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RESPONSIBILITY FOR ENVIRONMENTAL CRIMES FROM THE PERSPECTIVE OF CRIMINAL LAW IN INDONESIA

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Abstract: The environment is a unity of space with all objects and living creatures in it, including humans and their behavior that can affect the continuity of life between humans and the surrounding environment. Currently, environmental damage, especially in Indonesia, is increasingly worrying, if left unchecked, it will gradually threaten human life itself. Environmental damage is not only caused by natural conditions but also generally caused by damage caused by human activities that exploit nature excessively, such as forest destruction, illegal logging, water, air, and soil pollution, and so on. This study discusses criminal liability for the environment from the perspective of criminal law in Indonesia and the ambiguity of norms regarding the regulation of B3 waste dumping. This study uses a normative research type which is then described descriptively and analytically with argumentative techniques. Indonesian positive law regulates the Environment in Law Number 32 of 2009 concerning Environmental Protection and Management. It is hoped that future criminal law policies in addressing environmental crimes from a criminal law perspective can be understood from various aspects such as criminalization policies, criminal liability and sentencing.

Keywords: Criminal Liability, Environmental Crimes, Criminal Law Perspective

1. Introduction

A healthy and good environment is a gift from God Almighty to all living creatures on this earth. Therefore, the right to enjoy a healthy environment is the right of every human being and all living creatures around them, without exception. To enjoy a clean and pleasant environment, it is everyone's responsibility to preserve it.

Today, it is increasingly recognized that the sustainability of a clean and healthy environment is increasingly threatened. Besides the influence of natural factors, climate, and weather, the primary cause of environmental damage is human activity itself. For example, illegal logging and excessive exploitation of natural resources, changes in temperature and rainfall.[1] Economic factors are one of the factors that influence illegal logging and underlie the overexploitation of natural resources. Indonesia, as a developing country, is experiencing increasingly rapid economic growth, which is a factor in the occurrence of environmental crimes.

The increasing development activities have an impact on the environment, pollution and environmental damage.[2] The impacts of pollution caused by increasing development activities include water pollution caused by waste generated from industrial activities which is then

[1] Sri Sufiyatidan, Munsyarif Abdul Chalim, 2017, Kebijakan Hukum Pidana dalam Menanggulangi Tindak Pidana Lingkungan Hidup, Jurnal Hukum, Vol. 12.

[2] Gatot Supramono, *Penyelesaian Sengketa Lingkungan Hidup di Indonesia*, Rineka Cipta, Jakarta, 2013, hlm. 6.

dumped into rivers or watercourses, causing water pollution.[3] Then, land pollution caused by human habits of throwing plastic waste carelessly which causes land pollution because plastic waste will be difficult to decompose by the soil and takes a very long time, then air pollution caused by vehicle exhaust and smoke produced from engine combustion.

Given the significant impact of environmental pollution on the sustainability of a clean and healthy environment, environmental impact controls are essential to minimize the risk of environmental pollution. One policy approach to addressing environmental impacts is Law Number 32 of 2009 concerning Environmental Protection and Management, which serves as a foundation for current environmental management in Indonesia. This law is a breath of fresh air for environmental regulations, as it embodies principles for environmental protection and management, as well as legal instruments, aligning it with Indonesia's environmental legal system.[4]

Despite the enactment of environmental regulations, the environmental condition in Indonesia continues to be increasingly concerning. Looking back over the past few years, environmental destruction and pollution, both caused by natural and human factors, have further worsened the environmental condition and the availability of natural resources in Indonesia. This is due to inadequate enforcement of these regulations.

Criminal sanctions are mandatory as a means of addressing environmental issues. However, the use of criminal sanctions as an ultimum remindum is deemed insufficient in addressing environmental pollution crimes. Civil litigation generally takes a considerable amount of time, while administrative sanctions can lead to industrial closures, resulting in unemployment, and can lead to increased crime and criminality.[5] Therefore, to combat environmental crimes, criminal sanctions must be implemented primum remedium. Acts of environmental pollution and destruction must be addressed firmly through the application of criminal sanctions.

Based on this description, the author discusses the effectiveness of sanctions imposed on parties responsible for environmental crimes in an article entitled "Accountability for Environmental Crimes from the Perspective of Criminal Law in Indonesia."

Research Methode

The type of research used in this journal is normative legal research, examining law from an internal perspective, with legal norms as the object of research. This research outlines existing problems and then links them to applicable laws and regulations.[6] The laws in question are national laws and regulations related to positive law, specifically the Law on Environmental Protection and Management and Other Environmental Laws.

The approaches used in this research are the statute approach, the fact approach, and the analytical and conceptual approach.

[3] Samsul Wahidin, *Dimensi Hukum Perlindungan dan Pengelolaan Lingkungan Hidup*, Pustaka Belajar, Yogyakarta, 2014, hlm. 106.
[4] Muhammad Akib, *Hukum Lingkungan*, Rajagrafindo Persada, Jakarta, 2014, hlm. 17-19.
[5] Samsul Wahidin, op.cit. hlm. 104-106.
[6] I Made Pasek Diantha, *Metodologi Penelitian hokum Normatif dalam Justifikasi teori Hukum*, Predana Media Grup, Jakarta, 2016, hlm. 12.

2. Discussion

In Indonesia, the environmental and spatial planning legal framework is a crucial instrument for regulating natural resource and environmental management. The articles and laws governing these aspects provide the legal basis for addressing conflicts between mining activities and forest conservation efforts. Several articles and laws are relevant in this context.[7]

1. Law Number 32 of 2009 concerning Environmental Protection and Management

Article 1 paragraph (1) of Law Number 32 of 2009 defines the environment as a spatial entity with all objects, forces, conditions, and living creatures, including humans and their behavior, that affect the survival and well-being of humans and other living creatures. This law provides the legal basis for environmental protection and management in Indonesia.

Article 8 paragraph (1) of Law Number 32 of 2009 affirms that everyone is obliged to protect the environment from damage and pollution.

Article 9 paragraph (1) of the law stipulates that every activity with the potential to cause pollution and/or environmental damage must undergo an environmental impact study (AMDAL). This AMDAL must be prepared before the activity begins, and the results must form the basis for decision-making related to environmental permits.

2. Law Number 26 of 2007 concerning Spatial PlanningUndang-Undang Nomor 26 Tahun 2007 tentang Penataan Ruang

Article 1 paragraph (1) of Law Number 26 of 2007 defines spatial planning as the preparation, regulation, implementation, and control of the use of space and the environment based on the principles of sustainable development, national interests, regional interests, and community rights.

Article 13 of the law stipulates that the designation of spaces with conservation functions is based on certain criteria, such as biodiversity, ecological function, and natural beauty.[8]

3. Articles Related to Mining Conflicts and Forest Conservation

In cases of conflict between mining and forest conservation, several articles and laws mentioned above serve as a basis for conflict resolution. For example, Article 17 of Law Number 32 of 2009 stipulates that environmental permits will not be granted if the activity has the potential to damage protected environmental functions. This means that consideration of environmental impacts, including impacts on forest conservation, must be a primary consideration when granting permits.

Furthermore, Law Number 26 of 2007 also provides the legal basis for determining conservation areas. Conservation area designation is based on considerations of the biodiversity and ecological functions of an area. Therefore, granting mining permits in

[7] Elita Rahmi, "Instrumen Pemberian Izin Lokasi Perkebunan Sawit Dalam Rencana Tata Ruang Provinsi Jambi (the Instrument Permits the Provision of Oil Palm Plantation Location in Relation to the Spatial Plan of Jambi Province)," Jurnal Penelitian Universitas Jambi: Seri Humaniora 14, no. 1 (2012): 43423.

[8] Zaky Arita, Elita Rahmi, dan Fitria Fitria, "Pelaksanaan Fungsi Penyiaran Sebagai Implementasi Keterbukaan Informasi Publik Di Masa Pandemi Covid-19 Oleh Tvri Stasiun Jambi," Mendapo: Journal of Administrative Law 2, no. 3 (2021): 99–107.

conservation areas must consider negative impacts on the environment and forest conservation.

4. Law Enforcement and Conflict Resolution

Furthermore, this legal framework also encompasses aspects of law enforcement and conflict resolution. For example, Law Number 32 of 2009 provides the basis for regulating sanctions and legal action against violations of environmental provisions. Furthermore, the law also regulates the environmental dispute resolution process, providing a mechanism for peaceful and transparent conflict resolution.

The environmental and spatial planning legal framework in Indonesia provides a strong foundation for addressing conflicts between mining and forest conservation. Through the provisions of this law, it is hoped that natural resources and environmental management can be carried out sustainably, taking into account the interests of all parties involved. The importance of fair and transparent application and enforcement of the law is key to effectively addressing these conflicts for sustainable development in Indonesia.[9]

3. 1 Regulations Concerning Responsibility for Environmental Crimes According to Criminal Law in Indonesia

The application of criminal law to address environmental crimes is outlined in the sanctions outlined in applicable laws and regulations. Law Number 32 of 2009 concerning Environmental Protection and Management stipulates administrative, criminal, and civil sanctions. In addition to these sanctions, Law Number 32 of 2009 establishes three systematic law enforcement steps: administrative law enforcement, dispute resolution outside of court or through the courts, and investigation of environmental crimes.

According to criminal law theory, some argue that the application of criminal sanctions serves as the ultimum remedium for perpetrators of environmental crimes. This is based on the understanding that it is the government's responsibility to manage the environment through the imposition of administrative sanctions.[10] Administrative action involves the issuance of permits by authorized agencies or institutions. Administrative sanctions are imposed upon violations. Following administrative sanctions, civil sanctions are imposed in the form of fines or compensation for material damages. Criminal sanctions are only imposed when administrative and civil sanctions are ineffective.

Law Number 32 of 2009 applies minimum threats in addition to maximum penalties, criminalization for violators of environmental quality standards, expansion of evidence, regulation of corporate crimes and integration of criminal law enforcement. The principle of ultimum remidium is applied only to certain formal crimes, where criminal law is a last resort after the application of administrative sanctions is deemed ineffective, as examples of crimes that use the principle of ultimum remidium are violations of wastewater quality standards, emissions, disturbances in accordance with what is regulated in Article 100 of Law Number 32 of 2009. In addition, criminal provisions in other articles apply the principle of premium remidium, for example, the management of B3 waste and waste dumping. The application of

[9] Iqbal Anshori, Elita Rahmi, dan Syamsir Syamsir, "Polemik Penerapan Tanda Tangan Elektronik Dalam Pembuatan Akta Otentik," Recital Review 4, no. 2 (2022): 353–73.

[10] St. Munadjat Danusaputro, Teguh Sulistia dan Aria Zurnetti, *Hukum Pidana Horizon Baru Pasca Reformasi*, PT RajaGrafindo Persada, Jakarta, 2011, hlm. 170.

the principle of premium remidium is considered appropriate because violations of B3 waste and dumping are not material offenses, or offenses that do not require material evidence to determine the prohibited impact of an act that occurs.[11]

3. 2 Regulations Concerning Responsibility for Environmental Crimes According to Criminal Law in the Future

Based on the criminal law perspective, it can be seen that efforts to combat criminal acts can be seen from 3 aspects, namely the criminalization policy aspect, the criminal responsibility aspect, and the punishment aspect.

a. Criminalization Policy Aspects

What is meant by the aspect of criminalization policy is a policy to determine an act that was originally not a criminal act to be a criminal act.[12]

b. Aspects of Criminal Responsibility

There are two important aspects of criminal law: criminal acts related to the perpetrator and errors related to criminal responsibility. While criminal acts are generally recognized as legal subjects, corporations have also been recognized as legal subjects. The mechanisms for criminalizing corporations include:

1. Criminal penalties are imposed for crimes committed by employees, known as the principle of strict liability.

2. Criminal penalties are imposed when the actions of specific members of the corporation are recognized, known as the principle of identification. For example, a director's decision is also considered a corporate decision.

c. Criminal Aspects

Criminal punishment is essentially a punishment for deviant behavior committed by society. Therefore, this opinion suggests that criminal punishment is merely a form of retribution. However, on the other hand, criminal punishment is also intended to improve the behavior of the convicted person and deter others from committing similar crimes.[13]

Several weaknesses remain in the formulation of Law Number 32 of 2009, which amends Law Number 23 of 1997 concerning Environmental Protection. One example concerns the management of hazardous and toxic waste and dumping, specifically in Articles 60, 61, and 104. Article 60 states:

"Everyone is prohibited from dumping waste and/or materials into the environment without a permit."

Article 61 states:

1. Dumping as referred to in Article 60 may only be carried out with a permit from the Minister, Governor, or Regent/Mayor, in accordance with their respective authorities.

[11] Sri Sufiyatidan, Munsyarif Abdul Chalim, op.cit. hlm. 461.

[12] Barda Nawawi Arief, *Tindak Pidana Mayantara Perkembangan Kajian Cyber Crime di Indonesia*, PT Raja Grafindo Persada, Jakarta, 2006, hlm. 90.

[13] Sri Sufiyatidan, Munsyarif Abdul Chalim, op.cit. hlm. 463.

2. Dumping as referred to in paragraph (1) may only be carried out at designated locations.

3. Further provisions regarding the procedures and requirements for dumping waste or materials may be regulated in a Government Regulation.

The criminal provisions governing dumping are contained in Article 104 of Law No. 32 of 2009, which states:

"Any person who dumps waste and/or materials into the environmental environment without a permit as referred to in Article 60 shall be punished with a maximum imprisonment of 3 (three) years and a maximum fine of Rp. 3,000,000,000.00 (three billion rupiah)."

There is a dispensation in the formulation of sanctions, where minimum sanctions are not formulated as in other articles concerning B3 waste management. Regulations and formulation of sanctions should be made more specific and clear, and sanctions imposed should be more severe than those currently in effect. As we all know, dumping B3 waste is very harmful to the environment.

3. Conclusion

The formulation of Law Number 32 of 2009, regarding sanctions imposed to address environmental crimes, includes three types of sanctions: administrative sanctions, civil sanctions, and criminal sanctions. The system begins with administrative sanctions, proceeds through settlements outside of court and in court, and investigations of environmental crimes.

Future criminal law regulations for environmental crimes will address these issues through other perspectives, such as criminalization policy, criminal liability, and criminalization. Regarding criminalization, it is hoped that the formulation of minimum sanctions and the provisions of the articles will be clear and specific to facilitate understanding by the public and law enforcement officials.

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