Environmental audit as instrument for environmental protection and management

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Keywords
Constitutional Rights, Environmental Audit, Environment, Management

Abstract
The paper deals with the complex issue of implementation of green public procurement in relating with the environmental audit in Indonesia as constitutional rights. The aim is to demonstrate that as an environmental management instrument, the environmental audit is expected to be a preventive step and build a proactive attitude in preventing the environmental damage and pollution. As an instrument of law enforcement, environmental audits also serve as the support for the functioning of law enforcement for business activity to conduct compliance steps on environmental requirements. The arrangements of environmental audits in the Environmental Management Act occupy a very important position. Besides as a law enforcement instrument, it can also be developed as a proactive effort to identify environmental issues early and further as a preventive effort in environmental management.

1. Introduction
In environmental management, the government is obliged to develop and implement preemptive, preventive and proactive tools in order to prevent the decrease of environmental carrying capacity. To reduce waste and improve the efficiency of natural resources utilization, it can be achieved by conducting environmental audits that have been included in Environmental Management Act of 1997 and previously set out in the Decree of the Indonesian Environmental Ministry Number KEP-42/MENLH/11/94 on General Guidelines of Environmental Audit Implementation.

The environmental audit is one of the most important factors in sustainable development and as a conscious and planned effort, that integrate environmentally, including resource into development process in order to guarantee ability, welfare, and quality of current and future generation.

The importance of environmental audit as stated by Grant Ledgerwood et al., (1992) that:

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In association with the role of environmental audit in law renewal towards the realization of sustainable development, George H. de Berdt Romilly affirm that law as an important instrument for realizing environmental policies and environmental law reform programs to provide a legal framework for sustainable development (Hardjosoemantri, 2000).

In an international context, environmental audits have begun to be applied in Canada, which has proven to be satisfactory in terms of enforcement as well as supervisory of environmental issues. In Malaysia, also began to pioneer towards environmental compliance that begins with the implementation of environmental audit conference intended to study and socialize environmental audit.

In the development of its implementation in the United States, environmental audits appear to be one of the law enforcement tools that industrialists respond to positively. In contrast, the inherent issues responded to various concerns. Meanwhile, the US Environmental Protection Agency (US EPA) has full confidence that environmental auditing is an effective compliance tool, so in causality, an environmental audit cannot only be seen as a voluntary effort of the company, but also as the mandatory (Irwansyah, 2017).

Conceptually, the environmental audit has been known in the early 1970s, since some business entities in the United States voluntarily implemented environmental audits as part of their business management despite different in name or theme. It can be said that the United States is a pioneer country.
in the application of environmental audits. In subsequent developments, the term environmental audit has been generally accepted.

In the past, the parties or the management of business entities have been protected from various legal actions, then in later development, they have been subjected to prosecution or lawsuit for their responsibility in the field of environmental protection. Therefore, through the application of environmental audits, the leadership element may obtain information on the appropriate number of organizations, units, systems and equipment related to environmental management.

US's experience shows that the basis of environmental auditing is driven by the increasing enforcement of environmental laws, so that business entities themselves feel the need to ensure they have or already adhere to environmental requirements. The existence of information certainty about the performance of environmental management of the business entity, then, in turn, the management is expected to avoid the possibility of a lawsuit.

Nowadays, the application of environmental audits in the United States is still voluntary or advisable and not as a legal obligation. This situation cannot be separated from the basis of the birth of the environmental audit itself, which originated from the initiative of a number of business entities. Recent developments pursued by the EPA, only legalize environmental auditing practices and issue guidance on how environmental audits should be conducted by business entities. These guidelines are set forth in Policy Statement No. 51 Fed. Reg. 25004 (July 9, 1986). Similarly, the policies pursued by the ICC still require the implementation of the audit be voluntary or not required.

2. The Concept of Environmental Audit

Following are some views on the significance and importance of an environmental audit in the environmental management system as well as in the enterprise management system. Under the Environmental Protection Act (EPA), the definition of an environmental audit as a systematic, documented, periodic, and objective review by a regulated entity of facility operations and practices related to meeting environmental requirements.

The definition defined by the United States Environmental Protection Agency (US EPA) mentioned above stipulates that environmental audits include systematic, documented and periodic review by executors of business activities to the facilities and its activity practices to meet environmental requirements (Santosa, 2001). Furthermore, the International Chamber of Commerce (ICC) defines environmental audits in more detail, as follows:

A management tool comprising a systematic, documented, periodic and objective evaluation of how well environmental organization, management, and equipment are performing with aim of helping to safeguard the environment by (i) facilitating management control of environmental practices; (ii) assessing compliance with company policies, which would include meeting regulatory requirements.

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Related to the importance and position of the environmental audit, many firms are already looking for ways of turning this threat into the opportunity by making improved environmental performance in their operations and their products, a source of competitive advantage (Milto, 2016). By reporting publicly on their efforts, they seek to turn liability "fear factors" into business opportunities.

As described above, it can be concluded that the environmental audit cannot be separated from the environmental management system as referred to in International Standard Organization (ISO) 14000. This is very important in order to improve the performance of the company in the field of environment. Furthermore, the implementation of environmental audits aims to explore the causes of environmental problems, management was undertaken and the efforts that have been taken in managing the environment. With the audit, as confirmed by Darin G. Childers, it is expected to know the weakness and its improvement (Rajagukguk & Khairandy, 2001).

May be only some countries governing mandatory audits in environmental laws. The mandatory audit is an exception of voluntary audit by basing on general criteria for non-compliance. It is general
criteria that have recently been feared by environmentalists, experts, and companies and environmental consultants to be used by the government disproportionately or abusively.

Ideally, voluntary audits are actually the most effective audits compared with mandatory audits. This audit is certainly done because the awareness of the company management has the potential to produce optimal results so that its environmental performance will be optimal. On the contrary, a mandatory audit is not necessarily when it is based on full awareness to improve environmental performance, even if the public relations element is more dominant than the seriousness to control environmental impacts. Therefore, the audit required strict quality control at the time of the audit, audit implementation process, and post-audit.

Two important things about environmental auditing that lead to differences of opinion, namely; First, the nature of environmental audit information and; second, the importance of realizing the independence of auditors. The results of an environmental audit, whether the information is solely for the purposes of the enterprise concerned, or that information is open to anyone who wants to know. Business circles, as reflected in the ICC's position, argue that the environmental audit information is only for the interests of the enterprise concerned and not used for other purposes, for example for prosecution or claim by others.

In the United States, the emergence of business concerns about the nature of environmental information openness is due to the widespread and increasing enforcement of criminal law enforcement that can lead to the accused leadership element (Usman, 2003). Environmental audit information that demonstrates the inability of a business entity to comply with environmental requirements is feared to be the cause of the prosecution.

In the United States based on the Policy Statement 51 Fed. Reg. 25004 (July 9, 1986), the EPA is authorized to obtain an environmental audit report or parts of the environmental audit report if it is deemed necessary. The provision does not mention any right of other parties or the public at large to gain access to information about an environmental audit of a private enterprise. However, the policy statement confirms that federal government installations are subject to the Freedom of Information Act which recognizes or entitles to the public (Telle, 2012).

In Indonesia, based on the Decree of the Environment Minister, it acknowledges the responsibility of any activity or business entity as the party determining whether some or all of the environmental audit reports are open to the government, the public, or any other organization (Astriani, 2016). In addition, this provision also recognizes the right of the government to request specific information as a basis for determining the performance rating of a business entity.

About the independence of the auditor, some argue that for environmental auditing to be objective, it must be done by outsiders or consultants. Another opinion suggests that environmental audits may be performed by employees of the business entity concerned as long as they are not employees who are also responsible for production activities and they have the ability or proficiency as an environmental auditor. The interesting developments in the United States, Canada, and Europe with the emergence of certification and auditing standards, if this interesting phenomenon is related to the situation in Indonesia, it appears that such symptoms have not been practiced, especially since the practice of environmental auditing is still at the introduction stage to the business circle.

The EPAs' Policy Statement arranges that there are 5 (five) requirements to be fulfilled in order for an environmental audit as an internal environmental management tool in a business entity to function effectively, as follows:

Firstly, there is support from the leadership element of business entity for the implementation of the environmental audit. In addition, there is a commitment of the leadership element to follow up any findings from the audit team. The follow-up is in the form of corrective measures to the management practices of the realization of environmentally-based management; Secondly, the independence and objectivity of the auditors, the position of auditor organization must ensure the searching of current management practices. The independence of the auditor also realizes when auditors can perform objective tests and free from internal constraints; Thirdly, the skills of the environmental auditor, they must have the knowledge and skills to achieve the environmental audit objectives. Auditors must continually improve their skills through training and education; Fourthly, the objectives and scope of the
environmental audit should be clear. At least, the objective to be achieved is to assess compliance or adherence to environmental requirements established by the competent authority, management, personnel training programs for the achievement of continuous adherence. However, the environmental audit objective may also be more than an effort to comply with the requirements set by the government; and fifthly, through methods and processes of collecting, analyzing, interpreting and documenting information, compiling clear reports on audit findings, corrective actions, and implementation schedules.

3. Legal Policy of Environmental Audit in Indonesia

In general, implementation of environmental audits in Indonesia is conducted because of public pressure and the demand of the government, not conducted due to the awareness or volunteerism. Demands to companies are generally based on disputes arising between communities and certain companies. Another mode is the demand of government in an effort to improve the company performance in the field of environment to avoid publications conducted by the Environmental Impact Management Agency on their environmental performance. The implementation of audit in a pure voluntary is still rare.

Also, it should describe the factors that inhibit and support the implementation of environmental audits.

Inhibiting factors, among others:
Legal, not yet smooth implementation of law enforcement in the field of environment. That is, the responsible person of business still cannot fulfill the will of Article 28 UUPLH to conduct environmental audit.
Economic, assumption that conducting environmental audits will only increase production costs. In addition, the exclusion of external costs into production costs.

Supporting factors, among others:
Legal, the existence of general guidance of the implementation of environmental audit as described in detail in Ministerial Regulation No. 42 of 1994, including its arrangements in the UUPLHs Articles.
Economic, the existence of other environmental arrangement tools such as Corporate Performance Assessment Program that managed by Indonesia Cleaner Industrial Production Program (ICIPP), including the fear of legal sanction in the form of closing business activity.

The arrangement of environmental audit as provided in Article 28 and 29 of the Environmental Management Acts are very important as a means of law enforcement, particularly for an activity and/or business that is required to conducts the Environmental Impact Analysis, since an environmental audit can be used as a tool to encourage compliance with the implementation of the Environmental Management Plan and Environmental Monitoring Plan.

In order for the environmental audit process to proceed properly and effectively, an environmental audit must be conducted by a professional environmental auditor. An environmental auditor must have an appropriate education and have professional experience to be able conducting their duties. Related to the quality of environmental auditors, John T. Wiling states:
Auditors should have a working knowledge of the applicable regulations. This knowledge can be acquired in several ways, through courses, textbooks and the review and application of audit checklist or protocols… Auditors should be familiar enough with the regulations to be able to use protocol effectively. And the protocols need to be detailed enough to support the auditors’ efforts (Rajagukguk and Khuraindy, 2001).

Affirmed by Cameron (1998), the importance of factors when choosing and determining environmental auditors, as follows:
The auditor's type and length of experience as an environmental auditor or investigator;
It's previous experience in similar audits;
The availability of personnel to complete the audit in time;
The terms of the consulting agreement with the auditor, including the adequacy of the consultant's professional errors and omissions insurance, the terms of any release and indemnity of the consultant by the client, and consultant confidentiality;
Recommendations from other clients of the auditors.

Some professional environmental auditing organizations that have established certain requirements to become an environmental auditor includes: the Board of Environmental Auditors...
Certifications (BEAC) in Florida, Canadian Environmental Auditing Association (CEAA), the Environmental Auditors Registration Association (EARA), and the International Auditor Certification Training Association.

4. Conclusions

Environmental auditing is environmental management instruments in volunteer, but in certain cases can be mandatory for activities that potentially do not comply with environmental requirements. The arrangements of environmental audits in the Environmental Management Act occupy a very important position. Besides as a law enforcement instrument, especially for activities/businesses that are required to conducting an Environmental Impact Assessment, it can also be developed as a proactive effort to identify environmental issues early and further as a preventive effort in environmental management.

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