Vol. 17 No. 4 2022

YURISDIKSI

Jurnal Wacana Hukum dan Sains

Universitas Merdeka Surabaya

The Implementation of Environmental Law Protection in Indonesia

Reda Manthovani

Faculty of Law, Pancasila University, Jakarta, Indonesia

Email : redamanthovani@univpancasila.ac.id

ABSTRACT

The current condition of environmental law enforcement is not as expected. Environmental problems tend to accumulate, become complicated and even lead to threats to peace. Environmental law enforcement is still a bureaucrat/government discourse, not yet leading to concrete action. The government has also not synchronized economic, social and ecological elements in every development policy, so it is seen that many policies issued by the government are detrimental to environmental interests, such as the issuance of Government Regulation No. 1 of 2004 concerning the policy of granting mining concessions in protected forests, to 13 mining companies, where this provision is contrary to Law no. 41 of 1999 concerning Forestry which prohibits mining activities in protected forests. The lack of success in enforcing environmental law is also due to irregularities in the process of enforcing environmental law, this can be seen in the application of Article 30 (2) of Law no. 23 of 1997 concerning Environmental Management which states that the settlement of disputes outside the court as referred to in paragraph (1) does not apply to environmental crimes as stipulated in this law or in other words to environmental crimes cannot be resolved through ADR , but in practice the provisions of Article 30 (2) of Law no. 23 of 1997 concerning Environmental Management is often violated or deviated. From criminal politics, the increase in criminal acts in the environmental sector is due to, among other things, development projects and programs that are planned and implemented at the local, regional and national levels, ignoring/not paying attention to environmental factors, not based on accurate research and estimates of developments or crime trends both now and in the future. the purpose of this research is to find out how far the implementation of environmental protection laws is.

Keywords: Environmental, Environmental Law Enforcement, Criminal Law, Protection, Criminal Politics.

1. INTRODUCTION

The current condition of environmental law enforcement is not as expected. Environmental problems tend to accumulate, become complicated and even lead to threats to peace. Environmental law enforcement is still a bureaucrat/government discourse, not yet leading to concrete action. Opinions that are currently developing, especially those of investors, that in spurring economic growth and progress the emergence of side effects in the form of pollution and environmental destruction is something that cannot be avoided and is a consequence that must be accepted. This opinion is of course contrary to the principles and objectives of good environmental management to realize environmentally sustainable development, because good environmental management will contribute to the economy, on the contrary the occurrence of violations in the environmental sector has unknowingly shifted environmental economic costs to society. It is society that has to bear the costs of any environmental violations.(Abdurrahman, 1990)

The government has also not synchronized economic, social and ecological elements in every development policy, so it is seen that many policies issued by the government are detrimental

to environmental interests, such as the issuance of Government Regulation No. 1 of 2004 concerning the policy of granting mining concessions in protected forests, to 13 mining companies, where this provision is contrary to Law no. 41 of 1999 concerning Forestry which prohibits mining activities in protected forests.

The neglect of environmental problems is caused by the imperfect handling of the environment by various related departments such as the Ministry of Environment, Ministry of Trade, Industry, Forestry, Mining. Each sector is governed by its own sectoral law, and each sector has a different interpretation of dealing with environmental issues. For example, if a conflict occurs in a mining area located in a forest area, then there are three laws that regulate it, namely the Water Resources Law, the Forestry Law and the Mining Law. In addition, there are three departments involved and there are three agencies that regulate and manage. Meanwhile, each sector/department only controls and understands the laws in their field without wanting to see that the regulations between these departments are interrelated, so that if they are not understood there will be a conflict of interests and as a result the environment, which is the main problem that must be saved, is neglected. Therefore, there must be a common vision, mission, orientation and mastery of regulations in the environmental sector in a comprehensive manner by each relevant department so that environmental issues can be harmonized without sacrificing the interests of society, entrepreneurs, government and environmental interests.(Abdurrahman, 1990)

The lack of success in enforcing environmental law is also due to irregularities in the process of enforcing environmental law, this can be seen in the application of Article 30 (2) of Law no. 23 of 1997 concerning Environmental Management which states that the settlement of disputes outside the court as referred to in paragraph (1) does not apply to environmental crimes as stipulated in this law or in other words to environmental crimes cannot be resolved through ADR , but in practice the provisions of Article 30 (2) of Law no. 23 of 1997 concerning Environmental Management is often violated or deviated.

From criminal politics, the increase in criminal acts in the environmental sector is due to, among other things, development projects and programs that are planned and implemented at the local, regional and national levels, ignoring/not paying attention to environmental factors, not based on accurate research and estimates of developments or crime trends both now and in the future. In addition, due to the absence of research on social influences and consequences and policy decisions and infestations, feasibility studies covering social factors and the possibility of criminogenic consequences and alternative strategies to avoid them have never been carried out, therefore they are not It is surprising that environmental cases on a national scale cannot be completely resolved. Even though crimes in the environmental field by the 5th UN Congress in 1975 in Geneva regarding The Prevention of Crime and The Treatment of Offenders, were

categorized as "Crime as business" namely crimes aimed at obtaining material benefits through activities in business or industry, which are generally carried out in an organized manner. and carried out by those who have a respected position in society, commonly known as “organized Crimes” “White Collar Crime”.(Sago, 2019)

Furthermore, at the 7th Congress in 1985, among other things, attention was requested for certain crimes that were considered dangerous, such as "economic crimes", "Environmental offenses", "illegal trafficking in drugs", "terrorism" and "apartheid". In connection with the role of industrial growth and the progress of science and technology, the 7th Congress also asked for special attention to the problem of "industrial crimes", especially those related to problems:(Sago, 2019)

1. Public health and welfare (public health)
2. Conditions of workers/laborers/employees (labor conditions)
3. Exploitation of natural resources and environment (the exploitation of natural resources and environment)
4. Violation of terms/requirements for goods and services for consumers. (Offences against the provision of goods and services to consumers).

2. RESEARCH METHOD

The research method used in This writing is research on juridical law normative namely legal research conducted by examining library materials consists of primary legal materials, legal materials secondary, and tertiary legal materials.(Prof. Dr. Soerjono Soekanto, S.H., M.A., Sri Mamudji, S.H., 2015)

Research normative is carried out with a problem approach in the form of a statutory approach (statute approach), conceptual approach (conceptual approach) and case approach (case approach). Legal research methods focus more on library based, focusing on reading and analysis of the primary and secondary materials.(Ibrahim, 2005)

The statutory approach (statute aprroach) is done by reviewing all related laws and regulations with the legal issues being studied,(Marzuki, 2019) especially Law no. 23 of 1997 concerning Environmental Management. In addition, research was also carried out with see how deep empirical practice implementation of legalization in the Ministry Law and Human Rights and Ministry of Foreign Affairs.

3. RESULTS AND DISCUSSION

In the era of globalization, the quality and quantity of crime in the environmental sector has developed tremendously. The development of a consumptive modern society that prioritizes economic interests has been followed by increasingly sophisticated environmental crimes, such as environmental pollution, both water pollution caused by industrial waste and domestic waste, air pollution due to smoke caused by forest fires, destruction and deforestation on a large scale. illegal mining and mining in protected forests. Water pollution caused by uncontrolled industrial and domestic waste has polluted almost all rivers in Indonesia, especially in Java.

According to the results of research conducted by JICA, it turns out that 73% of residents' wells have been contaminated with ammonia chemicals originating from industrial waste. The level of concentration of chemical pollution is also high in most of the community wells, because around 13% of the resident wells examined in the South Jakarta area contain chemicals such as mercury, which comes from coli bacteria and ammonia from fecal waste, organo chloride and organo phosphorus. originating from chemical fertilizers, detergents, pesticides, toxic and hazardous waste (B3) from industry. Environmental conditions like this also cause some river water in Java to no longer be suitable for processing and producing into drinking water. The results of Bapedal's monitoring of river water show that as much as 25-50% of the pollutants that contaminate river water actually come from industries that dump their waste into the river. Every year it is estimated that more than 2.2 million tons of B3 waste are discharged into rivers in the Jakarta and West Java areas.(Ramelan, 2012)

The environment, which is an inherited property that must be kept intact from irresponsible hands, seems to be unable to maintain its integrity anymore, as a result of human greed in meeting their economic needs. Meeting economic needs seems to be everything even though it has to sacrifice environmental interests which incidentally are the interests of all nations in the world in general and the Indonesian people in particular. Satisfying and fulfilling the economic needs of a consumptive modern society, human greed, corruption and conspiracy by the ruling elite, cooperation between the ruling elite and world-class businessmen, seems to be the cause of the emergence of various deviations in environmental management both by the ruling elite, businessmen and public.

The Law on Environmental Management regulates actions that are considered criminal acts (crimes), including:

1. Acts of environmental pollution;

   The Law on Environmental Management has explicitly formulated the definition of environmental pollution as formulated in Article 1 point 12.

   Article 1 point 12 reads: "environmental pollution is the entry or inclusion of living things, substances, energy, and/or other components into the environment by human

activities so that the quality drops to a certain level which causes the environment to not function according to its designation."(Law No. 23 1997)

Thus Article 1 number 12 contains the elements of the act of environmental pollution as follows:

a. entry or inclusion of living things, substances, energy, and/or other components into the environment
b. carried out by human activities
c. cause a decrease in the quality of the environment, up to a certain level that causes the environment to not be able to function according to its designation.

2. Acts of Destroying the Environment

The formulation of the destruction of the environment is contained in Article 1 number 14, namely actions that cause direct or indirect changes to their physical and/or biological characteristics which result in the environment no longer functioning in supporting sustainable development.(Ramelan, 2012)

Article 1 point 14 contains elements of acts of environmental destruction, namely:

a. human action
b. causing changes to the physical and/or biological characteristics of the environment
c. causing the environment to no longer function in supporting sustainable development.

Pollution and destruction are categorized as criminal acts because acts of pollution and destruction result in damage to ecosystems and even the earth's biosphere, which can cause disruption to environmental sustainability for both present and future generations. As Abdurahman said, the danger that always threatens the environment from time to time is environmental pollution and destruction. The ecosystem of an environment can be disrupted due to environmental pollution and destruction.(Abdurrahman, 1990)

Furthermore, to obtain an explanation about environmental pollution and destruction, it cannot be seen from a legal perspective alone, but needs to be determined by scientific measurements from various other disciplines. In addition, it is necessary to determine whether the environment is polluted or damaged or not, so that environmental quality standards are necessary. The environmental quality standard is to assess the threshold that determines that the environment is still or is not functioning according to its designation, or to determine that the environment has not changed or there has been a change in the physical and or biological characteristics of the environment.

According to Andi Hamzah, in the broadest scope, environmental law concerns international law (public and private) and national law. Including international environmental law are bilateral agreements between countries, regional agreements because all of these are supranational sources of law. In the national space, environmental law occupies a cross point of various parts of classical law, namely public law and private law. Including public law are criminal law, government (administrative) law, tax law, constitutional law, even according to Andi Hamza, agrarian law is also related to environmental law.(Andi Hamzah, 1995)

Environmental law is very complex both in terms of its understanding, function, problems faced, interests protected, enforcement carried out, laws and regulations that regulate it, and involving various interests, institutions and fields of law. From the aspect of understanding environmental law, it can be seen as the physical environment and social environment, including social phenomena. From the point of view of the physical environment, the focus of the study is pollution, destruction, draining of the environment and natural resources, while from the aspect of the social environment and social phenomena, the focus is according to Ray Darville "Environmental problems are not only concentrating and contribute to a person's level of physical health or mortality, but also mental health and emotional problems. Not to mention the burden of a number of taxes to save the environment with the thought that our children and grandchildren in the future will still be able to enjoy the beauty of nature, at least the same as it is today."(Ray Darville, 1997)

From the aspect of protected interests, environmental law does not only protect the natural environment such as the earth, air, water and everything in it, including the living things that inhabit it, but also the social environment, for example how to prevent foreign cultural influences from entering Indonesia as a result of globalization. Furthermore, Andi Hamzah stated, "that environmental problems are also related to social phenomena such as population growth, migration and social behavior in producing, consuming and recreation".(Andi Hamzah, 1995)

From its function, environmental law aims to protect all of nature and its contents, such as the earth, water and air and the living things in it from extinction, destruction, pollution and depletion, from irresponsible hands in order to create a healthy environment. good, healthy, safe, comfortable, and beautiful. To support the creation of these goals, legal instruments are needed to protect and resolve problems that arise in connection with attempts to undermine these goals. These instruments are administrative law, criminal law and civil law. Judging from the forms of violations, they are also very complex, including violations of civil law, administrative law, and criminal law. Violations of civil law will be resolved through civil law means, violations of criminal law will be resolved through criminal law means and violations of administrative law will be resolved through administrative law means. Therefore, according to Andi Hamzah,

"Environmental law is a functional law which is the cross point of various fields of classical law".(Andi Hamzah, 1995)

Acts of environmental pollution and damage as described in the Law on Environmental Management are environmental crimes regulated in Chapter IX Article 41 to Article 48 of Law No. 23 of 1997 concerning Environmental Management. In addition, there are still acts of pollution and environmental destruction that are regulated in special criminal acts outside the Criminal Code and outside Law no. 23 of 1997 which has a negative impact on efforts to preserve the environment and or protect the environment. Thus, what is meant by environmental crimes is not only limited to environmental crimes as regulated in Law no. 23 of 1997 but also includes several criminal acts that have an impact on the environment which are regulated in:(Krismiyarsi, 2013)

a. UU no. 11 of 1974 concerning Irrigation Article 15 paragraph (1)(2)(3)
b. UU no. 5 of 1983 concerning the Indonesian Exclusive Economic Zone Article 16, Article 17, Article 18
c. UU no. 5 of 1984 concerning Industry
d. UU no. 9 of 1985 concerning Fisheries Article 25, Article 26, Article 27, Article 28, Article 29, Article 30
e. UU no. 5 of 1990 concerning Conservation of Living Natural Resources and Their Ecosystems Article 40 (1)(2)(3)(4)(5)
f. UU no. 41 of 1999 concerning Forestry
g. PP No. 22 of 1982 concerning Water Management

From the scope of criminal acts as regulated by the law mentioned above, it can be seen that there are many types, types of crimes related to efforts to preserve the environment and or protect the preservation of the environment, which have been regulated in detail.

Pollution and environmental destruction occur in almost all parts of Indonesia. This condition places Indonesia as one of the most polluted countries in Asia. If we trace the causes of environmental degradation in this country, it will be clear that law enforcement is not working. Why is that, because until now various major cases in the field of environmental pollution and destruction have not been resolved, according to ICEL the causes include:

1. The law has not been glorified as commander in chief in resolving environmental cases.
2. The elements contained in enforcing environmental criminal law, namely the Police, Prosecutors, Judges, Lawyers do not yet have a vision and mission that are in harmony with enforcing environmental law.
3. The skills of lawyers, the public, police, environmental management agency officials, prosecutors and courts are very limited, coordination and common perception among law enforcers is inadequate, there is no systematic and long-term planning in carrying out law

enforcement, and a lack of integrity from law enforcers which may affect the law enforcement process.

4. Supervision and law enforcement are not planned, reactive and improvisational.
   - the process of collecting information on investigations and prosecutions was carried out by different agencies with gaps in understanding between law enforcers coming from various agencies, and with very weak coordination.
   - Inequality in knowledge and understanding of judges in handling cases of natural resources and environmental functions, especially sustainable development more broadly. The gap in knowledge and understanding of the judges is exacerbated by the non-recognition of ad hoc judges to overcome the ordinary nature of judges in the field of environment and natural resources.
   - The low integrity of law enforcers (government officials, police, prosecutors and judges) threatens their independence and professionalism.(Mas Achmad Santosa, 2016)

The Law on Judicial Power has provided opportunities for law enforcement officials to freely explore law, create laws, which are based on unwritten laws that live in society, of course modern society which is currently developing. But apparently it was never done. For example, the use of criminal law in solving cases in the environmental field is hampered by a number of outdated principles and doctrines. In connection with the use of criminal sanctions in resolving environmental cases, the United States as the most advanced country in the world has made maximum use of criminal sanctions in solving environmental problems.

1. The independent use the criminal sanction the use of criminal sanctions that directly prohibit environmental pollution activities, namely by formulating that carrying out activities that continuously pollute water, air and soil is a crime
2. The dependent-direct use of the criminal sanction the use of limited criminal sanctions, namely by setting a threshold for pollutant substances that can be released by a company in carrying out its activities. Violation of this threshold is defined as a criminal act.
3. The dependent – indirect approach of the criminal sanction This approach reserves criminal sanctions for companies that do not meet predetermined standards
4. The preventive use of the criminal sanction the law used in this case determines what preventive steps must be taken by a company to protect the environment (for example filtering liquid waste, placing air filters before smoke is removed, etc.) if this step is not carried out, criminal sanctions will be imposed.(Krismiyarsi, 2013)

Enforcement of environmental criminal law is an action/effort made by law enforcement officials starting from investigation, investigation, prosecution, and imposition of criminal

sanctions by judges. While what is meant by environmental crimes are all criminal acts regulated in Chapter. XV (Article 98 to Article 115) Law no. 32 of 2009 (Environmental Protection and Management Law) and other common crimes outside the Criminal Code and outside Law no. 32 of 2009 which has a negative impact on efforts to preserve the environment and or protect the environment.

Thus, what is meant by environmental crimes is not only limited to environmental crimes as regulated in Law no. 23 of 1997 Jo Law no. 32 of 2009 (Environmental Protection and Management Law) but also includes several criminal acts that have an impact on the environment which are regulated in:(Krismiyarsi, 2013)

1. Law no. 11 of 1974 concerning Irrigation
2. Law no. 5 of 1983 concerning the Indonesian Exclusive Economic Zone
3. Law no. 5 of 1984 concerning Industry
4. Law no. 9 of 1985 concerning Fisheries
5. Law no. 5 of 1990 concerning the Conservation of Living Natural Resources and their Ecosystems.
6. Law no. 41 of 1999 concerning Forestry.
7. PP No. 22 of 1982 concerning Water Management.
8. PP No. 35 of 1991 concerning Rivers.

4. CONCLUSIONS

The attention, understanding and knowledge of investigators, prosecutors and judges has only focused on Law no. 23 of 1997 and Law no. 32 of 2009 (Environmental Protection and Management Law), even though environmental problems are complex in nature, covering various aspects, such as water, air, soil, forests, living things, which are cross-border and cross-sectoral in nature. Therefore, in handling environmental crime investigation files, the attention of law enforcement officers such as the police who are tasked with investigating, prosecutors who are in charge of pre-prosecution and public prosecutors should not only focus on the criminal acts regulated in Law no. 23 of 1997 and Law no. 32 of 2009 (Environmental Protection and Management Law) but also pay close attention to whether the criminal acts disclosed in the case files also fulfill the elements of the criminal articles in the eight statutory provisions mentioned above which also regulates other general crimes that can threaten, disrupt or impede efforts to preserve or protect the environment.

Enforcement of environmental law by means of criminal law is rarely used. This is due, among other things, to the principle of subsidiarity as contained in the general elucidation of Law no. 23 of 1997 and Law No. 32 of 2009 (Environmental Protection and Management Law) as

follows: As a support for administrative law, the enactment of criminal law provisions still takes into account the principle of subsidiarity, namely that criminal law should be utilized if sanctions in other fields of law such as administrative sanctions and civil sanctions and alternative dispute resolution environment is not effective and/or the perpetrator's error rate is relatively severe and/or the consequences of his actions are relatively large and/or his actions cause public unrest (Explanation of Law No. 23 of 1997 and Law No. 32 of 2009 (Environmental Protection and Management Law).

Or in other words, the use of environmental criminal law enforcement instruments can only be carried out if at least one of the following requirements is met:

1. Administrative law sanctions, civil law sanctions, alternative dispute resolution through negotiation/mediation/deliberation outside the court, after efforts have been made to be ineffective or expected to be ineffective;
2. The level of guilt of the perpetrators is too heavy;
3. The consequences of the actions of the perpetrators of the violations are relatively large;
4. The actions of the perpetrators violating environmental laws and regulations have caused public unrest.

REFERENCES

Abdurrahman. (1990). *Pengantar hukum lingkungan Indonesia* (3rd ed.). Citra Aditya Bakti.

Andi Hamzah. (1995). *Penegakan hukum lingkungan*. Arikha Media Cipta.

Ibrahim, J. (2005). Teori Dan Metode Penelitian Hukum Normatif. In *Bayumedia Publishing*.

Krismiyarsi, K. (2013). the Paradox of Positivistic View and Progressive Law of Criminal Law Enforcement in Indonesia. *Jurnal Media Hukum*, *20*(2).

Marzuki, P. M. (2019). *Penelitian hukum* (14th ed.). Jakarta.

Mas Achmad Santosa. (2016). *Alam pun butuh hukum & keadilan*. Prima Pustaka.

Prof. Dr. Soerjono Soekanto, S.H., M.A., Sri Mamudji, S.H., M. L. L. (2015). *Penelitian hukum normatif* (17th ed.). Rajawali Pers.

Ramelan. (2012). Laporan Akhir Naskah Akademik Rancangan Undang-Undang Tentang Perampasan Aset Tindak Pidana. *Bhmn*, 204.

Ray Darville. (1997). The environment as A Social Issue. *Analizing Social Problem*, *Prentice Hall Inc.*

Sago, D. V. (2019). The Difficulties of Enforcing Global Environmental Law | Georgetown Environmental Law Review | Georgetown Law. In *Georgetown*.

YURISDIKSI
Jurnal Wacana Hukum dan Sains
Universitas Merdeka Surabaya

Undang-Undang No. 23. (1997). *Undang-Undang Republik Indonesia Nomor 23 Tahun 1997 Tentang Pengelolaan Lingkungan Hidup, Lembaran Negara Republik Indonesia Tahun 1997 Nomor 68,Tambahan Lembaran Negara RI. 1997 No. 3699*. 1–59.