

Enforcement of Environmental Criminal Law in Cases of Environmental Pollution by Corporations

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ABSTRACT

The occurrence of various cases of environmental pollution is a reflection of the lack of corporate responsibility towards the environment, hence the need for environmental law enforcement. The formulation of the problem in this study is: 1). How is the enforcement of environmental criminal law against corporations after the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management?; 2). What legal obstacles arise in criminal practice if corporations pollute the environment after the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management? This research is normative legal research. The findings in this study show that the implementation of law enforcement is still weak, meaning that the subjective policy of law enforcement to continue criminal acts to further proceedings. Conditions like this are used as opportunities for corporations to do as they want and seek the maximum profit. Therefore, law enforcement must be firm and consistent. The main obstacles that occur in law enforcement practices faced when corporations commit environmental crimes are seven obstacles that affect the enforcement of environmental criminal law including: a). Obstacles to the Human Resource Capability of Law Enforcement is Still Limited; b). Environmental Enforcement Has Not Been a Priority; c). Obstacles to coordination between agencies in handling environmental crimes; d). Obstacles to Law Enforcement Professionalism; e). Obstacles to Facilities or Facilities that Support Law Enforcement; f). Dependence of Environmental Criminal Law Enforcement Application on Administrative Law; g). Criminal Law is still the ultimate remedium in environmental law enforcement.

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1. INTRODUCTION

Indonesia as one of the lungs of the world, is often expected to be a pioneer and driving force for the creation of sustainability and environmental sustainability. For this reason, it is absolutely necessary to increase the culture of environmental awareness in every aspect of life in society, nation and state, so that all actions and policies taken always pay attention to all aspects related to the environment. Article 28 H paragraph (1) of the 1945 Constitution states: *"Everyone has the right to live a prosperous life outwardly and mentally, to live and obtain a good and healthy living environment, and the right to health services"*. A good and healthy environment is the human right of every Indonesian citizen as mandated by the 1945 Constitution.

The potential for environmental problems that can have a major influence on the preservation of nature and human health raises awareness of the need to regulate environmental problems with legal instruments.¹ The regulation of environmental problems in Indonesia began with the existence of Environmental Law, namely Law Number 4 of 1982 concerning Basic Provisions of Environmental Management (State Gazette of 1982 No. 12 supplement to State Gazette No. 3215) which in its development was refined and replaced by Law Number 23 of 1997 concerning Environmental Management and then amended by Law Number 32 of 2009 concerning Protection and Environmental Management.

The regulation of environmental crimes according to Law Number 32 of 2009 concerning Environmental Protection and Management is none other than the emergence of losses to environmental aspects. Parties who suffer losses from a criminal act are called victims of criminal acts who need protection for the losses they suffer.²

The occurrence of various cases in the environment is a reflection of a lack of responsibility for the surrounding environment. The above environmental pollution cases are examples of the difficulty of applying the law when dealing with corporations. Environmental cases that occur are not considered trivial because they are very broad and can have a systemic impact and take a very long time to find. Environmental damage cannot be repaired as before, irreparable damage, not only because of the disharmonious state of nature, but requires corporations to be responsible for the consequences caused by the destruction of nature.

In environmental destruction and/or pollution, there are difficulties for investigating officers to provide valid evidence in accordance with the provisions of Article 183 and Article 184 of the Code of Criminal Procedure. In addition, proving the element of causal relationship is an obstacle in itself. Environmental pollution often occurs cumulatively, making it difficult to prove the source of pollution, especially chemical ones.³ Law enforcement when dealing with corporations that commit crimes tend not to bother and take pains to elaborate on a legal problem concerning the corporation.

2. METHODS

2.1 Types of Research

In this legal research, the author uses a type of Normative legal research, which is research that uses literature studies to examine legal issues from the point of view of legal science in depth against the legal norms formed. In this case, the author will examine how the enforcement of environmental criminal law against corporations after the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management and what legal obstacles arise in

¹Buyung Dwikora. *Pertanggungjawaban Pidana Korporasi dalam Undang-undang No 23 Tahun 2009 Tentang Pengelolaan Lingkungan Hidup*. Tesis FH-UNDIP. Semarang. hal. 14.

²Muhammad Topan. 2009. *Kejahatan Korporasi di Bidang Lingkungan Hidup*. Nusa Media: Bandung. hal. 114.

³Siti Sundari Rangkuti. 1996. *Hukum Lingkungan dan Kebijakan Lingkungan Nasional*. Airlangga University Press. Surabaya. hal. 193.

criminal practice if corporations pollute the environment after the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management.

2.2 Research Steps

This research begins with the collection of legal materials relevant to the main theme of the study. The legal materials used as the basis for this research include primary legal materials and secondary legal materials relevant to the research theme.

a. Legal Materials

- 1) Primary legal material, to analyze how the enforcement of environmental criminal law against corporations after the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management and what legal obstacles arise in criminal practice if corporations pollute the environment after the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management.
- 2) Secondary legal materials, which provide explanations of primary legal materials, such as research results, law books, scientific papers in the field of law, the internet and so on.

2.3 Analysis

These legal materials will be analyzed starting with determining legal issues, collecting legal and non-legal materials, conducting studies based on the materials collected, and providing prescriptions based on arguments that have been built.

a. Issues to be discussed

The author conveys how the enforcement of environmental criminal law against corporations after the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management and what legal obstacles arise in criminal practice if corporations pollute the environment after the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management.

b. Performing antics based on the collected materials

Based on the collection of legal materials, an analysis or review of the problems that have been raised is then carried out. In this activity, the author will examine an overview of how environmental criminal law enforcement against corporations after the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management and what legal obstacles arise in criminal practice if corporations pollute the environment after the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management.

3. RESULTS AND DISCUSSION

3.1 Enforcement of environmental criminal law against corporations after the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management

Law Number 32 of 2009 concerning Environmental Protection and Management, the provisions in the Law are effective and environmental law enforcement instruments, both administrative, civil, and criminal, are time to be implemented.

Law enforcement in our country is carried out preventively and repressively. Preventive law enforcement is held to prevent lawlessness by citizens and this task is generally assigned to the executive body and the Police. Repressive law enforcement is carried out if prevention efforts have been made and it turns out that there are still violations of the law, then the law must be enforced repressively by state law enforcement officials assigned judicial duties.

There are obstacles in the enforcement of environmental criminal law against corporations, namely Human Resources (HR). The understanding of corporate criminal liability is not mastered by law enforcement officials. Especially the understanding that corporations can be made subjects of law or perpetrators of environmental crimes, so that corporations can also be held accountable. Law No. 32 of 2009 concerning Environmental Protection and Management already regulates

corporations to be accounted for. Article 116 of Law No. 32 of 2009 paragraph (1) states: *"If an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions shall be imposed on: a). Business entity; b) The person who gave the order to commit the crime or the person who acted as the leader of the activity in the criminal act."*

Based on this with the conditions and problems faced by law enforcement carried out by corporations according to Law No. 32 of 2009 concerning Environmental Protection and Management, according to the author the conditions of law enforcement that want to maximally crack down on environmental crimes, however, it is considered something unrealistic because of limitations in the form of limited Human Resources (HR), Understanding of corporate criminal liability is not mastered by law enforcement officials, investigative tools in the form of environmental crime laboratories and funds to deal with environmental crimes are quite large, which requires discretion. This means the subjective policy of law enforcement in carrying out their duties to continue criminal acts into further proceedings. Because the scope of the rules does not reach comprehensively and in detail how each law enforcement can carry out their duties, authorities and responsibilities in the field.

3.2 Obstacles that arise in criminal practice if corporations pollute the environment after the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management

The issue of law enforcement arises is whether law enforcement in an effort to realize the rule of law agenda will be achieved properly. It depends on various obstacles. Many obstacles relate to law enforcement. The obstacles faced by law enforcement of environmental crimes whose perpetrators are corporations are:

1) Law Enforcement Human Resource Barriers Still Limited

It cannot be denied that the constraints of law enforcement Human Resources (HR) are factors in the ineffectiveness of environmental criminal law

enforcement. Especially in the regions, it cannot be said that law enforcers have mastered the ins and outs of environmental law, even the introduction of environmental law is still lacking. This can only be overcome by education and training in addition to the person having to learn on his own by reading books, attending scientific meetings, such as seminars and others.

2) Environmental Action Not yet a Priority

Environmental acts have not become a priority compared to other cases, such as theft, murder, corruption and others. Due to evidence, determining the causality relationship between pollution acts and victims of environmental crimes that occur pollution requires experts and special laboratories. Although Article 96 of Law No. 32 of 2009 has regulated the Article of Evidence which states: Valid evidence in the prosecution of environmental crimes consists of: a. Witness statements, b. Expert information, c. Letters, d. Instructions, e. Defendant's statement; and/or f. Other evidence, including evidence regulated in laws and regulations.

Article 183 of the Criminal Procedure Code expressly specifies the function of evidence as one of the conditions for judges to impose crimes. Because of its function in collecting strong and legitimate evidence, investigators need to be careful because the technique of taking and determining evidence in environmental crimes is very difficult and complex.

3) Barriers to Inter-Agency Coordination in Handling Environmental Crimes

Coordination between the investigating agencies of the Police, Prosecutor's Office and Civil Affairs Supervisory Investigators (PPNS) in environmental crimes has not gone well. Many criminal acts in the environmental sector are usually related to regulating or pleasing to violations of administrative authority policies that are usually preventive, and related to the prohibition of acting without permission. This has led to the

opinion that the authority of criminal law to conduct investigations and examinations of the rest will only be possible if other means of law enforcement have been attempted and failed the subsidiarity of criminal law. There are psychological differences between supervision carried out by supervisory officials (handling in the administrative field) and handling through criminal law means, including:

- a. Administrative government officials are not familiar with criminal law.
- b. Administrative government officials work with the aim of increasing cooperation between the government and the business world, so that handling through criminal law means is considered a nuisance and should be avoided because they need time to build relationships with the business world, and they fear losing prestige or trust from the business world, so there is a "reluctance" to be willing to report the occurrence or existence of environmental crimes.
- c. There is a view that considers environmental crimes not a serious violation of the law, this case is enough to be resolved administratively, especially if the crime is committed by a corporation. Perpetrators of corporate crime, always "considered" good citizens and respected in the eyes of the community.
- d. The limited knowledge and experience of law enforcement in handling cases related to corporations, makes law enforcers feel that the work is "heavy" and tedious (because it requires more thought and attention and will), so that the enthusiasm to handle the case is declining, let alone getting obstacles in proving or looking for evidence.
- e. There is a "policy" to let perpetrators continue to violate environmental law for a long period of time, because government authorities are still

"negotiating" with perpetrators to find solutions and / or find the costs needed to overcome this.

- f. There is a tendency for the authorities (administrative) to see violations of environmental law as administrative violations, and views that criminal law handling cannot make a quick decision.

Law No. 32 of 2009 concerning Environmental Management and Protection has regulated integrated law enforcement in Article 95 paragraph (1) stating: *"in the context of law enforcement against environmental crimes, integrated law enforcement can be carried out between civil servant investigators, police, and prosecutors under the coordination of the Minister."* The Triangle Integrated Environmental Criminal Justice System involves Investigators, Public Prosecutors and Experts. This integrated triangle system stems from the presence of certain properties in environmental crimes. This system is also a critical answer to the compartmentalization of the functions of our law enforcement duties as a result of the implementation of the principle of functional differentiation in the rigid field, and creates loopholes in the malfunction of the check and balance system.⁴

4) Barriers to law enforcement professionalism

It is an element of ability and skill in person from law enforcement figures. The obstacles faced by the slow handling of environmental crimes are caused by the lack of professionalism of law enforcement. Environmental crimes committed by corporations, Police investigators assume that environmental cases can be investigated if there is a report or complaint. In Law Number 32 of 2009 concerning Environmental Protection and Management, there is not a single article that says that environmental crimes are criminal complaints. The police are waiting for public complaints despite the fact that environmental crimes have occurred. Police investigators will also handle

⁴Erni Mustikasari. *kabar_insan_adhyaksa.php.htm*. www.kejaksaan.go.id. *Jangan kesampingkan masalah lingkungan hidup*. Diakses tanggal 4 oktober 2022.

environmental crimes if there are consequences committed by corporations, while according to the author how investigators will get the consequences of environmental crimes while they do not focus on environmental crimes.

5) Barriers to Facilities or Facilities that Support Law Enforcement

Facilities or facilities supporting law enforcement in environmental crimes are a factor of obstacles, especially laboratory facilities. Environmental cases are included in the settlement of high-cost cases due to the involvement of experts and laboratories which are not very cheap, while the handling of the operational budget for handling cases is quite limited.

6) Dependence of the application of environmental criminal law enforcement on administrative law.

The application of criminal law or violation of environmental law depends a lot on administrative law, especially regarding licensing. The problem is the permit issued by the administrative official which then turns out that the permit used is pollution or environmental damage. Environmental criminal law enforcement according to Law No. 32 of 2009 concerning Environmental Protection and Management is the ultimate remedium of last resort applied after other legal instruments cannot solve environmental problems. So that environmental criminal law enforcement laws must wait after the implementation of other laws has been implemented.

7) Criminal Law is still the ultimate remedium in Environmental Law Enforcement.

The difficulty or obstacle of the principle of subsidiarity in law enforcement practices in UUPLH (Environmental Management) No. 23 of 1997 has been corrected in UUPPLH (Environmental Protection and Management) No. 32 of 2009 by eliminating the principle of subsistence by

raising the principle of ultimate remedium in the general explanation of number 6 and Article 100 paragraph (2). This principle is further emphasized in its meaning as stated in Article 100 paragraph (2) states, namely, *"any person who violates wastewater quality standards, emission quality standards, or new nuisance quality standards may be punished, if the administrative sanctions that have been imposed are not complied with or violations are committed more than once."*

In practice, administration officials said the time had not yet come for the use of criminal legal instruments, while public prosecutors said it was time to use criminal law. This has led to a debate between administrative officials and public prosecutors about when the time comes for the use of the last drug (criminal law).

With the inclusion of the principle of subsistence which is replaced with the principle of ultimum remedium with certain conditions, it shows the attitude of law framers who do not want to use criminal procedures and criminal sanctions that usually have coercive power to obey environmental law. The use of the principle of subsidiaritas/ultimum remedium with certain and written conditions can reduce the nature of coercion as one of the characteristics of environmental criminal provisions.⁵

The existence of conditions for the use of criminal procedures and the threat of criminal sanctions in the UUPPLH gives the impression, at least in the minds of law framers, as if law enforcers are more often or very excessive in using criminal legal procedures and criminal sanctions than administrative or civil procedures so that legislative policies are needed to limit the space for law enforcement to use criminal procedures and criminal sanctions.

⁵Mudzakir.2011. *Aspek Hukum Pidana dalam Pelanggaran Lingkungan Hidup*. Pascasarjana UI. Jakarta. Hal. 546.

4. CONCLUSION

Based on all descriptions as described, several points of thought can be affirmed as conclusions such as the following:

1. Law enforcement is still weak in implementation because it has not been maximized, meaning the subjective policy of law enforcement to continue criminal acts to further proceedings. Conditions like this are used as opportunities for corporations to do as they want and seek the maximum profit. Therefore, the Police Law Enforcement and the Prosecutor's Office must carry out law enforcement firmly and consistently.
2. The main obstacles that occur in law enforcement practices faced by the Police and Prosecutor's Office if corporations commit environmental crimes, there are at least seven obstacles that affect law enforcement, including the enforcement of environmental criminal laws including: a). Law Enforcement Human Resources Barriers are still limited; b). Environmental action has not been a priority; c). Obstacles to Coordination between Agencies in Handling Environmental Crimes; d).

Barriers to law enforcement professionalism; e). Obstacles to Facilities or Facilities that Support Law Enforcement; f). The dependence of the application of environmental criminal law on administrative law; g). Criminal law is still the ultimate remedium in environmental law enforcement.

SUGGESTION

Regarding the results of research and discussion, the author suggests:

1. It is necessary to develop a triangle system Integrated Environmental Criminal Justice System (integrated triangle system of environmental criminal law enforcement), namely integrated coordination between Police investigators, Prosecutors and Experts to break the deadlock in law enforcement, rule of law, especially environmental law enforcement.
2. There is a need for police investigators and prosecutors specifically to deal with the environment, especially in industrial and mining areas, so that a firm attitude of preventive and repressive law enforcement is needed to run as a unified system called the criminal justice system.

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