Effectiveness of Imposing Criminal Sanctions on Dumping Activities of Hazardous Toxic Waste in the Form of Spent Bleaching Earth (SBE) (Reflection on Criminal Cases No. 107/Pid.Sus/2021/PN.Rbg and No. 106/Pid.Sus/2021/PN.Sus/2021 at the Rembang District Court)

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Abstract. The problem of illegal dumping of waste that occurs is a problem that can threaten environmental damage, as a matter of fact, requires law enforcement, nevertheless, it is necessary to question whether the imposition of criminal sanctions has been practical and valuable enough to overcome these issues without being preceded or accompanied by environmental restoration responsibility endeavours. This study will discuss in depth the importance of environmental restoration responsibility for dumping activities of hazardous and toxic waste (B3), especially in the form of Spent Bleaching Earth (SBE) in Indonesia. The research method used in this research is empirical juridical using primary data. Based on the results of the study It is known that the problem of hazardous and toxic waste (B3) in the form of spent bleaching earth (SBE) or waste from palm oil processing, which in this case occurred in the Sluke sub-district, Rembang district, was not an easy problem and laborious to solve. This includes only the imposition of criminal sanctions, due to the central point that is mandated by "Law Number 32 of 2009 concerning Environmental Protection and Management (LH) amended by Law No. 11 of 2020 concerning Job Creation" is regarding Environmental Recovery, in the event that there is sentencing without being accompanied by a restoration of the environment, then law enforcement can actually be seen as less effective.

Keywords: Responsibility, Environmental restoration, Dumping, Spent Bleaching Earth

1 Introduction

Law is an idea, concept, and value that is believed by a group of people in a society and agreed upon as a guideline for regulating the survival of the community [1]. The survival of the community is related to the environmental aspects, of where the community resides indeed. Environmental aspects in reality often experience disparate issues. Environmental issues are serious issues that can threaten human survival [2]. Environmental issues that often occur are environmental pollution, one of which is the result of exceeding environmental quality standards.

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The environmental quality standard is a measure of whether or not environmental pollution has occurred. This environmental quality standard is a preventive measure with reference to environmental control due to the reason that it can be used as one of the benchmarks and instruments for preventing environmental pollution. In general, environmental quality standards are exceeded due to business activities [3]. For example, the case that became the object of this research, where the environmental quality standard was exceeded was caused by the Spent Bleaching Earth (SBE) waste management business activities.

Environmental issues in Indonesia in general are always associated with economic issues (Firmansyah & Evendia, 2014). Environmental issues are associated with economic issues because often economic policies taken by the Government that facilitate investment and facilitate business activities in Indonesia without adequate regulations with the reference to environmental protection can result in environmental damage. Whereas "a good and healthy environment is a human right of every Indonesian citizen" as mandated in Article 28H of the 1945 Constitution of the Republic of Indonesia, from now on referred to in this research as the 1945 Constitution of the Republic of Indonesia. Article 28H of the 1945 Constitution of the Republic of Indonesia clearly and unequivocally stipulates that all Indonesian people have the right to enjoy a good living environment. Therefore, economic development policies should be accompanied by environmental protection policies. The goal is that sustainable development in Indonesia can be realized [4].

Sustainable development is a system in light of fact that is interrelated and affects each other, the systems that influence each other are the economic system, social system, and environmental protection system. Sustainable development cannot be understood partially but more than that, sustainable development needs to be understood more comprehensively by looking at the relationships and interactions between these interrelated systems (Jazuli 2015). Environmental issues are clear evidence of failure in realizing sustainable development goals in Indonesia. Indeed, environmental issues can be solved through litigation and non-litigation processes. Environmental issues that are resolved through the litigation process will pass through the stages of preliminary investigation, full investigation, prosecution, and trial process until the decision. The principle that is used as a guide in the settlement of environmental criminal cases is the *in dubio pro natura,* which emphasizes the protection and restoration of the damaged environment *dubio pro natura* has a close relationship with the precautionary principle in taking actions that can threaten environmental sustainability [5]. Ideally, the settlement of environmental cases should be based on the principle of *in dubio pro natura*, the aim of which is to restore the environment to environmental damage that has occurred. Nevertheless, in practice, in the process of enforcing environmental law in Indonesia, issues nonetheless occur due to the fact that discordancy between the *in dubio pro natura* with the judicial process and court decisions in environmental criminal cases, as happened in the case of Criminal Case No. 107/Pid.Sus/2021/PN.Rbg and No. 106/Pid.Sus/2021/Pn. Rbg at the Rembang District Court.

Position of Criminal Case No. 107/Pid.Sus/2021/PN.Rbg with the Defendant Indra Lukito, and Case No. 106/Pid.Sus/2021/Pn. Rbg with the Defendant Sunarto et al at the Rembang District Court, where our issues can be briefly described as follows; this case was initiated by the activity of transporting Spent Bleaching Earth (SBE) from the rest of the palm oil processing products belonging to PT Multimas Nabati Asahan, in light of the fact that was transported by PT Banteng Muda Trans as a land and sea transporter where the purpose of the transportation was to PT Faras Putra Arbrar which is located in Sidoarjo, East Java, as an SBE processing company. Nevertheless, in the process of sending it to Sidoarjo, East Java, the SBE was illegally dumped in Rembang Regency, Central Java. This SBE placement process did not

have a permit, so it was reported to the police in Rembang and processed under criminal law. The parties who became suspects, defendants, and eventually became convicts, in this case, was Indra Lukito Ngadini as director of PT Banteng Muda Trans, Sunarto Bin (late) Painah Mijoyo Sahid and Suparno Alias Dopar Bin (late) Suradi, as parties who condition the land as a place to live. waste dumping, Erbert Frans Munadi Bin (late) Munadi as the person who transported the SBE from the Port of Rembang to the SBE dumping site in Rembang, Karimun Bin (late) Lastun as the person who rented the land for the SBE dumping site; In this case, the Defendants were snared under Article 104 jo 160 of Law No. The Protection and Management of the Environment (LH) which was amended by Law no. 11 of 2020 concerning Job Creation *jo*. Article 55 paragraph 1 of the Criminal Procedure Code.

Despite the fact that in the end the case was decided, each of the convicts was subject to criminal sanctions in the form of imprisonment, fines, and substitute confinement for illegal dumping of waste on *Spent Bleaching Earth* in the jurisdiction of the Rembang District Court, but it turned out that after being observed, during the process of the case is ongoing, including during the investigation process, indictment, prosecution, and also in the verdict of the Panel of Judges, it turns out that it has not touched on environmental restoration which of course can be imposed on parties who are "really" legally responsible for the environmental restoration problem. Hence the central point of the problem turned out to be not running optimally until the case was decided and declared legally binding (*in kracht van gewisde*). For the time being, if it is associated with one of the objectives of the enforcement of Law number 32 of 2009 concerning Environmental Protection and Management (LH), which was amended by Law no. 11 of 2020 concerning Job Creation and based on the responsive legal theory of Nonet-Selznick, then this is compelling to be used as writing material.

Starting from the description above, the writer feels the need to research the problem; Why is there a need for environmental restoration responsibility with reference to SBE waste dumping activities in Criminal case no. 107/Pid.Sus/2021/PN.Rbg and No. 106/Pid.Sus/2021/Pn. Rbg? And what should be more effective steps in law enforcement in terms of waste dumping activities in the form of Spent Bleaching Earnings (SBE) in Criminal Case No. 107/Pid.Sus/2021/PN.Rbg and No. 106/Pid.Sus/2021/Pn. Rbg?

2 Method

The research method used in this research is empirical juridical, whichever is a legal research method that examines applicable legal provisions and what happens in reality in society, or research is accomplished on actual conditions that occur in society, with the aim of finding facts, facts that are used as research data which are then analyzed to identify issues which ultimately lead to the solution of the problem [6]. The research data used in this study is primary data, that is all kinds of information obtained from the main source of research. In the context of this research, the primary data is the process of criminal case no. 107/Pid.Sus/2021/Pn. Rbg and No. 106/Pid.Sus/2021/Pn. Rbg. The primary data was attained through direct observation of the field. Where observations are accomplished starting from the point of preliminary investigation, full investigation, and prosecution, in order to the trial process and the decision of the case. The analytical approach used is descriptive analysis.

3 Results and Discussion

3.1 Importance of Environmental Recovery Responsibility for Waste Dumping Activities in Criminal Case No. 107/Pid.Sus/2021/Pn. Rbg and No. 106/Pid.Sus/2021/Pn. Rbg

Environmental issues in Indonesia are one of the most difficult and not easy to solve, since every community activity, both individually and in industry, always produces waste, liquid waste, and emissions that have a negative impact on the environment. This happens due to the low awareness, knowledge, attitudes, and human behaviour toward environmental management. This condition is an important issue that must be resolved if this happens continuously, the environment will be damaged and will have an impact on human life. The complexity of environmental issues makes it important to take responsibility for environmental recovery that is imposed on every activity that produces waste, liquid waste, and emissions that have a negative impact on the environment [6].

Referring to the Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management, moreover to regulating criminal sanctions against perpetrators of crimes against the environment, in more detail it regulates environmental restoration as well as follows; The provisions in the Law of the Republic of Indonesia Number 32 of 2009 concerning the Protection and Management of the living environments are based on the principle of the "polluter pays" principle, which means that every person in charge whose business and/or activity causes environmental pollution and/or damage is obliged to bear the costs environmental recovery [7].

Article 46 essentially stipulates that in the context of restoring environmental conditions whose quality has been polluted and/or damaged, the Government and regional governments are obliged to allocate a budget for environmental restoration. This means that the Government and local governments are responsible for the restoration of environmental conditions whose quality has been polluted and/or damaged. Furthermore, referring to the provisions of Article 54 paragraph (1) Everyone who pollutes and/or destroys the environment is obliged to restore environmental functions.

In paragraph (2), it is stated that recovery of environmental functions is accomplished in stages: cessation of pollution sources and removing pollutant elements, rehabilitation, restoration; or other methods in accordance with progress in science and technology. As defined by "remediation" it means endeavours to return the environment to its former state so that it can be improved in terms of quality. As defined by "rehabilitation" refers to "endeavours to restore the value, function, and benefits of the environment, including endeavours to prevent land damage, provide protection, and improve ecosystems.". Essentially, restoration is restoring the environment or its parts to the way they were before. This means that environmental restoration endeavours are accomplished with the aim of recovering environmental functions to their original state, particularly the situation before the occurrence of environmental pollution or damage.

Specifically, the implementation of responsibility for environmental restoration is handled by the Minister, Governor, or Mayor, as the case may be, based on the provisions of Article 82 paragraph (1). Businesses and activities may be forced to perform environmental restoration by the Minister, Governor, Regent, or Mayor. This is due to the fact that pollution and/or ecological destruction occur due to their activities. Furthermore, paragraph (2) stipulates that the Minister, governor, or regent/mayor has the authority or can appoint a third party to conduct environmental restoration since the rental pollution and/or destruction is at the expense of the person in charge of the business and/or activity.

That referring to the provisions of the articles above, there are specific things for the perpetrators that cause environmental pollution, such as moreover in order to sanctions in the form of imprisonment and/or fines there are sanctions in the form of environmental restoration as well; Regarding the case that occurred in the Rembang Regency, Central Java, the chronology of which we have briefly described, it is necessary to review the effectiveness of the imposition of a criminal sanction on the perpetrator of a crime, which is based on the main function of criminal law, where the author takes the modern flow pioneered by Von Lizt, Prins and Van Hamel who stated that: The main function of law is to fight crime as a symptom of society. The science of criminal law and criminal law legislation must pay attention to the results of anthropological and sociological research. Criminal is the most powerful tool owned by the State to combat crime but is not the only tool, so the punishment should not be applied separately, but always in a combination of preventive measures.

Crime law's particular function is to protect legal interests against acts that wish to rape them (*rechtsguterschutz*) with sanctions that differ from those of other branches of law in that they are sharper in nature. As a result, there is a tragic element to the punishment sanction, so criminal law is regarded as a two-edged sword, which means that criminal law aims to protect legal interests (for example, life, property, independence, honor), but if a violation occurs, it will inflict harm (hurt) on the victim's legal interest (object). It can be said that criminal law provides rules for dealing with evil acts. In this case, it should be remembered that as a means of social control as well, the function of criminal law is supplementary, meaning that criminal law should only be implemented (used) in the event that other endeavours are inadequate [8].

The principle used as a guide in the settlement of environmental criminal cases is the *in dubio pro natura principle.* The principle *in dubio pro natura* advocates protecting and restoring the environment that has been damaged. The principle of *in dubio pro natura* has a close correlation with the (*precautionary principle)* in taking actions that can threaten environmental sustainability. Ideally, the settlement of environmental cases should be based on *in dubio pro natura*, which goal is to restore the environment to the damage it has suffered, But in case No. 107/Pid.Sus/2021/Pn. Rbg and No. 106/Pid.Sus/2021/Pn. Rbg, this principle has not been lifted but instead puts forward a law enforcement approach using only criminal sanctions. This means that environmental restoration is nevertheless not enclosed by the law.

3.2 Effective Measures for Environmental Recovery Responsibility for SBE's Waste Dumping Activities in Criminal Case No. 107/Pid.Sus/2021/Pn. Rbg and No. 106/Pid.Sus/2021/Pn. Rbg

"Moreover in order to wanting to be bound, man often tries to break free from the bond he has made himself when it no longer seems appropriate". Throughout history, humans have left such traces, such as building and obeying the law *(making the law)* and *breaking the law (breaking the law)*. Since the law was completed, life did not necessarily run with absolute certainty but was still full of turmoil and fractures [9]. In Satjipto Rahardjo's opinion, which follows, it is appropriate to state that sometimes human nature violates the rules outlined, as is in one case there is an "opportunity" to violate the rules without considering the long-term consequences.

Based on Legal Theory, which is a branch of legal science that studies disparate theoretical and practical aspects of certain positive law separately and in its entirety in an interdisciplinary manner, which aims to obtain better, clearer, and more basic knowledge and explanations regarding the positive law concerned [10].

Accordingly, the author is interested in linking the case law analysis above regarding the problem of waste dumping which occurred in the Rembang District, with the responsive legal theory developed by Nonet-Selznick during a time of Neo-Marxist criticism of liberal legalism in the legal analysis of the case above. As is well known, liberal legalism holds that law is an independent institution with an objective, impartial, and completely autonomous set of rules and procedures. Legal autonomy is an icon of liberal legalism. The rule of law is the most obvious manifestation of autonomy. Due to its autonomous nature, the law is regarded as a tool capable of controlling repression and maintaining its own integrity [11].

In light of the internal interest of the legal system itself, it is indeed possible to understand the argument for integrity. But the law is not an end in itself. Law is a tool for humans. Human needs are served by it. In this sense, the isolation of the legal system from distinctive surrounding social institutions has a negative impact on human needs. Law easily turns into a self-serving institution, no longer serving humans. Law has no longer able to be relied upon as a tool for change and as a means to achieve substantive justice; The alarm bells about the erosion of this authority and the breakdown of substantive justice have been the focus of criticism of the law [12].

Regarding the context of law enforcement in Indonesia, responsive law implies that law enforcement cannot be carried out half-heartedly. Accomplishing the law is not only undertaking the law but must have social sensitivity. Law is not only rules *(logic & rules),* but also there are other logics. Simply implementing jurisprudence is not enough, law enforcement must be enriched with social sciences. This is a challenge for all parties involved in the law enforcement process, from the police, prosecutors, judges, and advocates to be able to free themselves from the purely rigid and analytical confines of the la. implementation of true justice from social realities that occur in society [13].

Examining the waste dumping case in Rembang Regency in the Criminal Case No. 107/Pid.Sus/2021/PN.Rbg and No. 106/Pid.Sus/2021/Pn. Rbg which has permanent legal force *(in kracht van gewisjde)*, it turns out that in its decision it has indeed given criminal sanctions to the convicts, however, it is associated with issues as observed especially in Law No. 32 of 2009 concerning Environmental Protection and Management, in the author's opinion, it can still be seen that state law currently enforced in Indonesia is indeed closer to the autonomous" type of law, according to Nonet and Selznick, wherein the autonomous legal type the government system is run based on the law *(rule of law)* and the interpretation of the apparatus towards law enforcement is carried out according to what is stated in these legal regulations. Nonetheless, Indonesian law can be close to repressive law as well, where political power can sway the law according to its will. Law-making, which is narrowed down in statutory regulations, is by no means separate from political influence. As a result, apart from not fulfilling the community's sense of justice, the law is also a threat to society. Philippe Nonet and Philip Selznick, describe three basic classifications of law in society, Law as a servant of repressive power (repressive law). Law as a separate institution capable of taming repression and protecting its integrity (autonomous law) and law as a facilitator of disparate responses to social needs and aspirations (responsive law) [11].

Returning to Nonet-Selznick's theory of Responsive Law, which in principle does not discard the idea of justice but expands it to include substantive justice. The responsive type of law has prominent characteristics, namely the shift in emphasis from rules to principles and goals, and the importance of populist character (populist) both as a legal goal and a way to achieve it" [14]. What Nonet and Selznik said, indeed wanted to criticize the *analytical jurisprudence* tau rechsdogmatiek model which only dwells in the positive legal system [15].

In the event that interpreted in a simpler way, indeed, the central point of this Responsive Law theory is an approach that is more of a legal benefit, hence in this case of course when it is associated with the case of waste dumping are the disparate endeavours that have been contained in Law no. 32 of 2009 namely "Remediation" endeavours in the form of endeavours to restore environmental pollution to improving the quality of the environment; “Rehabilitation” is an effort to restore the value, function, and benefits of the environment, including endeavours to prevent land damage, provide protection, and improve ecosystems. "Restoration" is recovery endeavours to make the environment or its parts function again as they did previously".

Thus, the author indeed believes that the imposition of criminal sanctions on the convicts is actually not yet fully effective, in light of the fact that it is precisely the endeavours to restore environmental pollution to improve the quality of the environment that are more crucial and become the central point in the problem of environmental pollution. Returning to the issues above, regarding the issue of environmental pollution which involves companies as well, it is necessary to put forward the theory of corporate responsibility, in the doctrine of criminal law, at least we know that there are 5 theories of corporate responsibility. First, identification theory states that a corporation can commit crimes through individuals acting for and on behalf of the corporation who has a high position or play a key function in corporate decision-making. This theory is referred to as *alter ego* as well [16].

Second, *vicarious liability* states that a person can be responsible for criminal acts committed by others. In the context of a corporation, criminal responsibility is imposed on the management of the corporation as the 'agent' of the corporation. *Vicarious liability* was originally applied to crimes against the environment. Further development of vicarious liability, there is what is known as *absolute liability* and *strict liability*. The difference in principle between the two: in *absolute liability,* there is no need for an error or *men's rea*, but what is needed is proof that a crime has occurred. Meanwhile, *strict liability* requires proof that the defendant has committed a doubtful act. This means that the defendant has the right to do *due diligence* in relation to the case. Delegation theory states that criminal liability is placed on people who are delegated by the board of directors to exercise corporate authority [17].

This theory is a middle ground between the narrow identification theory and *vicarious liability* when dealing with complex corporate structures. Fourth, the aggregation theory which states that criminal liability can be charged to the corporation if the act is carried out by a number of people who meet the elements of the offense which are interrelated and do not stand alone. Corporation authorizes or permits such actions [18].

Regarding the theory of corporate responsibility above, particularly in relation to environmental issues, it would be better to assess who can be considered responsible and which parties are involved in the incident before using criminal law endeavours. Initial endeavours in the form of environmental restoration actions can be called upon by all parties deemed responsible to be given the burden of environmental restoration endeavours either through remediation" in the form of endeavours to restore environmental pollution to improving the quality of the environment. Rehabilitation is a restoration effort to restore the value, function, and benefits of the environment including endeavours to prevent land damage, provide protection, and improve ecosystems. Restoration is a restoration endeavour to make the environment or its parts function again as before.

This will be under the supervision of the regional Government, the Environmental service, and the Rembang District Police as well, possibly with administrative fines attached. As the result, in the event that these parties are negligent and neglectful in implementing this

environmental restoration obligation, then it will be developed and brought to the attention of the police. Therefore, criminal sanctions do not take precedence, thus it is feared that it will not be right on target as desired and mandated by Law No.32 of 2009 About Environmental Protection and Management.

4 Conclusion

The principle used as a guideline in the settlement of environmental criminal cases is the *in dubio pro natura principle,* which emphasizes the protection and restoration of the environment that has been damaged so that ideally the settlement of environmental cases should be based on the *in dubio pro natura* whose goal is restoration environment for the environmental damage that has occurred.

The imposition of mere criminal sanctions against perpetrators of environmental pollution crimes, in this case, the placement/dumping of Toxic Hazardous Materials (B3) in the form of *Spent Bleaching Earth (SBE)* without being preceded by an approach in the form of environmental restoration, is less effective for law enforcement as mandated in the Act. No. 32 of 2009 concerning Environmental Protection and Management.

Initial endeavours should be made in the form of environmental restoration actions that is, all parties deemed responsible can be called upon to be charged with endeavours to restore the environment either through remediation endeavours "in the form of endeavours to restore damage caused by pollution to improving the quality of the environment; Rehabilitation is a restoration effort to restore the value, function, and benefits of the environment including endeavours to prevent land damage, provide protection, and improve ecosystems. Restoration is a restoration effort to make the environment or its parts function again as before." Obviously, this is with the supervision of the local government, the Environmental Service, and the supervision of the Rembang Regency Resort Police as well, with possibly being accompanied by administrative fines as well. In the meantime, in the event that these parties are negligent and neglectful in fulfilling the environmental restoration obligation, then that will be taken up as a criminal case, thus criminal sanctions are not the priority.

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