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ANALYSIS OF CLASS ACTION DECISION NUMBER 26/PDT.G/2009 /PN. TPI CONCERNING MARINE POLLUTION ON THE MINING BUSINESS AGENCY

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Abstract

The sea is an important resource, especially for coastal communities. Therefore we are obliged to preserve and keep it from being damaged. If there is damage caused by human activity, what is harmed is humans and living creatures in the sea that will feel the loss. In exchange, the perpetrator of the damage must be punished. Environmental law enforcement has regulated all forms of violations or crimes committed by individuals or a body. Enforcement can be preventive (prevention) or by taking action (repressive). Actions are carried out based on consideration. These actions include Class Action Lawsuits, Criminal Actions, and Administrative Actions.

Keywords: Class Action Lawsuits, Criminal Actions, and Administrative Actions.

INTRODUCTION

Nature has countless hidden resources. These resources have many benefits for society's welfare, both within their own country and for other countries. This wealth includes the forestry, agriculture, marine, mining, and plantation sectors.(Idris, 2016; Larasati, 2018)

In managing existing resources, a rule is needed to limit exploitation on a large scale and also to pay attention to the impact that this management has on the environment. This aims to minimize the damage. Management that can be done is by preserving natural resources. This is stated in Law Number 32 of 2009 concerning Environmental Protection and Management.(Malik, 2017; Sutrisno, 2014)

However, the reality is that the management is not good. There is a lot of exploitation on a large scale, and so on, which hurts the environment.(Maryono, 2018) Therefore, we are interested in analyzing Decision Number 26/PDT.G/2009/PN. TPI (Environmental Pollution

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Class Action Lawsuit Against Mining Business Entities).(Erwin, 2015; Manik, 2018)

The problems that occur in Decision Number 26/PDT.G/2009/PN. TPI (Environmental Pollution Class Action Lawsuit Against Mining Business Entities), namely the existence of fishing communities who suffer losses because their livelihoods to fulfill their livelihoods on the beach have been polluted and damaged due to mining and jetty construction, as well as landfill on the beach and also ultimately leads to waste. (Endratno, 2017) There was sea pollution, and the fish ecosystem on the beach died and moved places, and finally, the fishermen filed a Class Action lawsuit against the related party/Defendant.(Ningsih, 2018; Vatria, 2013)

This is because there is no socialization or notification in mining, and we do not see whether it will harm many people or not, and we do not ask fishers for permission. Also, in the port's construction, the Defendant did not have the proper permit for the port. And there are still many irregularities that occur. Because there is a mutually sustainable relationship. Starting from the Defendant's negligence to the loss of the Plaintiff and other fishers. Before filing the Class Action lawsuit, the fishermen had other efforts, namely my family, but the defendant's response was not good. In fact, the Defendant was mistreated. So that the plaintiff finally decided to file a Class Action lawsuit.

According to Prof. Sudikno Mertokusumo in his book, Indonesian Law is a claim for rights or civil suit (*burgerlijke vordering*) which contains disputes or rights claims from interested parties or actions whose purpose is to obtain legal protection provided by the court because he has suffered losses due to the actions of other parties or to prevent the existence of *iegenrichting*. (M Rasyid & Herinawati, 2015; Tamba, 2019) Then according to Zainal Asikin, a lawsuit is a claim submitted to the head of the court who is authorized by someone regarding a matter due to a dispute with another party which then requires the judge to examine the demand in a certain way which then gives birth to a verdict on the decision. (Asikin, 2019) Then Mukti Arto, who called the lawsuit with a lawsuit, was a letter submitted by the plaintiff to the authorized head of the court, which contained a right claim which contained a dispute and at the same time was the basis for examining the case and proving the truth of a right. (Arto, 2004) Meanwhile, according to Teguh Samudra, a lawsuit is a form of writing that

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contains the reasons for the relationship and dispute between the parties as well as the desired request in the dispute.(Maskur Hidayat, 2016)

Procedure for filing a lawsuit must be done in writing and addressed to the Chairman of the Court, who is authorized to judge. This is regulated in Article 118 HIR and Article 142 paragraph (1) Rbg. But there are exceptions regarding the need to submit in writing. This is explained in Article 120 HIR and Article 144 Rbg. If the Plaintiff has an abnormality, namely illiteracy, it can be submitted verbally, which is then recorded by the head of the court regarding the rights of the lawsuit. As for the contents of the lawsuit, the conditions can be seen in Article 8 Number 3 RV, which must contain, Identity of the Parties, Reason for Lawsuit (Fundamentum petendi or posita) and Principles of Civil Lawsuits.(Polii, 2018; Sabda, 2015)

Class Action comes from English, which consists of two words, namely Class, which means a group of people, objects, or activities with the same characteristics or characteristics, and the word Action, which means a claim brought to court. According to Black Law, Class Action means a large group that has the same interest in a case, which can sue or be required to represent the group without mentioning the group members represented. Class Action is a lawsuit filed by one or more community members representing all members of a particular community group. Meanwhile, according to Supreme Mahakamah regulations Number 1 of 2002, Class Action Action is a procedure for filing a lawsuit represented by one or more people to file a lawsuit for themselves and at the same time representing a large number of groups who have the same legal and factual basis between group members and parties represent.

METHODOLOGY

Using the juridical normative research method, which is an approach that is based on the principles, concepts, and principles of legal science.(Amiruddin, 2008; Hamidi, 2004) It also refers to laws and regulations and the opinions of scholars and experts and other literature related to Marine Pollution Class Action Lawsuits. The data were analyzed using quantitative normative, which finally concluded inductively, which concludes by discussing specific legal

principles and rules in collecting data using data from library research (library research). Conducted to obtain secondary data through a literature search to obtain primary, secondary, and tertiary legal materials. And the writer uses a qualitative descriptive to get an overview of the Marine Pollution Class Action Lawsuit.

RESULT AND DISCUSSION

The legal basis for the Class Action lawsuit has few regulations, namely:

1. Law Number 8 of 1999 concerning Consumer Protection;
2. Law Number 18 the Year 1999 regarding Construction Services;
3. Law Number 19 of 2004 concerning Stipulation of Government Regulations instead of Law Number 1 of 2004 concerning Amendments to Law Number 41 of 1999 into Law;
4. Supreme Court Regulation Number 1 of 2002 concerning Class Action Action Procedures.

Meanwhile, Law Number 32 of 2009 concerning Environmental Protection and Management is regulated in Article 91, replacing Article 37 of Law Number 23 of 1997. The procedure for filing a lawsuit is that one or more people represent the group, file a lawsuit for themselves, and at the same time represent a large group of people by considering the similarity of facts or legal basis between-group representatives and the group members they represent. Class Action lawsuit procedural is the aspect of similarity which includes:

- a. Numerosity (the interest of the crowd)
- b. Communality (common facts and legal basis)
- c. Typicality (same type of demands)
- d. Adequacy of representation (group representatives are worthy people)

The procedure for handling Class Action is formally and officially regulated in the Supreme Court Regulation Number 1 of 2002, dated April 26, 2002, with the term Class Action Lawsuit. Then the Class Action lawsuit formulation according to the HIR or Rbg.

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The group representatives (Plaintiffs) Aswardi and Zaini Dahlan are part of 200 Coastal Fishermen who work as catch fishermen and skating fishers in the waters of Senggarang and its surroundings in Tanjung Pinang Kota District, Tanjung Pinang City, Riau Islands Province, which in this case are victims gave powers to Herman, SH, Mukhlis, SH, and Sri Ernawati, SH, suffered material and immaterial losses from the pollution of the marine environment due to mining and stockpiling of red soil towards the sea for the construction of a pier carried out by Defendant I (PT. Cahaya Bintang Abadi), Defendant II (PT. S & B Investama), and Defendant III (PT. Perjuangan). Therefore, the group representative (Plaintiff) filed a Class Action lawsuit.

To order and order Defendants I, II, and III to pay direct cash, and instant compensation to Plaintiffs I and II jointly and severally in the form of:

- a. Material loss:
 - 1) Group I representative: Rp. 2,880,000,000 - (Two billion eight hundred and eighty million rupiahs)
 - 2) Representative of group II: Rp. 2,880,000,000 - (Two billion eight hundred and eighty million rupiahs)
- b. Immaterial loss: Rp. 5,000,000,000, - (Five billion rupiah)

So that the total of all losses to be paid is the sum of all material and immaterial losses, which is Rp. 10,760,000,00 - (ten billion seven hundred and sixty million rupiahs) and to all Defendants (I, II, III, IV, V, and VI) to pay expenses incurred in court cases of Rp. 966,000 - (Nine hundred and sixty-six thousand rupiahs).

The Class Action Lawsuit by the community for marine pollution against mining business entities, the civil environmental law, has regulated legal protection for environmental pollution victims and/or destruction resulting in loss and suffering. Article 91 of Law Number 32 the Year 2009 concerning Environmental Protection and Management explains that the community has the right to file a class-action suit for their own interests and/or for the benefit

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of the community if they suffer losses due to environmental pollution and/or damage. A lawsuit can be filed if there are similarities in the legal basis and facts and types of claims between the group representatives and their members.

The judges' panel has stated that the Defendant's actions who carried out bauxite mining and construction of ports for docks by stockpiling or stockpiling resulted in sea water pollution so that the fish died. The Plaintiff lost their livelihood as fishermen. Because mining does not carry out environmental supervision, and there are no preventive measures against hazardous and toxic waste flowing into the sea. The act committed by Defendant was an act against the law that harmed Plaintiff both materially and immaterial.

According to the author, the Panel of Judges' decision is following Law Number 32 of 2009 concerning Environmental Protection and Management, which the Plaintiff uses as the basis for filing a lawsuit against the law that has harmed others.

In Article 87 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management, it is explained that industrial companies are obliged to prevent environmental damage and pollution. In this case, if it violates and causes losses, the person in charge of the business is obliged to pay compensation or take certain actions. Following Article 76 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management, authorized officials may impose administrative sanctions in the form of written warnings, government coercion, suspension of environmental permits, or revocation of environmental permits.

Law No. 32/2009 adheres to the principle of liability based on fault and strict liability. Liability based on errors is also regulated in Article 1365 of the Civil Code, namely the obligation to prove the lawsuit's arguments. The Panel of Judges in Case Number 26 / PDT.G / 2009 / PN.TPI has applied this principle with the fact that there was a verdict on the basis of an illegal act and sentencing to the Defendant to compensate the Plaintiff directly, cash and instantaneously to the Plaintiff in the form of material and immaterial with a total of Rp.

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10,760,000,000, - (ten billion seven hundred sixty million rupiah). As well as paying a court fee of Rp. 966,000 - (Nine hundred and sixty-six thousand rupiahs).

Marine pollution is defined as the entry of substances, living things, or other components into the marine environment by humans. The quality of seawater decreases, causing the marine environment to not comply with quality standards and functions. Environmental responsibility is the obligation of a person or party to assume responsibility for sufferers whose rights to a good and healthy environment have been violated.

Regarding the responsibility of mining business entities regulated in Law Number 32 of 2009 concerning Environmental Protection and Management, which adheres to the principle of liability based on fault, the burden of proof is on the sufferer or the Plaintiff; absolute responsibility (strict liability) where the release of evidence from the elements of error which the Plaintiff is not obliged to prove the existence of an error committed by the Defendant; and absolute accountability, which is accompanied by a reverse burden of proof which aims to protect victims of environmental pollution and also protection for business actors.

CONCLUSION

From the above discussion, two conclusions can be drawn first, Class Action Lawsuits can be filed by the community in the event of a violation of the law and pollution of the marine environment, which causes individual losses and causes losses to the wider community formed in a group. Therefore, to avoid the repetition of a lawsuit with legal facts and the same claims from a group of people, a class action can be carried out. In this case, there are group representatives who act for themselves and, at the same time, represent a large number of groups who share the same disadvantages and suffering.

The decision issued by the District Court against the Class Action lawsuit according to Decision Number 26 / PDT.G / 2009 / PN. TPI has granted Plaintiff's claim and stated that Defendant has committed illegal acts due to bauxite mining and stockpiling at the edge of the pier to build a port, which resulted in contamination of seawater and death of fish and marine life resulting in material and immaterial damage and loss. A material loss of Rp. 5,760,000,000 -

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(Five billion seven hundred and sixty million rupiahs) and immaterial losses of Rp. 5,000,000,000, - (Five billion rupiah). so, the total losses to be paid by Defendant were Rp. 10,760,000,000, - (ten billion seven hundred sixty million rupiah) and also the Defendants were charged a court fee of Rp. 966,000, - (Nine hundred and sixty-six thousand rupiah).

From the writing of this article on the judge's decision analysis, the writer suggests that.

Mining Business Entity Civil Responsibility for Marine Pollution includes the principle of absolute responsibility (strict liability) as regulated in Article 88 of Law Number 32 the Year 2009 concerning Environmental Protection and Management and liability based on fault according to Article 1365 BW, in where the burden of proof lies with the patient or the Plaintiff. The Sufferer or Plaintiff will then receive compensation if he succeeds in proving an element of an error on the part of the Defendant.

2. The community must play an active role as a means of control in government policies that allow Mining Business Entities which are detrimental to the sustainability of the ecosystem and the livelihoods of communities around other Mining Business Entities operating in Indonesia.

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