The question that arises then is whether this will be a form of inventory activity other than the inventory mandated in other regulations. Because for example in UUPPLH the inventory is carried out on all ecosystems, and doesn't that also include peat ecosystems. However, this PP does not concretely provide a link to the inventory mandated by UUPPLH. Another question will be related to the position of RPPLH and RPPEG in the overall peat management framework in Indonesia. However, in this context, the principle of integration put forward by UUPPLH has been sidelined. In addition, in the two previous studies, it is clear that there is an emphasis that social aspects (issues related to community relations with peat ecosystems) are important in policy making related to peat ecosystems. In the end, this PP can be said to be inconsistent with various policy studies that have been prepared previously.

One of the hopes placed on this PP is related to the sectoral approach that is still strongly felt by some parties in peatland management. There is no one specific authority that regulates and has the authority to provide regulation on peatlands. So far, peatlands have been tossed around between various existing sectors. This PP has laid down several obligations to coordinate and minimize sectoral approaches in peatland

management. However, the question that arises is what about the pre-existing roles of various other institutions in the context of coordination. For example, BKPRN (National Spatial Planning Coordination Agency), does BKPRN then become irrelevant in determining the function of peat? In addition, the coordination mandated in this PP is only mandated to the Ministry of Forestry and Ministry of Public Works. What about other ministries that are also related to peat ecosystems? Shouldn't this PP be able to strengthen the role of the existing coordination forum?

Another point that is also considered important to be considered in this discourse is the linkage of the one map policy with the Final Map of the Peat Hydrological Unit as stated in article 7 paragraph (1) and will be a reference in determining the function of the peat ecosystem. The relationship between the two is not clearly regulated through this PP. It is possible that the peat ecosystem map will become a thematic map within the one map policy. However, this needs to be explicitly stated in this PP, so that in implementation there will be no loopholes that delay the protection of the peat ecosystem.

The next note is related to the monitoring mandated in this PP, where the Minister, Governor, and Regent/Mayor are given the obligation to carry out supervision. However, this PP does not explain the operationalization of this monitoring. There is a stipulation in article 37 regarding what can be done in terms of supervision (covering the authority of the official conducting the supervision). However, the clear roles among these three levels of government (Minister, Governor, Regent/Mayor) in conducting supervision have not been clearly spelled out in this PP. Who will carry out the supervision and what triggers the supervision? Is this a routine action? Or is it incidental?

This PP also implicitly divides the function of the peat ecosystem into a protection function and a cultivation function. It is mandated that in one area the Peat Hydrological Unit (KHG) must be set at least 30% as a protection function, which includes the area in the peat dome and its surroundings. Peat protected areas also include peat areas with a thickness of more than 3 (three) meters, peat that is a habitat for endemic or protected species, and peat that is in protected areas. It is stated that one way to overcome the damage to the peat ecosystem is through the construction of canal blocking or construction that regulates water in peatlands and keeps the groundwater level at more/at least 0.4 meters below the peat surface for function cultivation.

CONCLUSION

Peatland management policies have not achieved the desired goals and objectives in their efforts to protect them from damage and extinction. Peatland management has not been followed by changes in the behavior of the community and other stakeholders to preserve biodiversity and implement sustainable development. This is presumably because there are still differences in vision, interests, and perceptions among stakeholders regarding the existence of the peatlands. In addition, the existing institutional capacity is still weak to adopt the correct concept in peatland utilization.

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