

REKONSTRUKSI KEDUDUKAN HUKUM PASAL 1365 KUHPERDATA, PASAL 87 AYAT (1) UUPPLH, DAN PASAL 88 UUPPLH JUNCTO UUCK DAN IMPLIKASINYA TERHADAP STRATEGI FORMULASI GUGATAN DALAM PENYELESAIAN SENGKETA PERDATA LINGKUNGAN HIDUP

Agas Prayustisio Aji* dan Herliana**

INTISARI

Permasalahan keberagaman dan inkonsistensi konstruksi Pasal 1365 KUHPerdata, Pasal 87 ayat (1) UUPPLH, dan Pasal 88 UUPPLH *jo.* UUCK oleh advokat, akademisi, maupun hakim menimbulkan kebingungan terkait bagaimana memahami ketiga pasal tersebut dalam peradilan perdata.

Penulisan Hukum ini bertujuan untuk mengetahui dan menganalisis (1) kedudukan hukum ketiga pasal tersebut, (2) implikasi kedudukan hukum ketiga pasal tersebut, dan (3) pengaruh implikasi kedudukan hukum ketiga pasal tersebut terhadap strategi formulasi gugatan perdata lingkungan hidup.

Penulisan Hukum ini berjenis penelitian hukum yuridis-normatif yang mengkaji data sekunder. Data sekunder berupa bahan hukum primer, sekunder, dan tersier diolah, dianalisis, dan disajikan secara deskriptif, kualitatif, dan sistematis.

Hasil penelitian menunjukkan bahwa: (1). Ketiga pasal tersebut berkedudukan hukum sebagai perikatan dari ketentuan peraturan perundang-undangan sebagai akibat perbuatan subjek hukum yang melawan hukum atau “Perikatan Perbuatan Melawan Hukum (PMH)”. Setiap pasal tersebut memiliki rumusan yang sifatnya distingtif, di mana berdasarkan asas *lex specialis derogat legi generali* antara ketiganya memiliki hubungan kekhususan, yaitu Pasal 1365 KUHPerdata (umum), Pasal 87 ayat (1) UUPPLH (khusus), dan Pasal 88 UUPPLH *jo.* UUCK (lebih khusus). Pada praktiknya, kedudukan hukum ketiga pasal tersebut dikonstruksikan dengan beragam. (2). Pasal Perikatan PMH memiliki implikasi yuridis yaitu berfungsi sebagai dasar pertanggungjawaban perdata dan ketentuan alokasi beban pembuktian, serta implikasi teknis yaitu berfungsi sebagai pedoman perumusan surat gugatan dan sumber hukum bagi hakim dalam melakukan penemuan hukum. (3). Implikasi pasal Perikatan PMH berpengaruh terhadap strategi dalam merumuskan gugatan yaitu bahwa gugatan berdasarkan ketiga pasal tersebut diajukan secara kumulatif, serta *fundamentum petendi* dan *petitum* diuraikan sesuai dengan distingsi dan hubungan kekhususan, di mana *petitum* dimintakan secara alternatif.

Kata Kunci: kedudukan hukum, perikatan perbuatan melawan hukum, formulasi gugatan, penyelesaian sengketa perdata lingkungan hidup.

* Mahasiswa Konsentrasi Hukum Acara Perdata, Program Sarjana, Fakultas Hukum, Universitas Gadjah Mada.

** Pengajar pada Departemen Hukum Perdata, Fakultas Hukum, Universitas Gadjah Mada.

RECONSTRUCTION OF THE LEGAL CONCEPT OF ARTICLE 1365 OF THE CIVIL CODE, ARTICLE 87 PARAGRAPH (1) ENVIRONMENTAL ACT, AND ARTICLE 88 ENVIRONMENTAL ACT AS AMENDED BY JOB CREATION ACT AND ITS IMPLICATIONS FOR LAWSUIT FORMULATION STRATEGIES IN ENVIRONMENTAL CIVIL DISPUTES RESOLUTION

Agas Prayustisio Aji* dan Herliana**

ABSTRACT

The issue of variety and inconsistency in the construction of Article 1365 of the Civil Code, Article 87 paragraph (1) of the Environmental Act, and Article 88 of the Environmental Act as amended by the Job Creation Act from advocates, academics, and judges creates confusion about how these three articles in civil justice should be understood.

This legal writing aims to find out and analyze (1) the legal concept of the three articles, (2) the implications of the legal concept of the three articles, and (3) the influence of the implications of the legal concept of the three articles on the strategy for formulating environmental civil lawsuits.

This legal writing is a type of juridical-normative legal research that examines secondary data. Secondary data in the form of primary, secondary, and tertiary legal materials are processed, analyzed, and presented descriptively, qualitatively, and systematically.

The research results show that: (1). These three articles have legal concepts as obligations based on the provisions of statutory regulations as a result of the legal subject's actions that are against the law or are called "Tortious Act (PMH) Obligations". Each of these articles has a distinctive formulation, where, based on the principle of *lex specialis derogat legi generali*, the three have a specific relationship, namely Article 1365 of the Civil Code (general), Article 87 paragraph (1) of the Environmental Act (special), and Article 88 of the Environmental Act as amended by the Job Creation Act (more specifically). In practice, these three articles legal concepts are constructed in various ways. (2). The PMH Obligations article has juridical implications, namely functioning as a basis for civil liability and provisions for allocating the burden of proof, as well as technical implications, namely functioning as a guideline for the formulation of a lawsuit and a legal source for judges in making legal discoveries. (3). The implication of the PMH Obligations article influences the strategy in formulating a lawsuit, namely that the lawsuit based on the three articles is submitted cumulatively, and the fundamentals of the petition and petitum are explained in accordance with the distinction and specific relationship, where the petitum is requested alternatively.

Keywords: legal concept, tortious act obligations, lawsuit formulation, environmental civil disputes resolution.

* Civil Procedure Concentration Student, Undergraduate Program, Faculty of Law, Universitas Gadjah Mada.

** Lecturer at Civil Law Department, Faculty of Law, Universitas Gadjah Mada.