

JURIDICAL ANALYSIS OF CRIMINAL ACTS IN ENVIRONMENTAL POLLUTION IN ACCORDANCE TO THE 32 LAW OF 2009 CONCERNING PROTECTION AND MANAGEMENT ENVIRONMENT

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Citation: Chaidir, M. Noor., et.al., 2024. Juridical Analysis Of Criminal Acts In Environmental Pollution In Accordance To The 32 Law Of 2009 Concerning Protection And Management Environment. *Int' Journal of Law, Environment, and Natural Resources (INJURLENS)*, 4 (1), 55-67.

Academic Editor: Muhammad Hendri Yanova
Received: 6 June 2023
Revised: 22 April 2024
Accepted: 22 April 2024
Published: 29 April 2024

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Abstract: This study aims to describe the regulation of criminal acts of environmental pollution in Indonesian positive law and to analyze the responsibility for criminal acts of environmental pollution according to Law Number 32 of 2009. This study uses normative legal research in the form of library research using three types of legal materials, namely primary, secondary and tertiary legal materials, qualitative descriptive research, normative juridical research, statutory and conceptual approaches.

The results of the study stated that the regulation of criminal acts of environmental pollution in Indonesian positive law is regulated in Law Number 32 of 2009 concerning the Environment. This law stipulates that if environmental pollution and damage has already occurred, it is necessary to take repressive measures in the form of effective, consistent and consistent law enforcement against environmental pollution and damage that has occurred so as to apply the principle of *primum remedium* criminal law.

The crime of environmental pollution is not only imposed on individual perpetrators of environmental crimes, but also on corporations. In addition, also to customary law communities based on the Constitutional Court decision No. 35/PUU-X/2012 by using conditionality in recognizing the existence of indigenous peoples as legal subjects which are still maintained as long as in reality they still exist and their existence is recognized, and confirmation of their existence is stipulated by Regional Regulations..

Keywords: Juridical Analysis; Crime; Environment.

1. INTRODUCTION

Environmental problems in developing countries like Indonesia are different from environmental problems in developed countries or industrialized countries.

Environmental problems in developed countries are caused by pollution as a result of the side effects of using advanced technological energy materials which waste energy in transportation and communication activities and other economic activities, while environmental problems in Indonesia often stem from underdevelopment as a cause of environmental problems. which exists.

The consequences of pollution and environmental destruction are not only a national problem, but have become a problem between countries, regionally and globally. The world is getting smaller, relations between countries are getting closer and there is dependence between one country and another. The consequences of environmental problems have sometimes crossed national borders, in the form of river water pollution, air emissions, forest fires, oil pollution at sea, and many others. Likewise, the process caused by the use of natural resources (SDA) will also have an impact on environmental destruction.

The environment is a place where there are living things and inanimate things, all of which are in one unit. The environment also greatly influences the survival and well-being of humans and other living things. The environment is also a medium for mutual relations between living things and inanimate objects which form a unified whole, where humans are in it. The science that studies the mutual relations between living things and their environment is called ecology. (Sodikin, 2003) It has been explained in Law Number 23 of 1997 concerning Environmental Management, the definition of the environment in article 1 paragraph (1) namely: "The environment is a unitary space and all objects, forces, conditions and living things, including humans and their behavior, which affect the continuity of life and well-being of humans and other living things." (Republik Indonesia, 2004).

Development that is environmentally sound, including natural resources, is a means to achieve sustainable development and a guarantee for the welfare and quality of the present and future generations, because environmental pollution and destruction will become a social burden, which in the end the community and the government must bear the recovery costs.

The constitutional basis relating to the implied notion of sustainable development can be found in the provisions of Article 33 paragraph (4) of the 1945 Constitution which states: "The national economy is organized based on economic democracy with the principles of togetherness, efficiency, fairness, sustainability, environmental insight, independence, and with maintaining a balance of progress and national economic unity. Meanwhile in the international world, regarding sustainable development was developed through The World Commission on Environment and Development in 1987, better known as the "Brundtland Report"¹⁰⁹ with the title "Our Common Future" (Our Common Future). The report stated that there is a need for every country to implement sustainable development.

The existence of an obligation to protect the environment means that the environment with all its resources is wealth that can be used by everyone, and therefore must be maintained for the benefit of society and future generations. The protection of the environment and its natural resources has a double duty, namely to serve the interests of society as a whole and the interests of individuals. (Hardjasoemantri, 1999).

From a formal juridical point of view, public policy regarding the environment in Indonesia has been set forth in Law No. 32 of 2009 concerning the Protection and Management of the Environment which is a provision of the Act as a legal umbrella for all forms of regulations concerning issues in the environmental field. Many of the principles or principles contained in the law are very good for the purpose of protecting the environment and all its contents. However, its implementation still needs to be followed up with various implementing regulations so that it can operate as expected.

We can find the definition of pollution and environmental damage in the law, where environmental pollution is the entry or inclusion of living things, substances, energy and or other components into the environment by certain activities which cause the environment to not function according to its designation. Meanwhile, the destruction of the environment is an act that causes direct or indirect changes to its physical and/or biological characteristics which results in the environment no longer functioning in supporting sustainable development.

Environmental crimes are not only a national problem, but have become a problem between countries, regionally and globally. The world is getting smaller, relations between countries are getting closer and there is dependence between countries with one another. The consequences of environmental problems sometimes cross national borders, in the form of river water pollution, air emissions, forest fires, oil pollution at sea, and many others. Likewise, processes arising from the utilization of Natural Resources will also have an impact on environmental destruction.

2. METHODS

This is a normative legal research, using a statutory regulation approach that focuses on primary legal material, namely Law No. 32 of 2009 concerning Environmental Protection and Management. The nature of qualitative descriptive analysis. Collection of legal materials is carried out by means of document studies (*library*), processing of legal materials is carried out by means of checking (*editing*), marking (*coding*), reconstruction, and systematizing.

3. RESULTS AND DISCUSSION

3.1. Environmental Pollution Crimes in Indonesian Positive Law.

Article 1 point 4 of Law Number 23 of 1997 concerning Environmental Management contains the following formulation: "Ecosystems are an arrangement of environmental elements which are an integral whole and influence each other in forming balance, stability and environmental productivity". Leden Marpaung stated that the meaning of the word "System" in terms of ecosystem shows a complete "unity" or "integration", which can consist of subsystems that are interrelated, influence each other and are interdependent. With this formulation, it can be understood that the earth consists of components, namely humans (M), air (U), water (A), soil (T), forests (H), animals (S), environment (L).

Law Number 32 of 2009, formulates the meaning of "environment" in Article 1 point 1 which reads as follows: "The environment is a spatial unit with all objects, resources, conditions, and living things including humans and their behavior, which affect the continuity of life life and well-being of humans and other living things." While

the definition of "environment" experts make boundaries with various formulations. R.M. Gatot P. Soemartono, expressed some of the expert's formulations, as follows: "In general, the environment is defined as all objects, conditions, circumstances and influences contained in the space we live in, and affect living things including human life. The boundaries of environmental space according to this understanding are very broad, but in practice it is limited to environmental space by factors that can be reached by humans such as natural factors, political factors, economic factors, social factors and others. (Hardjasoemantri, 1999)

Soedjono defines "environment" as a physical or physical living environment that includes and encompasses all the physical elements and factors found in nature. In this sense humans, animals, and plants that are in it. (Hardjasoemantri, 1999) Emil Salim defines the environment: "All objects, conditions and influences contained in the room we live in, and affect life including human life. (Hardjasoemantri, 1999) According to Munadjat Danusaputro, the environment is all objects and forces and conditions including humans and their actions that are contained in the space where humans are and affect the survival of others. Thus sufficient terms of the physical environment and terms of the cultural environment. (Danusaputro & Munajat, 1980).

As for protection and management, Article 1 paragraph (2) of Law Number 32 of 2009 concerning Environmental Protection and Management:

"environmental protection and management are systematic and integrated efforts that can be made to preserve environmental functions and prevent environmental pollution or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement"

In environmental management, principles related to management cannot be separated, including deviations that can result in a decrease in environmental quality. Conditions and procedures for relationships between environmental components have regularity or adhere to certain principles. This environmental principle is useful as a foundation in environmental management. Openness and community participation are

essential principles in good environmental management, especially in preventing environmental pollution.

From the above understanding, it can be concluded that managing the environment is an effort that can be integrated into 1. Environmental Planning 2. Environmental Utilization 3. Environmental Control 4. Environmental Maintenance 5. Environmental Monitoring 6. Environmental Law Enforcement. In this case that from an arrangement can be located in terms of environmental management. To carry out a protection and management, a principle is needed. Law Number 32 of 2009 Article 2 concerning Principles, Objectives and Scope:

"State responsibility, sustainability and sustainability, harmony and balance, integration, benefits, prudence, fairness, ecoregion, biodiversity, paying polluters, participation, local wisdom, good governance, and regional autonomy."

Neither in the formulation of the experts nor in the formulation of the Act, the word "existence" is not found. The word is very important in understanding the nature of "pollution/environmental destruction" because the existence of humans or a living creature in a place is very closely related to the "environment" in the system, meaning it is associated with the ecosystem. (Marpaung, 1997).

Many of the principles or principles contained in the UUPLH are very good in the purpose of protecting the environment and all of its contents, whose application still needs to be followed up with various implementing regulations, so that it can operate as expected. Material in the field of environment is very broad, because it covers aspects from outer space, down to the seabed and the bowels of the earth. This also includes human resources, biological resources, non-living natural resources and artificial resources.

Materials like this cannot be completely regulated in a law, but require a set of laws and regulations with similar directions and characteristics. Because of this, the nature of the law regulates "Environmental Management". Environmental law contains basic principles and principles for environmental management, so that it can function as an "umbrella", both for drafting other laws and regulations related to the environment,

as well as for adjusting existing laws and regulations and may need to be refined to keep pace with developments.

Environmental management which is carried out under the principle of state responsibility, the principle of sustainability, and the principle of benefit aims to realize sustainable development with an environmental perspective in the context of developing the Indonesian society as a whole and the development of a whole Indonesian society that has faith and piety to God Almighty. This is clearly stated in Article 3 of Law No. 32 of 2009.

With regard to laws related to the environment, according to Hamza, they have two dimensions, namely: first, are provisions regarding community behavior, all of which aim to encourage members of the community even if necessary to be forced to comply with environmental laws whose aim is to solve environmental problems; second, is the dimension of giving rights, obligations and authority to government agencies in managing the environment. (Hamzah, Peneakan Hukum Lingkungan, 2005)

Penal instruments are very important in enforcing environmental law to anticipate environmental damage and pollution. In Law Number 23 of 1997 concerning environmental management, two types of criminal acts are recognized, namely:

1. Generic crimes. It is an unlawful act that causes pollution or damage to the environment. Such acts of legal opponents must not be connected with violations of administrative law rules so that this material offense is also known as Administrative Independent Crimes.
2. Formal offenses (*specific crimes*). This offense is interpreted as an act that violates the rules of administrative law.

The UUPLH defines several acts that are classified as crimes:

- a. intentionally commit acts that result in environmental pollution.
- b. Deliberately commit acts that result in damage to the environment
- c. Negligence in committing acts that result in environmental pollution
- d. Negligence in committing acts that result in environmental damage
- e. Deliberately releasing or disposing of hazardous substances, energy and/or other components
- f. Deliberately providing false information or omitting or hiding or damaging the information required in relation to item (e)

- g. Negligence in committing the acts as stated in points (e) and (f) above.

Criminal sanctions in environmental protection are used as ultimum remedium, where criminal charges are the end of a long chain. Aims to eliminate or reduce adverse effects on the environment. The links in the chain are: (Husein, 1995) 1. determination of policy, design and planning, environmental impact statement; 2. regulations regarding standards or minimum guidelines for licensing procedures; 3. administrative decisions on violations, determination of deadlines and final days for compliance with regulations; 4. civil lawsuits to prevent or inhibit violations, research on fines or compensation; 5. a public lawsuit to force or urge the government to take action, a claim for compensation; 6. criminal charges.

In environmental crimes, there are the following principles: (Erwin, 2008)

1. The principle of legality; it is the most prominent principle in environmental crimes, where punishment must be based on statutory provisions. According to this principle, the formulation of criminal law regulations must contain clarity relating to what is referred to as criminal acts in the environmental field (environmental delict), regarding criminal justice and regarding sanctions that need to be imposed so that there is legal certainty to protect the environment and natural resources to be enjoyed by future generations.
2. The principle of sustainable development (The Principle of Sustainable Development); this principle was accepted by The UN General Assembly in 1992. This principle emphasizes that economic development should not sacrifice the rights of future generations to enjoy a healthy environment. Sustainable development requires the existence of a system that guarantees compliance with the law. What is important in this regard is laying the foundation for the development of effective and credible compliance.

To ensure compliance and enforcement of laws and regulations, the responsibility for protecting the sustainability of environmental capabilities must be clearly defined and understood. Every apparatus must understand and be

aware of their duties according to the law. Once their duties have been legally assigned, each official is obliged to carry out his duties. The legal obligation of every apparatus is to consistently carry out their duties according to law.

3. The precautionary principle; this principle is contained in principle 15 of the Rio de Janeiro Declaration. This principle emphasizes that efforts to take action against formal violations of environmental laws do not immediately impose heavy sanctions, but must be carried out gradually and thoroughly from the lightest, moderate to the heaviest.
4. Principle of control (Principle of restraint); this principle is also one of the conditions for criminalization. This principle states that criminal sanctions should only be used against environmental crimes if there are ineffective administrative legal sanctions, civil law and alternative environmental dispute resolution out of court. In criminal law this is known as the principle of subsidiarity (ultima ratio principle/ultimum remedium/lost resort/last resort).

3.2. Criminal Responsibility for Environmental Pollution Perpetrators according to Law Number 32 of 2009

Criminal liability implies that every person who commits a crime or violates the law, as defined in the law, that person must be held accountable for his actions according to his mistakes. In other words, a person who commits a criminal act will be held accountable for the act criminally if he has a mistake, a person has a mistake if when he commits an act seen from the point of view of society, it shows a normative view of the mistakes that that person has made. (Moeljatno, 2007) .

Criminal responsibility is implemented with punishment, which aims to prevent the commission of criminal acts by enforcing legal norms for the protection of society; resolve conflicts caused by criminal acts; restore balance; bring a sense of peace in society; socialize convicts by holding coaching so that they become good people and free the guilt of convicts.

A criminal responsibility must pay attention that criminal law must be used to create a just and prosperous society that is materially and spiritually equitable. The

criminal law is used to prevent or overcome unwanted acts. In addition, the use of criminal law facilities with negative sanctions must pay attention to costs and the working capacity of the relevant institutions, so that there is no overloading in implementing them. (Moeljatno, 2007).

A person will be held accountable for a criminal act, if the act is against the law and there is no reason to justify or negate the unlawful nature of the crime he committed. From the point of view of being responsible, only someone who is capable of being responsible can be held accountable for his actions. A crime if there is no mistake is the principle of criminal responsibility, therefore in the case of a person being punished for committing an act as threatened, this depends on whether in committing this act he has made a mistake. The ability to be responsible is an element of error, so to prove the existence of an error, this element must be proven again.

Environmental Law No. 32 of 2009 Article 1 number 3 regulates that everyone is an individual or a business entity, whether a legal entity or not a legal entity, then "everyone" also includes corporations or in this law are called business entities. As a result of the law, all articles that regulate punishment must also be applied to corporations. The definition of environmental pollution is formulated in Article 1 paragraph (12) of Law Number 23 of 1997 is "the entry or inclusion of living things, substances, energy and/or other components into the environment by human activities so that their quality drops to a level which causes the environment to not function according to its designation". (Moeljatno, 2007)

In Article 1 number 12 UUPLH contains elements of acts of environmental pollution, namely:

1. Entry or inclusion of living things, substances, energy, and/or other components into the environment.
2. Human activities are carried out.
3. The decline in environmental quality to a certain level.
4. Causing the environment to no longer function.

The provisions of Article 116 UUPPLH regulate criminal liability in the event that a crime is committed by, for and on behalf of a business entity. In relation to criminal liability, it must be clear in advance about who can be held accountable. That is, it must first be ascertained who is declared as the author of the crime. Regarding who is declared as the perpetrator of the crime (subject of the crime) in general, the legislators have formulated it. (Syahrin, 2021)

Perpetrators of environmental crimes based on Article 116 UUPPLH, namely: carried out by business entities; conducted for business entities; carried out on behalf of the business entity; carried out by business entities carried out by people based on work relations who act within the scope of work of the business entity; carried out by business entities carried out by people based on other relations who act within the scope of work of the business entity; carried out for business entities carried out by people based on work relations who act within the scope of work of the business entity; carried out for business entities carried out by people based on other relations who act within the scope of work of the business entity; carried out on behalf of a business entity carried out by a person based on a work relationship who acts within the scope of work of the business entity; carried out on behalf of a business entity carried out by a person based on another relationship who acts within the scope of the business entity's work.

4. CONCLUSIONS

Arrangements for criminal acts of environmental pollution in Indonesian positive law are regulated in Law Number 32 of 2009 concerning the Environment. This law stipulates that if environmental pollution has already occurred, it is necessary to take repressive measures in the form of effective, consistent and consistent law enforcement against environmental pollution and damage that has occurred so as to apply the principle of *primum remedium* criminal law.

The crime of environmental pollution is not only imposed on the perpetrators of the crime of environmental pollution individually, but also on corporations. In addition, to customary law communities based on the decision of the Constitutional Court No.

35/PUU-X/2012 by using conditionality in recognizing the existence of indigenous peoples as legal subjects which are still maintained as long as in reality they still exist and their existence is recognized, and confirmation of their existence is stipulated by Regional Regulations.

5. SUGGESTION

Law Number 32 of 2009 concerning the Environment as positive law in Indonesia cannot be enforced without the support of parties such as the government, society, non-governmental organizations (NGOs), corporations and other stakeholders. Therefore uniformity of action and synergy are things that must be formed and maintained.

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