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Court

CHEVRON BIOREMEDIATION: AT WHICH POINT DID THE STATE BUDGET LOSS OCCUR?

The bioremediation case has become a popular and controversial one in the last 3 months. The Attorney General Office (AGO) investigated and prosecuted officials of PT Sumigita Jaya, a bioremediation contractor to Chevron Indonesia who won the bioremediation tender held by Chevron, due to an alleged corruption case on fictitious bioremediation work on 28 points of ex-oil-and-gas drilling locations. In reality, this bioremediation work is still ongoing in accordance to the obligations in the Production Sharing Contract (PSC) between the Government of Indonesia and Chevron Indonesia. One of the contents of the contract requires Chevron to undergo bioremediation, which has been done through the services of PT Sumigita Jaya who won the tender process fairly.

According to the contract, initial funding for bioremediation is the responsibility of Chevron and can be claimed as a part of cost recovery towards the government after the bioremediation work is finished. The total amount of cost recovery is approximately USD 9 million.

The bioremediation work is still ongoing and the cost recovery has been claimed. However, state funds have not yet been delivered to Chevron as cost recovery. In other words, the state fund for this recovery is still in its "safe-deposit-box" (According to one dissenting opinion voiced by judge Sofialdi with Herman bin Ompo as the accused person of corruption. Regretfully, the AGO is continuing to prosecute the case and believes that there is state money loss according to Article 2(1) Corruption Law 1999. This is because PT Sumigita Jaya and the officials have breached up the Decree of Ministry of Environment No. 128/2003 on Procedure and Requirement for Processing Oil and Soil Waste Contaminated by Oil Drilling Activity.

From here a question arises: has the state-money-loss risen although the state money is still safe? Logically; no. No corruption has happened in this case or situation. However, Article 2(1) of Corruption Law 1999 is a flexible article that can subjectively criminalize everyone that is assumed to harm state money. The term "yang dapat" (which can harm) is a key for bad apparatuses of law enforcement to conduct criminalization although no state money loss has occurred. Thus, revision of Article 2(1) should be made. (MFA)

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Parliament

THE REGRESSION OF RULE OF LAW; SECONDS TOWARDS THE LEGALIZATION OF SOCIETAL ORGANIZATION BILL

28 years ago, under the New Order regime, the Government is promoting political stability to ensure the continuity of the character of authoritarian rule. Thus, the dynamics of civil society is tightly controlled by the concept of a single sector organization for easy control, freezing, and even dissolving the Societal Organizations (Organisasi Kemasyarakatan/Ormas) without any impartial judicial process. These repressive measures were legalized by Law No. 8 Year 1985 concerning Societal Organizations.

If Ormas is seen by the concept of law, the Parliament and the Government do not need to regulate Ormas by the political approach. The right to unite and assemble for the community can be done by two ways; without legal entity or with legal entity. If people choose the first option, they can establish a legal entity named Perkumpulan/organization (membership based) or legal entity named Foundation (non-membership based), which is both approved by the Ministry of Justice and Human Rights. Once the legal entities are legalized, if they want to cooperate with the Government in a particular sector, then the organization can deal with relevant ministries such as the Ministry of Education, Religion, Health, etc.

Ormas regulations in that law were not created using the correct paradigm. Evidently, two years after the Law was enacted, on December 10 1987, by decree of the Minister of Internal Affairs No. 120 Year 1987,

the Indonesian Muslim Students (PIL) and Marhaenis Youth Movement (GPM) was dissolved. Under the Directorate General of the Ministry of National Unity and Political Affairs (Ditjen Kesbangpol), Ormas are not seen and treated by a legal approach, but they were treated by political approach instead. The Dynamics of social activities that are protected as right of uniting and assembling under Article 28 Constitution 1945 was diverted by Law Society Organizations.

Argumentations from the Parliament and Government that the Societal Organization Bill as a deterrent instrument of violence and terrorism, and efforts to achieve transparency and accountability has already been answered in the Criminal Code (KUHP), Staatblad No. 64 of 1870 on Associations, Foundations Act, Anti-Terrorism Act, Freedom of Information Law and so on. The Parliament and the Government should repeal the Law No. 8 Year 1985 concerning Societal Organization, revise the Staatblad No. 64 of 1870 on Associations which is already in the list of 2010-2014 National Legislation Program (No. 228), and not pass the bill of Societal Organizations. Surfacing the regulation on the dynamics of civil society in the reformation era by political approach is very ironic and reflects setbacks in the rule of law paradigm of our Parliament and the Government. (SMR)

Supreme Court

MONITORING AND EVALUATING THE IMPLEMENTATION OF JUDICIAL REFORM

Legal news site, hukumonline.com, on 14 June 2013 reported a statement by the Chairman of the Supreme Court, Hatta Ali, who confesses that there are still many judicial reform policies unable to be practiced in the field. Hatta Ali also explained that this problem is a manifestation of lack of commitment towards judicial reform from the court leadership. This statement from the Chairman of the Supreme Court was delivered at the inauguration of the Young Chairman of the Supreme Administrative Court and 13 Chairmen of the Appellate Court, which took place at the Supreme Court Building. Observing the above statement, the Chairman of the Supreme Court has found obstacles in implementing judicial reform that lies in the commitment of the leadership of the court. The pursued solution in accordance to the reports is implementing technical guidance and the socialization of reform policies issued in the form of circulars of the Supreme Court (surat edaran Mahkamah Agung or SEMA) as well as regulations of the Supreme Court (peraturan Mahkamah Agung or PERMA).

Up until now, the judicial reform process has been ongoing for approximately ten years. Let us use the moment of drafting the blueprints of judicial reform as a step towards renewing the environment of the Supreme Court. The first blueprint was published in 2003 and the second in 2010. The above statement from the Chairman of the Supreme Court is a reflection of the challenges in implementing judicial reform. Even though it has been ongoing for ten years, evidently the channel of communication and information that aids in developing reformation commitments and facilitates relations between central and local governments is still constrained. Consequently, steps towards renewal aren't captured quick enough by court apparatuses. This becomes a severe problem, even more when linked towards the fulfillment of people's right to access justice. It is time that the Supreme Court also take into consideration approach strategies in order to expedite the process of judicial reform on a regional level since this is the stepping-stone towards actualizing justice for the people. It is understandable that in the early stages of this renewal the activities are focused more on institutional and policy improvements on a national level. However, this

process must immediately be counterbalanced with the means to ensure the stated reform policies are carried out properly within all or part of the court. This mechanism can be executed by improving performance monitoring procedures, improving the performance report and further action mechanisms, as well as making more effective the units that are linked to performance supervision in order to monitor and evaluate the implementation of judicial reform. These efforts are necessary to guarantee judicial reform implementation in an organized manner, which is closely related to the task unit within the Supreme Court.

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(MNS)