

Reform of Environmental Criminal Law in Overcoming Protection Gaps and Enforcing Accountability

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Abstract. The renewal of Environmental Criminal Law is an effort to adapt the legal system to the dynamics of increasingly complex environmental changes. The reformulation of criminal norms related to the environment is an urgent need to overcome modern ecological challenges. Strengthening cooperation between states, the private sector, and civil society is an important element to achieve environmental sustainability globally. The author will discuss how gaps in environmental protection in Indonesia and how obstacles in enforcing criminal liability for environmental violations. The research used in writing is normative juridical. The primary and secondary legal materials used in this study are the sources of the legal materials. Books on legal science are the primary sources of information. The method of analysis, which is then described in descriptive analysis writing, is the method of data processing.

Keywords: Reform, Criminal Law, Environment

1 Introduction

Planning, utilization, control, maintenance, supervision, and law enforcement are all components of environmental protection and management, which aims to preserve environmental functions and prevent environmental damage and pollution.[1] The idea of environmental law is actually corrective to various mistakes that have been made by society in both developed and developing countries, especially due to the practice of industrialization which initially seemed almost without restrictions.[2]

The comprehensive history of Indonesian environmental law regulation, also known as environmental law, can be traced back to Law Number 4 of 1982, which was about Basic Environmental Provisions and was abbreviated as UULH. Later, Law Number 23 of 1997, which was about Environmental Management, was called UUPH. Now, Law Number 32 of 2009, which is about Environmental Protection and Management, is called UUPPLH.[3]

Environmental law is a juridical instrument that contains rules regarding environmental management. Environmental law aims to prevent depreciation and degradation of environmental quality. Munadjat Danusaputro argues that environmental law is a concept of environmental studies

that specializes in legal science, with the legal object being the level of public awareness and understanding of the aspects of protection as a necessity of life.

Law No. 32 of 2009 strengthened the principles of environmental protection and management based on good governance, which is the fundamental difference between Law No. 23 of 1997 and Law No. 32 of 2009. This is because every process of formulating and implementing instruments to prevent pollution and/or environmental damage as well as mitigation and law enforcement requires integrating aspects of transparency, participation, accountability, and justice. Therefore, each of the laws mentioned only contains the main principles and principles for environmental management, therefore the law serves as an "umbrella" for the preparation of other laws and regulations. Thus UULH, UUPPLH or UUPPLH are referred to as "*umbrella act provisions*".

The environment should be viewed as a whole and as a well-organized system in which all elements are placed equally. Renewal and development have brought many disasters to the environment and humanity, in this case, the environment is interpreted conventionally. The environment is considered as an object. This perspective views and places the environment as an object that also means wealth and can be utilized for the sole purpose of supporting development, as a result, the current state of nature and the environment has become worse over time.

The environment is one of the most discussed issues in the world. The environment is getting worse because environmental damage has also caused undesirable things to happen. Environmental damage in science is the introduction or introduction of living things, energy resources, or other components into the environment, as well as changes in the order of the environment caused by human activities or natural processes, resulting in a decrease in the environment's quality to the point where it can no longer function in accordance with its designation.[4]

Environmental damage in terms of where it occurs can be classified into three, namely air, water and soil pollution. This is becoming an increasingly complex problem and is not only practical, conceptual, economic but also an ethical problem, both social and business. Criminal law not only protects nature, flora and fauna (*the ecological approach*), but also the future of humanity that may suffer from environmental degradation (*the anthropocentric approach*). Thus, the term "*the environmental laws carry penal sanctions that protect a multimedia of interest.*"[5] This globalized issue is evidenced by recent warnings from scientists.

Several scientists who are members of the Intergovernmental Panel on Climate Change gave a warning in the form of a code red for humans. This warning was conveyed by the UN Secretary General, Antonio Guterres, after the publication of the report of the IPCC scientist working group on August 9, 2021 and addressed to all countries in the world, including Indonesia. In their predictions, scientists who are members of the IPCC, stated that global warming has become the cause of extreme weather around the world. In short, IPCC stands for *Intergovernmental Panel on Climate Change* or Intergovernmental Panel on Climate Change.[6]

Crimes in the environmental sector by the 5th UN congress in 1975 in Geneva regarding *The Prevention Of Crime and The Treatment of Offenders*, categorized as *Crime as business*, crimes that are typically committed in a well-organized manner and by individuals who hold a respectable position in society and are aimed at obtaining material benefits through activities in business or industry are referred to as organized crimes.

The idea of environmental law actually serves as a correction to various mistakes that have occurred in society, both in developed and developing countries. Particularly, this relates to the early practice of industrialization which seems to have proceeded without adequate restrictions.

Environmental Protection and Management is a coordinated and systematic effort to protect the environment from harm and pollution.[7]

The problems of this research can be formulated as follows, given the preceding background: What are the gaps in Indonesia's environmental protection? Additionally, what obstacles hinder criminal prosecution for environmental violations?

2 Methodology

The writing relies on normative legal research. The primary and secondary legal materials used in this study are the sources of the legal materials. The majority of the materials are legal science books.[8] The types of approaches used in this research are legislative approaches, case approaches and legal concept analysis approaches. The data processing method used is the analysis method which is then outlined in descriptive analysis writing.

3 Discussion

Environmental protection and management will not run optimally without adequate legal instruments that specifically regulate environmental protection. The environment will experience tremendous destruction without efforts to prevent and punish those who violate it. Law has an important role to provide a deterrent effect to people who violate environmental laws. If there is no law governing the environment, it will cause tremendous damage to the environment. People arbitrarily utilize protected forests for personal gain without caring about others. With the existence of environmental laws that are accompanied by strictness to violators, it will minimize environmental damage. This is because the penalties given by law to violators are very severe.

In the implementation of environmental criminal provisions, there is an offense, where the definition of the offense is an order and prohibition of the Law to the legal subject where, if the legal subject violates the stipulated regulations, it will be subject to criminal sanctions, such as fines to imprisonment. The purpose of imposing these sanctions is so that every violating legal subject gets a deterrent effect, and protects the overall life of living things.

There are two types of offenses in environmental crimes, namely material offenses and formal offenses, where material offenses and formal offenses have differences, for material offenses are offenses that in their formulation provide criminal penalties for actions that have caused the impact of the actions committed. Meanwhile, a formal offense is a formulation that provides a criminal threat for every prohibited act, regardless of the consequences of the act.

In environmental law enforcement, all forms of violations and crimes have been regulated, for perpetrators both committed by individuals and entities with preventive and repressive efforts. For this repressive action, there are several types of instruments that can be applied and their application depends on the need, as consideration, among others, looks at the impact caused.

Environmental law enforcement deals with a wide range of complicated aspects with the goal of preserving and creating an environment that can be enjoyed by all people without affecting the

environment itself. A form of legislation in the form of laws and various implementing regulations has been created to capture the attitudes of irresponsible parties.[9]

According to constitutional principles, the state has tremendous power over the earth, water, air, and everything within them. This obviously also reflects a tremendous responsibility. In this instance, it does not imply that it belongs to the state; rather, it is intended to regulate natural resource justice, sustainability, and social functions for the benefit of the populace.

Environmental problems in the form of pollution and destruction of the environment in Indonesia in particular and the world in general at the present time, which includes the land and forest environment, the water environment and the air environment are problems that must be handled seriously both in terms of prevention and handling. Deforestation, critical land, depletion of the ozone layer, global warming, oil spills in the sea, dead fish in tributaries due to chemicals, and extinction of certain species are some examples of environmental problems. In the literature, environmental problems can be grouped into three forms, namely environmental *pollution* (*pollution*), land misuse and depletion or exhaustion of *natural* resources (*natural resource development*).[10]

The decline in environmental quality not only has a direct impact on human life but also an indirect impact on global conditions that show hostile indicators. Humans consider that they are the center of the universe. Nature and its surroundings exist to support human life. Nature should have the same status as humans. With this equal position, there are rights and obligations from both nature and humans. As a result, the rate of deforestation continues to climb, the condition of the post-mining area is very concerning, and the worst is the condition of the surrounding community which is deteriorating due to human behavior that destroys nature. This human perspective is referred to as anthropocentrism. There needs to be a change in human perspective so that human behavior towards nature changes.[11]

Gaps in environmental protection can occur due to several factors, including:

1. Weak law enforcement: While Indonesia has various laws and regulations governing environmental protection, law enforcement is often weak. This is due to various factors, including lack of human resources, lack of coordination between relevant agencies.
2. Unclear rules and overlapping regulations: there is a lack of clarity in the rules and overlapping regulations among the various laws and regulations governing the environment. This makes it easy for environmental violations to occur.
3. Lack of awareness: a lack of environmental awareness and education is also a contributing factor to gaps in environmental protection. Without an adequate understanding of the importance of the environment and the impact of human actions on the environment, people tend to be less concerned about environmental issues and less active in protecting it.

If there is a violation in the utilization/management of the environment, then law enforcement must be carried out against the violated rules and the perpetrators must be prosecuted. Nowadays, criminal law is increasingly used and relied upon in order to regulate and order society through legislation. Legal dynamics can be seen from the policy of using criminal sanctions through the inclusion of chapters on "criminal provisions" at the end of most legislation products.[12]

Indonesia has been shocked by the tin mining corruption case, which is not only detrimental to state finances, but also has a huge impact on the environment. Reaching a massive loss of Rp.

271 Trillion due to corruption in the tin mining sector is an astonishing figure. However, more than just numbers, what should be highlighted is the real impact felt by the environment and surrounding communities. Tin mining corruption not only steals natural resources that should be common wealth, but also steals health and life that should be the right of every citizen.

Ecological environmental loss in this case refers to the loss of ecosystem functions that regulate water, and air cycles. Meanwhile, environmental economic losses include the economic values of lost ecosystem services, such as carbon sequestration, clean water provision, and biodiversity. In the case of tin mining, we see that how natural resources, which should be a common asset for survival, have been deprived by irresponsible actions.

Environmental law enforcement goes beyond the use of criminal law enforcement to deal with violations of the provisions of Law Number 32 of 2009's environmental protection and management law. In addition to the criminal penalties outlined in Law No. 32 of 2009 Concerning Environmental Protection and Management, individuals and businesses who violate the provisions of environmental protection and management face additional penalties.

Administrative sanctions in the form of written warnings, government coercion, suspension of environmental permits and/or environmental protection and management permits through civil law mechanisms by filing civil lawsuits to provide legal protection to the environment and victims of environmental pollution or destruction are also regulated by Law No. 32/2009 in addition to criminal law enforcement.

Examining the formulation of future criminal law (*ius constituendum*) can not be separated from the current legal formulation (*ius constitutum*), because to formulate the future formulation still has to look at the conditions. In conducting legal reform, it can be by reorganizing existing laws or building new ones altogether. So in this case it is related to "*law reform*" and "*law development*", especially related to the reform and development of the criminal law system. It can be said that between criminal law development policies and national development goals, a synergistic approach is needed so that public life is maintained in a unified state based on Pancasila.

Cases arising from environmental crimes are basically a conflict of interest between the party who commits acts of environmental destruction and/or pollution (perpetrators) and the party harmed by acts of environmental pollution and/or destruction (victims).

Some of the obstacles that can hinder the enforcement of criminal liability for environmental offenses, namely:

1. Evidence limitations: it is often difficult to gather evidence strong enough to establish criminal liability in cases of environmental violations. Evidence such as accurate environmental data, scientific analysis, or adequate documentation is often difficult to obtain.
2. Resource constraints: Law enforcement agencies often face human, financial, and technical resource constraints that can hinder their ability to effectively handle cases of environmental violations. This lack of resources can limit investigations, inquiries, and prosecutions of environmental violations.
3. Political and economic pressure: pressure from parties with a political or economic interest in cases of environmental violations can affect the law enforcement process. This can lead to interference in investigations or prosecutions, and reduce the willingness or ability of law enforcement agencies to act independently.

Environmental management as a conscious effort to maintain and improve the quality of the environment so that the needs of present and future generations can be met as well as possible in realizing intergenerational justice.[13] Compliance and obedience to established legal regulations, namely environmental law, is an indicator of legal awareness that must be owned by the community.

The application of environmental law to protect the environment with all its aspects at the present time is not only seen in its function as protection and certainty for the community (agent of stability), but more prominently as a development tool (a tool of social engineering), serving as either an agent of change or development.[14]

4 Conclusions and Suggestions

4.1 Conclusion

Environmental protection and management will not run optimally without adequate legal instruments that specifically regulate environmental protection. The environment will experience tremendous destruction without efforts to prevent and punish those who violate it. Law has an important role to provide a deterrent effect to people who violate environmental laws, if there is no law governing the environment, it will cause tremendous damage to the environment.

Law enforcement in environmental issues is regulated in environmental law. Environmental law is a juridical rule for every environmental management and protection. The existence of law enforcement efforts can be done to prepare for the challenges of environmental degradation which is getting worse every day is very important. In efforts to enforce environmental law in various cases, it is necessary to have good cooperation between the government, law enforcement officials and the role of the community which is very important to strengthen the self-awareness of each individual, so that the future generations of the nation will experience the various benefits of the environment.

4.2 Suggestions

According to Law No. 32 of 2009 on Environmental Protection and Management, law enforcement must be firm and maintain their integrity when taking legal action against those who destroy or pollute the environment. It is essential to strengthen the law enforcement system in order to enforce accountability for environmental violations.

To address gaps in environmental protection, comprehensive and coordinated reforms are needed at various levels, from improving laws and law enforcement to increasing public environmental awareness and participation. These reforms should be based on a thorough evaluation of existing regulations, as well as efforts to strengthen the capacity of relevant institutions and increase the active involvement of the public in environmental protection efforts.

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