

EXISTENCE OF CRIMINAL LAW MECHANISMS IN ENVIRONMENTAL LAW

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Abstract: *Environmental damage in Indonesia is increasingly concerning, largely due to an anthropocentric view leading to the limitless exploitation of nature. Corporate environmental crimes often violate regulations, causing detrimental impacts on society and ecology. Despite an increase in companies engaging in pollution and environmental destruction, law enforcement against these corporations has not been optimal. Therefore, environmental impact control is crucial to minimize pollution risks. Law Number 32 of 2009 concerning Environmental Protection and Management serves as an important legal basis in Indonesia. This study employs a normative legal research method to address the urgency of criminal law instruments in environmental protection. Criminal sanctions are considered urgent and effective in tackling environmental problems as they serve as a law enforcement tool and provide a deterrent effect. The application of environmental criminal law is based on the principles of legality, sustainable development, prevention, and restraint, aiming to educate the public and prevent irresponsible behavior towards the environment.*

Keywords: *Environmental Criminal Law; Corporate Environmental Crime; Environmental Law Enforcement; Sustainable Development.*

1. INTRODUCTION

The current state of environmental degradation cannot be separated from humans' flawed perception of nature. For a long time, human thought has been dominated by the ethics of anthropocentrism in understanding and positioning themselves within the universe. Under this anthropocentric perspective, humans are regarded as the central rulers of nature, possessing the authority to do whatever they wish to the natural world. This has led to exploitative attitudes and behaviors, whereby nature and all its resources are used indiscriminately, without consideration for the resulting damage and long-term consequences (Hamidi et al., 2012) The anthropocentric worldview poses a significant threat to the sustainability and survival of biodiversity and its ecosystems as integral components of the environment. The concept of anthropocentrism stands in stark contrast to the principles of environmental justice and ecological fairness.

In the era of industrial globalization, environmental crimes frequently occur in areas dominated by corporate operations. These companies often engage in activities that pollute and degrade the environment, violating existing regulatory

frameworks in their management practices. Such actions not only breach environmental laws but also cause significant harm to surrounding communities by contributing to the spread of diseases and triggering environmental destruction that threatens the ecological balance essential for human life in the future (Muhtar, 2015).

The devastating impact of corporate crimes on the environment can be vast and complex, as the consequences are not limited to individuals alone, but also affect communities, nations, and the state as a whole. Therefore, a serious and comprehensive response is urgently required to address and mitigate such environmental harm (Muhtar, 2015).

The increasing number of development activities has an impact on the environment, pollution and environmental damage (Supramono, 2013). One of the consequences of increasing development activities is environmental pollution, particularly water pollution caused by industrial waste. Such waste is often discharged into rivers or water streams, resulting in the contamination of water sources and posing serious environmental and public health risks (Wahidin, 2014).

Corporate crimes and violations against the environment have been increasing year by year. This trend is evident from the results of the Environmental Performance Rating Assessment conducted by the Ministry of Environment in 2012. A total of 1,317 companies participated in the Environmental Management Performance Rating Program. The assessment results showed that 12 companies received a gold rating, 79 companies were rated black, 331 red, 119 green, and 771 blue. Notably, companies with red and black ratings, totaling 410, represent those that have caused significant environmental pollution and damage, effectively constituting environmental crimes with severe impacts. Despite the large number of offending companies, law enforcement actions against these corporations remain inadequate (Amir, 2020).

The latest data, in 2020, at least seven companies (corporations) were named as suspects in forest and land fire cases in Kalimantan. Corporate responsibility in these cases remains a major challenge for environmental law enforcement, especially in light of the frequent forest and land fires in South Kalimantan. The forest and land fires in this region have, among other causes, been attributed to corporate activities (Priagung, 2022).

In light of the various emerging environmental problems, it is the constitutional duty of the state and the government to protect all human resources of Indonesia as components of human capital, aiming for the welfare of all Indonesian people and humanity at large. Constitutionally, the state has the authority to regulate and establish policies and regulations concerning environmental and natural resource management to realize the welfare of its citizens, including the fundamental human right of every individual to a good and healthy environment.

Considering the significant impacts caused by environmental pollution on the sustainability of a clean and healthy environment, it is necessary to implement control measures to minimize the risks of environmental contamination. Environmental protection and management in Indonesia are fundamentally governed by Law Number 32 of 2009 on Environmental Protection and Management. The primary objectives and targets stipulated in this law emphasize integrated management in the utilization, restoration, and development of the environment. These objectives are largely driven by the reality of unrestrained exploration and exploitation of natural resources by humans, which has resulted in environmental degradation and pollution.

Although environmental regulations have been enacted, the condition of Indonesia's environment continues to deteriorate over time. The urgency of this research is that the enforcement of criminal sanctions is very important as a means to overcome environmental problems. The national environmental law includes a policy that mandates the imposition of criminal penalties to protect the environment. This policy aligns with Agenda 21, which emphasizes the need to develop an integrated and comprehensive legal framework for sustainable development. Consequently, the regulation of criminal law within the Environmental Protection and Management Act serves as an instrument to achieve the goals of environmentally sound sustainable development (Hardjosoemantri, 2005). Based on the background described above, the issue to be addressed is the urgency of criminal law instruments in the field of environmental protection.

2. METHODS

In this study, the author employs normative legal research. According to Peter Mahmud Marzuki, normative legal research is a process of identifying legal rules, legal principles, and legal doctrines to address the legal issues encountered (Marzuki, 2011). Legal sources in this research include Article 33 of the 1945 Constitution of the Republic of Indonesia (UUD 1945), and Law Number 32 of 2009 concerning Environmental Protection and Management. The nature of this research is normative with a legal perspective. This study employs a statutory approach and a conceptual approach in analyzing criminal law instruments in the field of environmental protection.

3. RESULTS AND DISCUSSION

3.1. Urgency of Criminal Law in Environmental Governance and Protection

The environment is one of the blessings from God Almighty that must be preserved and sustainably developed to continue serving as a vital support for human life and other living beings, ensuring the continuity and improvement of life quality itself (Hakim, 2020). In general, environmental degradation is caused by two factors: internal and external. Internal factors refer to damage originating from natural processes, while external factors are caused by human activities.

Environmental degradation can be caused by both individuals and corporations. Among these legal subjects, corporations deserve particular attention due to the significant environmental damage resulting from their business activities. This is largely because corporations typically operate using advanced equipment and produce goods on a large scale, which can have substantial impacts on the environment.

Environmental problems globally have been increasing in line with industrial development and population growth, especially in developing countries. The deterioration of environmental quality has reached a level where the damage is irreversible and cannot be restored to its original condition (Said & Nurhayati, 2020). Environmental problems are progressively becoming larger, more widespread, and

more severe. These issues have extended beyond local or translocal scopes to encompass regional, national, transnational, and global dimensions (Hakim, 2020).

In summary, the degradation of environmental quality is closely linked to the reckless and excessive exploitation of natural resources. Pollution does not occur instantaneously but rather through a gradual process of environmental quality decline, beginning with contamination by certain substances or materials over an extended period (Danusaputro, 1986).

In Indonesia, environmental degradation has reached a concerning level, potentially causing damage that will affect future generations. Consequently, these generations inherit environmental problems resulting from past environmental destruction. The essence of the environment encompasses the order and values that sustain the continuity of life within it. These orders and values uphold the sustainability of the environment, natural resources, and social justice concerning the Right to Environment (Hak Atas Lingkungan) for both current and future generations. Therefore, it must be emphasized that the environment should be viewed and managed for sustainable life, rather than merely for growth and equitable development.

The constitutional basis for natural resource management grounded in environmental sustainability is enshrined in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, post-amendment, which states: "The earth, water, and the natural resources contained therein shall be controlled by the State and utilized for the greatest prosperity of the people." In the rational implementation of development, the extraction of natural resources must be carried out in such a way that it does not damage the human environmental order, conducted with comprehensive wisdom, and with consideration for the needs of future generations (Manik, 2003).

These constitutional provisions serve as a fundamental basis for environmental protection in Indonesia. The government began enforcing environmental law by enacting Law Number 4 of 1982, which was subsequently replaced by Law No. 23 of 1997, and later by Law No. 32 of 2009 to adapt to contemporary developments and support sustainable development. Environmental regulations have also been implemented at the regional level. Criminal sanctions, initially considered as *ultimum remedium* (a last resort), are now regarded as *primum remedium* (the primary measure) due to their greater effectiveness in addressing environmental damage resulting from the shortcomings of previous approaches.

As a developing discipline, much of the environmental law material is part of administrative law (*administratiefrecht*). Environmental law also encompasses aspects of civil, criminal, tax, international law, and spatial planning, and therefore cannot be strictly classified within the classical divisions of public and private law. Consequently, the substance of environmental law gives rise to branches such as

environmental administrative law, environmental civil law, and environmental criminal law (Rangkuti, 2018).

Regarding environmental crimes from the perspective of environmental criminal law, criminal law is employed as a means of environmental law enforcement aimed at addressing such crimes. One approach to combating these offenses is through the application of criminal law and its associated sanctions. However, this approach remains a subject of ongoing debate. According to Inkeri Antila, the discussion on the role of criminal law in tackling these issues has persisted for centuries. Herbert L. Packer describes the use of criminal sanctions to control antisocial behavior by punishing offenders who violate criminal regulations as a social problem with significant legal dimensions (Achmad, 2013).

Herbert L. Packer, in his book *The Limits of the Criminal Sanction*, states that (Hartiwiningsih, 2020):

- *The criminal sanction is indispensable we could not now or in the foreseeable future get along, without it.*
- *The criminal sanction is the best available device we have for dealing with gross and immediate harms and threats of harm*
- *The criminal sanction is at once the prime guarantor and prime threatener of human freedom. Used providently and humanely, it is guarantor; used indiscriminately and coercively, it is threatener.*

From this formulation, the importance of criminal sanctions in addressing various threats of crime and violations, both now and in the future, becomes evident. Criminal sanctions represent the best available means to confront serious crimes and dangers; they serve as the principal guarantor and, at times, the primary threat to human freedom. They act as a guarantor when applied sparingly and judiciously, and as a threat when other legal measures fail. Therefore, criminal law must advance. As Moderman suggests, the state should criminalize acts that violate the law and cannot be effectively prevented by other means, making criminal law the spearhead. However, it should not be expected that criminal law will fill all legal gaps.

When criminal law is designated as a tool to combat crime, it must thoroughly consider all factors that support its effective functioning in practice. These supporting factors include, among others (Hartiwiningsih, 2020):

- a. The application of criminal law must consider the goals of national development, which are to realize a just and prosperous society both materially and spiritually based on Pancasila. In this regard, the purpose of criminal law is to combat crime and implement measures to address such offenses, all for the welfare and protection of the community.
- b. Acts targeted for prevention or control by criminal law must be undesirable behaviors, meaning actions that cause harm (both material and spiritual) to members of society.

- c. The use of criminal law must also take into account the cost-benefit principle.
- d. The application of criminal law must consider the capacity or capability of law enforcement bodies to carry out their duties, avoiding an overload of responsibilities (overbelasting). Upon thorough examination, the relationship between criminal law instruments.

In Indonesia, the use of criminal law instruments appears to be a policy widely accepted by all parties, as evidenced by the consistent inclusion of criminal sanctions in every legislative regulation. The application of criminal law is considered normal and appropriate, and indeed should be present in all legislation as a means to ensure compliance with the regulations. However, the emerging issue is what kind of policy should be adopted to ensure that the use of criminal sanctions in legislation is truly effective, their presence is beneficial to society, and they achieve success and utility (Abdullah, 2022).

The functionalization of criminal law to address environmental destruction is realized through the formulation of criminal sanctions in the applicable legislation. There are two main reasons for the necessity of criminal sanctions: First, criminal sanctions are intended not only to protect human interests but also to safeguard environmental interests, since humans cannot fully enjoy their property and health if the fundamental conditions of a good environmental quality are not met. Second, the utilization of criminal sanctions is also aimed at instilling fear in potential polluters. Criminal sanctions may include imprisonment, fines, orders to restore the polluted and/or damaged environment, business closures, and public announcements through mass media that can damage the reputation of the involved business entity. The enforcement of environmental criminal law is based on the principle of legality, encompassing both substantive and procedural aspects (Dwiprigitaningtias, 2019).

The general principles applicable in environmental criminal law were articulated by Muladi as follows (Muiksan, 2017):

1. **Principle of Legality.** This principle encompasses legal certainty as well as clarity and precision in formulating criminal law regulations, particularly regarding the definitions of environmental crimes and the sanctions that must be imposed to ensure compliance with the norms. This relates to the accuracy of the criminalization process and its requirements, which include the existence of a victim and clear losses specified in the legal norms.
2. **Principle of Sustainable Development.** This principle emphasizes that economic development must not sacrifice the rights of future generations to enjoy a healthy and good environment.
3. **Precautionary Principle.** This principle asserts that when there is danger or a threat of serious and irreversible environmental damage, the lack of complete scientific certainty should not be used as a reason to delay cost-effective measures aimed at preventing environmental degradation.

4. **Principle of Restraint.** This principle serves as a condition for criminalization, stating that criminal sanctions should only be utilized when civil sanctions, administrative sanctions, and other means prove inadequate or ineffective in addressing certain offenses. In criminal law, this is known as the subsidiarity principle or the "*ultima ratio principle*" or "*ultimum remedium*."

The enforcement of environmental criminal law has several objectives to be achieved through sentencing, namely: First, to educate the public regarding the moral wrongdoing associated with prohibited conduct. Second, to prevent or deter potential offenders in the context of environmental criminal law enforcement from engaging in irresponsible behavior toward the environment (Manik, 2003).

The measure of justice in sentencing for environmental crimes cannot be separated from the philosophy of punishment and the philosophy of environmental law itself. The study of punishment philosophy in environmental crimes, within the framework of legislative policy and application policy, is inseparable from the essence of environmental law, which is rooted in ecological principles that emphasize the balance and sustainability of environmental functions. It also takes into account intragenerational and intergenerational justice in order to achieve sustainable development (Nainggolan, 2007).

4. CONCLUSIONS

The problem of environmental degradation, particularly in Indonesia, has become increasingly concerning in recent years. This condition is closely linked to the anthropocentric worldview, which places humans at the center of nature and legitimizes its exploitation without adequate consideration of the resulting damage. Environmental crimes are frequently perpetrated by corporations whose operational activities cause pollution and environmental destruction, leading to adverse impacts such as public health risks and long-term ecological threats. Empirical data show that numerous companies are involved in environmental pollution and degradation; however, law enforcement efforts remain insufficient and ineffective.

Considering the significant impacts posed, it is imperative to implement environmental impact control mechanisms to mitigate the risks of environmental pollution. The state holds a constitutional and moral obligation to protect the environment and natural resources for the benefit of its citizens, including safeguarding the right to a healthy and sustainable environment. Law Number 32 of 2009 on Environmental Protection and Management serves as the primary legal framework in Indonesia, providing the foundation for integrated environmental governance that encompasses utilization, restoration, and sustainable development.

The application of criminal sanctions has become an urgent necessity in responding to environmental problems, as such measures are regarded as more effective compared to previous regulatory approaches. Environmental criminal law functions as a legal instrument to address and deter environmental offenses. The

imposition of criminal penalties aims to protect both human interests and ecological integrity, while also serving as a deterrent to potential violators. In practice, the enforcement of environmental criminal law is based on several key principles, including legality, sustainable development, prevention, and environmental control. The overarching objective of enforcing environmental criminal law is to foster public awareness and discourage irresponsible environmental behavior.

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