

ABSTRAK

**KAJIAN HUKUM PERLAWANAN PT. KASWARI UNGGUL TERHADAP
SANKSI ADMINISTRATIF
ATAS KEBAKARAN HUTAN DAN/ATAU LAHAN**

Oleh:

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Berdasarkan Pasal 76 Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup, KLHK menerapkan sanksi administratif kepada PT. Kaswari Unggul akibat kebakaran di areal perusahaan. Penelitian ini bertujuan untuk mengkaji lebih jauh argumentasi hukum PT. Kaswari Unggul terhadap penolakan sanksi administratif, menganalisa pertimbangan hakim dalam memutuskan perlawanan atas sanksi administratif yang dijatuhkan terhadap PT. Kaswari Unggul, serta argumentasi hukum KLHK dan sikap hakim apabila gugatan TUN PT. Kaswari Unggul diterima.

Dalam penelitian ini digunakan penelitian normatif yang meletakkan hukum sebagai sebuah bangunan sistem norma dengan tipologi bersifat eksplanatoris. Jenis data yang digunakan dalam penelitian ini menekankan pada penggunaan data sekunder atau studi kepustakaan, selain itu, data primer ini juga akan didukung wawancara dengan narasumber yang berkompeten pada masalah yang diteliti. Metode analisis data yang penulis gunakan analisis kualitatif.

Hasil penelitian menunjukkan telah terjadi kebakaran hutan dan/atau lahan di areal PT. Kaswari Unggul. Argumentasi hukum PT. Kaswari Unggul yaitu KLHK dianggap telah melakukan penyalahgunaan wewenang terkait penerbitan sanksi administratif SK No. 4551, PT. Kaswari Unggul menganggap bahwa perusahaan merupakan korban yang menderita kerugian akibat kebakaran hutan dan/atau lahan, serta menyatakan bahwa sarana dan prasarana penanggulangan kebakaran yang dimiliki PT. Kaswari Unggul sudah sesuai standar yang berlaku di lahan perkebunan. Dasar pertimbangan majelis hakim dalam memutuskan perkara gugatan PT. Kaswari Unggul pada Putusan Pengadilan Negeri TUN Nomor: 104/LH/PTUN.JKT mengacu pada ketentuan Pasal 55 UU Peratun Tahun 1986, Majelis juga merujuk pada Pasal 53 ayat (1) UU No. 9 Tahun 2004 tentang Perubahan Atas UU Peratun Tahun 1986. Majelis menyatakan pengajuan gugatan telah melewati tenggang waktu 90 (sembilan puluh) hari pengajuan gugatan. Apabila gugatan PT. Kaswari Unggul dinyatakan diterima, maka KLHK akan tetap mengikuti proses persidangan tahap selanjutnya dan memberikan argumentasi hukum bahwa penerbitan SK No. 4551 telah sesuai dengan peraturan perundang-undangan dan memenuhi unsur Pasal 67, Pasal 68 huruf b, Pasal 76 UUPPLH, Pasal 56 UU No. 39 Tahun 2014 tentang Perkebunan, Pasal 13 dan Pasal 18 ayat (1) PP No. 4 Tahun 2001. Sikap hakim menurut hemat penulis berdasarkan aturan hukum akan tetap mendengarkan para pihak dalam persidangan dan memperhatikan bukti-bukti yang diajukan oleh para pihak. Hakim dituntut untuk dapat menerapkan asas *indubio pro natura* yaitu apabila hakim mengalami keraguan mengenai bukti, maka hakim mengedepankan perlindungan lingkungan dalam putusannya di setiap kasus lingkungan hidup dan kehutanan yang terjadi di Indonesia. Tetapi jika proses pembuktian ilmiah tidak bisa atau terlambat, maka hakim harus mendahulukan kepentingan perlindungan lingkungan.

Kata kunci: Sanksi administratif, kebakaran hutan dan/atau lahan, gugatan Tata Usaha Negara.

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ABSTRACT

**LEGAL REVIEW PT. KASWARI UNGGUL ON THE OBJECTION OF
ADMINISTRATIVE SANCTION OVER FOREST AND/OR LAND FOREST**

By:

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Based on Article 76 of Law No. 32 of 2009 concerning Protection and Management of the Environment (UUPPLH), KLHK gives administrative sanctions to PT. Kaswari Unggul due to fires in the company's area. This thesis aimed to study further about legal argument of PT. Kaswari Unggul on the objection of administrative sanction, analyze judge's consideration in breaking the resistance on administrative sanction that was given to PT. Kaswari Unggul, also legal argument of KLHK and judges' attitude if the claim of TUN PT. Kaswari Unggul was accepted.

This research used normative research which placed law as a norm building system with explanatory topology. The kind of the data that were used in this research emphasized on the use of secondary data or library research, and, the primary data would be also supported with interview with interviewee that had competence on the problem discussed. Data analysis method that the writer used was qualitative analysis.

The research results showed that there was either forestor land fire in the area of PT. Kaswari Unggul. Legal argument of PT. Kaswari Unggul was KLHK considered already did abuse of authority on the issuance of administrative sanction SK No. 4551, PT. Kaswari Unggul assumed that the company was the victim who experienced loss because of the forest and/or land fire, also stated that the facilities and infrastructures that owned by PT. Kaswari Unggul was already according to the standard that applied on plantation land. The basic consideration of the judges panel in deciding the claim case of PT. Kaswari Unggul on the Verdict of the District Court Number: 104/LH/PTUN.JKT referred to the provision of Article 55 Administrative Court Law of 1986, the Assembly also referred to Article 53 clause (1) Law Number 9 of 2004 concerning the Amendment of Administrative Court Law of 1986. The Assembly stated that the filing of the claim was already over the deadline of 90 (ninety) days of filing a claim. If the claim of PT. Kaswari Unggul was accepted, so KLHK would still follow up the next stage of the trial process and gave legal argument that the issuance of SK No. 4551 was already suitable with the legislations and met the element of Article 67, Article 68 letter b, Article 76 of UUPPLH, Article 56 Law Number 39 of 2014 concernig Plantation, Article 13 and Article 18 clause Government Regulation Number 4 of 2001. Judges' attitude according to the writer based on the rule of law, the judge would still listen any part in the trial and regarded the proofs submitted by the parties. The judge was asked to implement *in dubio pro natura* principle, it was if the judge had doubt on the proof, so the judge prioritized environment protection in his verdict in every environmental and forestry case in Indonesia. But, if the scientific proof process could not be done or late, so the judge should prioritize the interes of environmental protection.

Keywords: *administrative sanction, forest and/or land fire, claim of TUN.*

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