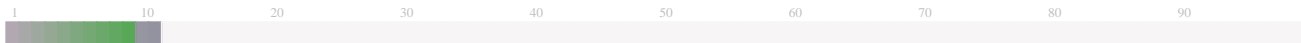


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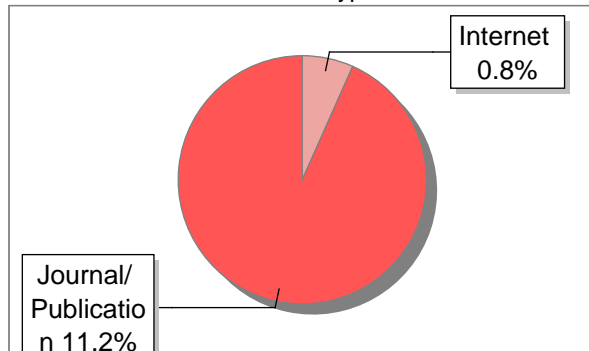
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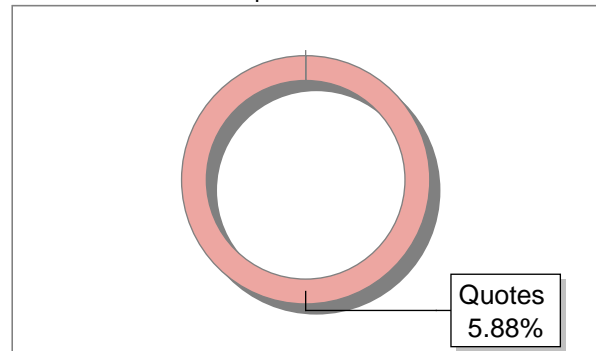
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Implementation of Criminal Law to Determine Persons of Environmental Pollution and/or Destruction in Court

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Abstract

Pollution and/or environmental damage continues to occur and according to the Environmental Quality Index (IKLH) the environment in Indonesia is increasingly damaged and many parties are harmed both humans and the environment itself but an effective settlement of environmental cases has not been found. Thus it is necessary to think about being able to resolve environmental issues that are effective and considerate justice the environment itself. A good and healthy living environment should be realized. This desire can be realized by applying appropriate laws that can deter perpetrators of environmental pollution and/or destruction. The purpose of this research is; to analyze and explain the effective resolution of environmental cases that takes into account the environment itself and the application of criminal law that can deter perpetrators of environmental pollution and/or destruction. The research method used is normative legal research to find the law for an in-concreto case. Criminal law instruments in the settlement of environmental cases in judicial practice, there are still obstacles in presenting evidence, it is still necessary to think about other issues that are not regulated in the law, especially the formulation of environmental offenses. The use of criminal law instruments is more effective because prosecutors have wider powers of coercion, for example detention, search, and faster execution. Criminal law instruments not only deter people who violate them but are also aimed at other people so they do not commit acts that violate the law if they do not want to be subject to criminal sanctions.



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A. Introduction

Pollution and/or environmental damage continues to occur and according to the Environmental Quality Index (IKLH) the environment in Indonesia is increasingly damaged and many parties are harmed both humans and the environment itself but an effective settlement of environmental cases has not been found. Thus it is necessary to think about being able to resolve environmental issues effectively and pay attention to the environment itself.

A good and healthy living environment should be realized. This desire can be realized by implementing the application of appropriate laws that can deter the perpetrators of environmental pollution and/or destruction.

Criminal law arrangements for resolving environmental cases in Law no. 32 of 2009 concerning the Protection and Management of the Environment (UUPPLH), regulated in the following articles: Articles 59.98, 103, 109.112.

Although there are many criminal provisions in law no. 32 of 2009 concerning the Protection and Management of the Environment, but this does not deter the perpetrators of environmental pollution and/or destruction. The formulation of the problem that arises is how to effectively settle environmental cases that pay attention to the environment itself and how to apply criminal law that can deter perpetrators of environmental pollution and/or damage.

In environmental justice, elements of the judiciary are adjusted to the needs of environmental justice. The need in environmental justice is the creation of justice that pays attention to the protection of the environment. Thus, the elements in environmental justice need to pay attention to the environment itself in order to realize environmental sustainability. In environmental courts, it is not only humans who are the litigants, but the environment itself, which is also obliged to receive protection. So what is protected is not only humans but also non-humans. If the elements of the judiciary in environmental justice are not environmental-

ly oriented,¹Weaknesses in elements of the judiciary will affect the legal culture of judges in resolving environmental cases that are oriented towards environmental sustainability. The judge as one of the elements of the judiciary also carries out other elements of the judiciary. If the other elements of the judiciary pay little attention to environmental aspects, it will give birth to a legal culture of judges who pay little attention to environmental aspects. Judges should be more sensitive in dealing with environmental processes because as we know that the impact of environmental pollution is very detrimental to both humans and environmental sustainability.

Judicial elements (judges) have an important role in resolving environmental cases in court. Judges who are also elements of the judiciary will implement other judicial elements (law of procedure, disputing parties, environmental disputes, material law) in settling environmental cases in court. The judge becomes more concerned when compared to other elements of the judiciary. Thus the discussion will also get more portion with other elements of the judiciary. This does not mean that other elements of the judiciary are not important, because judges in the process of settling environmental cases in court in making decisions consider and are influenced by other elements of the judiciary. Likewise judges in realizing protection to the environment polluted and/or damaged need to implement in his ruling on the theory of environmental justice from environmental justice theory from Arne Naess about Deep ecology. With this theory, every judge's decision in resolving environmental cases pays attention to the living environment as a victim.

B. Method

The type of research used in this research is normative legal research to find the law for an in-concocreto dispute. In this study, the legal norms contained in legislation are required as the major premise, while the relevant facts in the dispute (legal fact)

¹ Rochmani, 2020, The Urgency of the Environmental Court in Settlement of Environmental Cases in Indonesia, Journal of Environmental Law Development, Volume 4, Number 2, April 2020, Bandung, H.296-297

are used as the minor premise. Through the process of syllogism, a conclusion will be obtained in the form of the in-concreto positive law that is sought. By describing the problem of the application of criminal law that can deter perpetrators of environmental pollution and/or destruction.

The specification of the research used in this research is descriptive legal research. This research is intended to describe in detail certain legal phenomena, namely the application of criminal law which can deter perpetrators of environmental pollution and/or destruction.

Sources of data used in this study are: Secondary data used in this study from primary legal materials, secondary. The primary legal material used is statutory regulations. Secondary legal material which can come from the scientific work of scholars, journals related to the issues discussed, and research results.

The data collection method in this study was carried out by means of a literature study. The literature study in this research revolves around procedural law and environmental law.

The data presentation method is presented in the form of descriptions of application of criminal law that can deter perpetrators of environmental pollution and/or destruction.

The data analysis method is carried out using qualitative analysis by examining data and concepts, theories and doctrines as well as related laws and regulations to achieve clarity regarding the application of criminal law that can deter perpetrators of environmental pollution and/or destruction.

C. Results and Discussion

Dispute² is a condition or situation of conflict involving two or more actors each trying to justify and fight for their interests. The status of an incident can be called a conflict if it is accompanied by two factors, namely "case" and "articulation". The term "case" which according to the Indonesian

2 Sunoto, 1998, Prerequisites and Preconditions for Developing an Effective Environmental Dispute Resolution System in the Regions, ICEL, Jakarta, H.31.

General Dictionary means "thing or formula that must be done" or more specifically means "violation" is the main prerequisite for the emergence of conflict, especially in relation to the type and characteristics of the case, the perpetrators and the relationship between the actors involved in the dispute. a case. Cases always contain an element of "conflict".

Conflictual relationships only occur when there is an articulation process. "articulation" which in English means "the act or process of speaking or express word" is the process of triggering a case, especially because the articulation places the perpetrators of the case in a position of mutually defending their interests, namely through the process of "prosecution" and "defense" (although not through the courts). This articulation can be in the form of a warning or a demand.³

There are several definitions of environmental disputes. According to article 1 number 2, Government Regulation (PP) Number 54 of 2000 concerning Institutions Providing Environmental Dispute Settlement Services Outside the Court, that what is meant by environmental disputes is disputes between two or more parties arising from the presence or suspicion of pollution and and/or environmental destruction. According to Moore, as quoted by Nicholson, environmental issues are forms of tension, disagreement, debate, competition, conflict or conflict related to several elements of the environment. According to Nicholson, the term environment in a broad sense can be interpreted as management of natural resources, energy, development or industrialization.⁴ According to Article 1 number 25, Law Number 32 of 2009 Concerning Environmental Protection and Management (UUPPLH), what is meant by environmental disputes are disputes between two or more parties arising from activities that have the potential and/or have an impact on the environment. The defini-

3 Sunoto, in Mas Achmad Santoso and Sulaiman N. Sembiring, 1998, Community Complaints and Resolution environmental matter, Indonesian Center for Environmental Law (ICEL), Jakarta, H.31

4 Sudharto P. Hadi, 2010, Environmental Conflict Resolution, Diponegoro University Publishing Agency, Semarang, H.3

tion of environmental disputes according to UUPPLH is broader when compared to the understanding of environmental disputes regulated in PP. Number 54 of 2000, because the UUPPLH does not only limit that environmental disputes do not only occur due to environmental pollution and/or damage.

The Supreme Court uses the term environmental case in environmental violations. The definition of environmental cases according to Article 1 paragraph (9), Decision of the Chief Justice of the Supreme Court of the Republic of Indonesia Number: 26/KMA/SK/11/2013 Concerning the System for Selection and Appointment of Environmental Judges is: "environmental cases are violations of criminal, civil, or administration in the field of environmental protection and management, including but not limited to regulations in the fields of forestry, plantation, mining, coastal and marine, spatial planning, water resources, energy, industry, and/or natural resource conservation.

Criminal Instruments

In criminal law, the prevention of criminal acts is divided into two:⁵

The nature of using penal means which is referred to as the criminal justice system means that the perpetrator is carried out by law enforcement in the form of punishment through a trial with punishment so that the perpetrator is deterrent, while the purpose of punishment is also the goal of the criminal justice system. Some scholars argue about the objectives of criminal law are;⁶ To frighten people not to commit crimes, either by frightening the general public (general prevention), or by scaring certain people who have committed crimes so that in the future they will not commit crimes again (special prevention); To educate or correct people who like to commit crimes, so that they be-

5 Soedjono, 1970, Conception of Criminology in Crime Control Efforts, alumni of Bandung. P.50, in Nilma Suryani, 2016, Law Enforcement of the Lapindo Mud Criminal Law is Still Far from Expectation, Journal of Environmental Law Development, volume 1, Number 1, October 2016, Bandung, H.77

6 Siswanto Sunarso, 2005, Psychotropic Law Enforcement in Legal Sociology Studies, PT. Grafindo Persada, p.7, in Ibid

come people of good character, so that they are of benefit to society; To prevent the commission of criminal acts for the protection of the State, society and residents, namely: (1) To guide convicts so that they are converted and become members of society who are virtuous and useful; (2) To remove stains caused by criminal acts.

Preventive in nature, that is, non-penal countermeasures, meaning that prevention before a crime occurs is the same as in the health sector, it is better to protect than to treat, such as: Improving the social and economic conditions of the community; Increasing legal awareness and community discipline; Improving moral education and family harmony

The criminal instrument for resolving environmental cases in Law no. 32 of 2009 concerning Environmental Protection and Management, regulated in the following articles:

Article 98:

(1) Any person who intentionally commits an act which results in exceeding the quality standard for ambient air, water quality standard, seawater quality standard. Or the standard criteria for environmental damage, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah).

(2) If the act as referred to in paragraph (1) causes injury to a person and/or endangers human health, the criminal shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least IDR 12,000,000,000.00 (twelve billion rupiah).

(3) If the act referred to in paragraph (1) causes a person to be seriously injured or dies, the criminal shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least Rp. 5,000,000,000.00 (five billion rupiah).

Article 99:

(1) Any person who due to negligence causes the ambient air quality standard, water

quality standard, sea water quality standard, or environmental damage standard criteria to be exceeded, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a minimum fine of Rp. 1,000,000,000.00 (one billion) and a maximum of Rp. 3,000,000,000.00 (three billion).

(2) If the act as referred to in paragraph 1 (one) causes injury to a person and/or endangers human health, the criminal shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of 6 (six) years and a fine of at least IDR 2,000,000,000.00 (two billion) and a maximum of IDR 6,000,000,000.00 (six billion rupiah).

(3) If the act as referred to in paragraph (1) results in a person being seriously injured or dead, the penalty is imprisonment for a minimum of 3 (three) years and a maximum of 9 (nine) years and a fine of at least Rp. 3,000,000,000.00 (three billion rupiah).

Article 103:

Everyone who produces B3 waste and does not carry out the management as referred to in Article 59, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least Rp. 1,000,000,000.00 (one billion rupiah).

Article 59:

Everyone who produces B3 waste is obliged to process the B3 waste they produce.

Article 109:

Everyone who carries out a business and/or activity without having an environmental permit as referred to in Article 36 paragraph (3), shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah).

Article 112:

Any authorized official who deliberately does not supervise the compliance of those in charge of a business and/or activity with laws and regulations and environmental permits as referred to in Article 71 and Article

72, resulting in environmental pollution and/or damage resulting in loss of human life, shall be punished with imprisonment for a maximum of 1 (one) year or a fine of a maximum of Rp. 500,000,000.00 (five hundred million rupiah).

Although there are many criminal provisions in law no. 32 of 2009 concerning the Protection and Management of the Environment, however, this does not mean that many environmental criminal cases will be submitted to the District Court. Criminal instruments in the settlement of environmental cases in judicial practice, judges usually use criminal instruments regulated in the Criminal Code (KUHP) and the Criminal Procedure Code (KUHP). Besides the use of these criminal instruments there are obstacles in presenting evidence, it is also necessary to think about other issues that are not regulated in the law, especially the formulation of environmental offenses.⁷

Environmental cases are *lex specialis* because they have been specifically regulated separately, this is evidenced by Law no. 32 of 2009 concerning Environmental Protection and Management.

Judges in Settlement of Environmental Cases

The settlement of environmental cases is actually very special, because it is not only aimed at the interests of the litigants, but also for the interests of everyone and the interests of the environment itself. So in solving environmental cases for the benefit of humans and non-humans. Thus in the settlement of environmental cases pay attention to democratic principles.

The democratic principle in resolving environmental cases is a manifestation of the will of all the people for the common interest of creating a good and healthy environment. Settlement of environmental cases that are oriented towards environmental sustainability is not based on the will of the parties, the government alone but also pays attention to all people who may be affected by the pollution and/or damage to the environment.

⁷ Kosnadi Hardjosoemantri, 2002, *Law Environmental governance*, Gadjah Mada University Press, Yogyakarta, H. 333

Remembering that a good and healthy environment is **the right of** everyone, including future generations. The environment is also a shared responsibility in preserving it, not only the role of the government but all the people must be involved.

Several important aspects of democratic principles **in the settlement of** environmental cases. First, the main agenda in resolving environmental cases is the community for the benefit of the community. Settlement of environmental cases is the implementation of people's aspirations for the benefit of society. The government **is only a mediator in** resolving environmental cases that are mandated by the community. Thus the government must guarantee that **the agenda and role of the government given by the community to** be carried out are truly from the community for the benefit of the community. Second, community participation (intergenerational representatives) in their participation in resolving environmental issues is a moral imperative. The community is not only involved in implementing the settlement of environmental cases by law enforcers, but also participates in formulating and determining the agenda for environmental settlement. Third, there is access to honest and open information about the agenda for settling environmental cases. Public transparency is a must in democratic principles. The big idea regarding the right to obtain accurate and correct information is a moral demand from democracy in resolving environmental cases.⁸

Besides judges applying the principles of democracy to settle environmental cases, judges also need to implement the theory of *adil* environment from Arne Naess about *Deep ecology*.

Deep ecology (deep ecology) is an environmental philosophy that was first introduced by the Norwegian philosopher, Arne Naess in 1973. Deep ecology demands a new ethic that is not centered on humans, but centered on all living things in relation to efforts to overcome environmental prob-

lems. Man **is no longer** the center of the moral world. *Deep ecology* instead it focuses attention on all species, including non-human species. *Deep ecology* not only focus on short term interests, but also long term interests. Hence the developed moral principles *Deep ecology* concerns **the interests of the** entire ecological community.⁹ Therefore *Deep ecology* not only paying attention to the current state of the environment, but also paying attention to future environmental conditions or environmental sustainability. It's not just quality that matters *Deep ecology* but also the quantity of the environment, including the humans in it. Deep ecology wants to pay attention to environmental sustainability.

Deep ecology is a concept that changes the view of humans from anthropocentric which views humans as the center of the universe system to ecocentric, which views humans as part of the environment. Theory *deep ecology* itself is used to explain human concern for the environment.¹⁰

Criminal Legal Instruments in Effective Environmental Case Resolutions that Pay Attention to the Environment

In resolving environmental cases in court, it is necessary to pay attention to the instruments used. In this case it is necessary to pay attention to the signs or criteria in choosing the application of administrative instruments or criminal law instruments. This criterion is: 1. Normative criteria; 2. Instrumental criteria; 3. Opportunistic criteria.

Normative criteria are based on the view that criminal law is only applied to violations that have a very high negative ethical value. Violations are seen as highly morally reprehensible (socially most reprehensible).¹¹

The instrument criteria are pragmatic in nature, such as deterring suspects which is the aim of the criminal law that should be applied. If the goal is to recover the situation or repair the damage, administrative instruments are reluctant to act or are even involved in the violation, then criminal law

⁸ Rochmani, et al, 2021, Legal Realism in Settlement of Environmental Cases in Court after the Covid-19 Pandemic in Indonesia, Journal of Environmental Law Development, volume 5, Number 3, June 2021, Bandung, H.540

⁹ A. Sonny Keraff, 2010, *Environmental Ethics*, PT Kompas Media Nusantara, Jakarta. H. 213

¹⁰ <http://pipit.kecilku.blogdrive.com/archive/95.html>

¹¹ HG van de Bunt, et.al, *Strafrechtelijke handhaving van milieuwet*, H.35.

Table 1. SEMARANG District Court Decision Number 284 / Pid.Sus / 2015 / PN/SMG

SEMARANG District Court Decision Number 284 / Pid.Sus / 2015 / PN/SMG	
Date 5 January 2016 — Liao Chih Ping bin Liao Tai Hung	
Number	284 / Pid. Sus / 2015 / PN/SMG
Process Level	First
Classification	Special Crimes Environment
Keywords	Environment
Year	2016
Registration date	—
Judicial Institution	PN SEMARANG
Types of Judicial Institutions	PN
Chief Judge	Torowa Daeli
Member Judge	Soesilo, Gatot Soesanto
Amar	Etc
Other Amar	LAW
Amber's Note	Justice I1. Declare that the defendant Liao Chih Ping bin Liao Tai Hung has been proven legally and convincingly guilty of committing the crime of dumping hazardous and toxic waste (B3) without a permit; 2. Sentenced for that reason with imprisonment for 1 (one) year and a fine of Rp. 100,000,000.- (one hundred million rupiah) with the provision that if the fine is not paid then it is replaced by imprisonment for 6 (six) months; 3. Establish evidence in the form of: - + 1 (one) ton of B3 waste types of fly ash and bottom ash confiscated from the building used as a Temporary Storage Site that has not yet been completed with a TPS permit; - + 3, 75 M3 B3 types of fly ash and bottom ash confiscated from the dumping site 1;- + 11 (eleven) M3 B3 types of fly ash and bottom ash confiscated from the dumping site; Used for other matters; 4. Burden the defendant to pay court fees of Rp. 5,000, - (five thousand rupiah).
Deliberation date	—

tion has been decided and the decision has permanent legal force, the execution will be protracted. If finally the cassation has been decided and the decision has permanent legal force, the execution will be protracted. Usually, even though it is clearly only a civil

case, for example debts, the aggrieved party tries to turn it into a criminal case because the prosecutor has broader powers of coercion, for example detention, searches, faster executions, and so on.

Thus, in accordance with these consi-

derations, criminal law instruments are more effective than civil law instruments, even though the prosecutor has the authority to represent both the state and the community to sue civil cases including violations of environmental law. Another thing that needs to be considered when using the instrument criteria is sufficient court fees. Proficiency in using civil law instruments, as well as expertise in drafting lawsuits and countermeasures are needed, in contrast to criminal prosecutions because it has become the daily bread of prosecutors with all the equipment borne by the state.¹⁷ Criminal law sanctions can have a deterrent effect on perpetrators of environmental violations. Sanctions in criminal law for violations of environmental law can be in the form of; imprisonment, fines and restoration of damaged environment¹⁸.

Settlement by criminal means apart from being a fast process and can create a deterrent effect is also more appropriate for resolving environmental disputes, considering that what has been violated is the environment which has a clear impact on humans and the environment which will later be inherited by human posterity in the future. So that when viewed from the consequences or impacts it is very reasonable if the settlement used uses criminal means¹⁹.

4 Application of Criminal Law that Can Create a Deterrent Against Perpetrators of Environmental Pollution and/or Destruction.

Seeing the decision of the case above, the judge's decision can deter perpetrators who can cause damage and/or the environment. In order to better punish the perpetrators who caused the damage and/or pollution, the judge may add additional punishments in the form of restoration of the damaged and/or polluted environment. If the

¹⁷ Ibid, H.66-68.

¹⁸ Lazarus, Victor Apriano R., and Francis Saverius Nurdin. "Reconstruction of Article 119 Letter b of Law No. 32 of 2009 concerning Utilitarianism-Based Environmental Protection and Management." IUS QUIA IUSTUM: 442.

¹⁹ Edi Sutikno, Edi Sutikno. "Analysis of Decisions of Judges of the Muara Bungo District Court Regarding Environmental Crimes (CASE STUDY OF DECISION NUMBER 162/Pid. B/2013/PN". Mab). Diss. Batanghari University, 2018.

perpetrator gets a punishment in the form of; imprisonment, compensation and additional punishment in the form of restoration of a damaged and/or polluted environment, people will think twice about taking actions that could cause environmental damage and/or pollution.

The judge's decision is not only aimed at the perpetrators who are given a sentence, but the law is also intended for good people. Good people also have the potential to cause actions that can cause environmental damage and/or pollution. If the judge's decision creates a deterrent effect on the perpetrator, of course the decision that can cause a deterrent effect can influence good people to remain good and will not take actions that can cause damage and/or environmental pollution. By enforcing the criminal law for environmental actors, the purpose of sentencing will be achieved, namely the perpetrators are deterrent and do not repeat their actions and are not imitated by others.²⁰

D. Conclusion

Criminal law instruments in the settlement of environmental cases in judicial practice, the use of these criminal law instruments in addition to having obstacles in presenting evidence, also requires thinking about other issues that are not regulated in the law, especially the formulation of environmental offenses

The effectiveness of criminal law instruments in resolving environmental cases in judicial practice, that criminal law instruments are more effective because prosecutors have wider powers of coercion, for example detention, searches, faster executions. Criminal law instruments do not only deter people who violate them but are also aimed at other people so they do not commit acts that violate the law if they do not want to be subject to criminal sanctions.

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