

JURIDICAL REVIEW OF LAW ENFORCEMENT ON WASTE POLLUTION CASES IN MARINE AREAS

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Abstract

The purpose of this study is to analyze: 1) what is the Legal Construction on the protection and management of marine areas? 2) How is Law Enforcement of Waste Pollution Cases in Marine Areas?. The research methods used are empirical juridical and normative juridical with a statutory approach, concept approach, and case studies. The results showed that: 1) Penal arrangements in Law No.32 of 2009 concerning Environmental Protection and Management (UUPPLH) can be imposed on individuals, corporations and authorized officials. As stipulated in Article 98, environmental crime in paragraph (1) is materially formulated which means that environmental crime will occur if there is a consequence of the act committed. Paragraph (2) there is an additional element, namely the element of causing serious injury and / or danger to human health. This element is the ballast of paragraph (1) which is done deliberately. In paragraph (3), the additional element is that the victim of environmental pollution is seriously injured or to death, so the criminal threat is more severe than paragraph (1) and paragraph (2). Article 99, the formulation of article 99 is also a material formulation, meaning that the actions of the perpetrators cause pollution and / or environmental damage. 2) Refer to Law No. 27/2007 and Law No. 32/2009 concerning Environmental Protection and Management, which use 3 (three) legal instruments in the enforcement of environmental laws related to marine pollution in coastal areas, namely administrative law, civil law, and criminal law.

Keywords: Review, Juridical, Enforcement, Law, Case, Pollution, Waste, Marine Area.

INTRODUCTION

Background

The coastal ecosystem, which is one of the environments and as a place to live for residents who mostly work as fishermen, has legal certainty for its protection. Article 57 of the PPLH Law explains that the environment is maintained through the conservation of natural resources. The conservation of natural resources in question can be seen in the explanation of Article 57 which among others states that, Conservation of natural resources includes, among others, conservation of water resources, forest ecosystems, coastal and marine ecosystems, energy, peatland ecosystems, and karst ecosystems.¹

The disruption of the environment and ecosystem of the coastal area is caused by the large number of domestic (household) garbage piles that are thrown on the beach. As a result of the pile of garbage, the beach area that is usually used for leaning boats is now no longer used. The beach is gradually

abandoned by fishermen due to the high mud caused by garbage that makes fishing boats difficult to walk. The amount of landfill if it cannot be handled will cause various environmental problems in the community.²

The government has actually issued laws as an effort to preserve the environment, namely:

- (a) Law of the Republic of Indonesia No. 5 of 1990 concerning the Conservation of Biological Natural Resources and their Ecosystems,
- (b) Law No. 27 of 2007 concerning Management of Coastal Areas and Small Islands;
- (c) Law No. 45 of 2009 on Fisheries;
- (d) Life of the Government Regulation of the Republic of Indonesia No. 15T ahun1990 concerning Fisheries Business;
- (e) Government Regulation No.51 of 1993 concerning Environmental Impact Analysis;
- (f) Regulation of the Minister of Environment Number 5 of 2004 concerning Seawater Quality Standards.

It turns out that a number of these laws have not been able to prevent complete damage to marine ecosystems. On the other hand, the awareness of coastal communities has not grown, the willingness to be part of taking the role of taking preventive measures against pollution of the coastal environment.³

Environmental pollution is the entry or inclusion of living things, substances, energy, and/or other components into the environment by human activities so as to exceed the established environmental quality standards, the definition of environmental pollution is regulated in the provisions of Article 1 number 14 of Law No. 32 of 2009. Environmental destruction is regulated in the provisions of Article 1 number 16 of Law No. 32 of 2009, which specifies that: "*environmental destruction is an action that causes direct or indirect changes to its physical and/or biological properties that result in the environment no longer functioning*".⁴

In relation to the principle of laws and regulations, namely the precautionary principle, is that uncertainty regarding the impact of a business and/or activity due to limited mastery of science and technology is not a reason to delay steps to minimize or avoid threats to pollution and/or environmental damage.

Environmental pollution on the beach has a considerable impact on the surrounding environment, especially if the surrounding is the same residential area, residents generally make a living as sailors or fishermen. Population settlements are expanding, making the increase in household industrial products which will result in the development of industrial areas in big cities. This will trigger pollution on the coast, because all waste from land, both from urban settlements and from industrial areas eventually empties into the sea.⁵

With the occurrence of marine pollution due to garbage waste and destruction of coastal areas, there will be disadvantaged parties due to garbage waste pollution and destruction of coastal areas, and the disadvantaged parties can be individuals and communities, especially coastal communities. The occurrence of waste pollution and environmental destruction of coastal areas means that there have been civil disputes in the coastal area.

In pollution, environmental pollution is one of the causes of damage and changes in the environmental order, sources of pollution materials are increasing day by day. According to Mukono stated that a pollutant (pollutant) is a material that exists in the environment and is the result of human activities, which has a detrimental effect on living organisms.⁶

Control of pollution and/or environmental damage in coastal areas must be carried out by the Government, local governments, and those responsible for businesses and/or activities in accordance with their respective authorities, roles, and responsibilities. Environmental problems will arise if human demand for certain natural resources or environmental services exceeds the ability of regional ecosystems to provide those natural resources or environmental services.

Weak supervision, guidance and law enforcement have triggered various environmental problems. The lack of supervision and enforcement of law enforcement both at the lower level (community) and at the top level (government) makes the tendency of environmental damage worse. This can be seen from the absence of an independent special institution with full authority to supervise and enforce laws governing natural resource management.⁷

Problem Statement

1. What is the Legal Construction on the protection and management of marine areas?
2. How is Law Enforcement of Waste Pollution Cases in Marine Areas?

Theoretical Framework

The Grand Theory or the main theory on which the analysis knife is based in this study is the theory of legal protection. Legal protection is the obligation of the state in providing legal protection to every citizen. Legal protection can also be described as a function of law both as a function of regulating and as a function of enforcing the law to achieve justice and legal expediency. Legal protection is defined as providing protection to human rights and such protection is given to the community so that they can enjoy legal rights.⁸

According to Satjipto Rahardjo, legal protection is to provide protection for human rights that are harmed by others and that protection is given to the community in order to enjoy all the rights provided by law.⁹ Meanwhile, according to C.S.T. Kansil, legal protection is a variety of legal remedies that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from interference and various threats from any party.¹⁰ Philipus M. Hadjon argues that legal protection is an act to protect or provide assistance to legal subjects, using legal instruments.¹¹

Middle Theory in this study uses the Hierarchy Theory of Legislation. According to Hans Kelsen, norms are tiered in layers in a hierarchical order. In this sense, the legal norms below apply and originate, and are based on higher norms, and higher norms also originate and are based on higher norms and so on until they stop at a highest norm called the Basic Norm (*Grundnorm*) and still according to Hans Kelsen is included in a dynamic norm system.

Law is formed and abolished by its authorities who are authorized to form it, based on higher norms, so that lower norms (*Inferior*) can be formed based on higher norms (*superior*), in the end the law becomes tiered and multi-layered forming a Hierarchy.¹²

Applied Theory in this study uses Authority Theory. The concept of authority can be seen in Dutch known as "*bevoegdheid*" which means authority or power.¹³ Authority is the ability to perform certain legal actions in the sense of actions that cause legal consequences and include the emergence and disappearance of legal consequences.¹⁴ all government actions must be based on applicable law. Thus

that legitimate government action is if it is in accordance with authority. It further said that authority can only be obtained in two ways, namely attribution and delegation.¹⁵

RESEARCH METHODOLOGY

This research is included in the type of collaborative research, where the approach method used is normative as well as empirical, namely normative juridical and empirical juridical collaboration. Normative legal research method, which is a study conducted by reviewing laws and regulations that apply or are applied to a particular legal problem. Normative research is often referred to as doctrinal research, which is research whose object of study is statutory documents and library materials. The normative method was chosen because the object of study is to require the study of related laws and regulations, Normative legal research is research that includes research on legal principles, research on legal systematics, research on legal synchronization, legal history research, and comparative legal research, in order to answer legal problems or issues to be studied.¹⁶ Empirical methods are also needed in this study intended to provide data and a clearer picture of coastal area management. The results of empirical research are then collaborated with normative legal research.

RESEARCH RESULTS

Legal Construction on Waste Pollution in Coastal Areas

Pollution that occurs due to humans directly is waste disposal that is carried out without prior filtration. The community, especially those who live around the sea coast, dispose of waste directly into the sea with a large enough volume and often occurs so that it becomes a factor in the pollution of the marine environment. As for marine pollution that occurs due to other human activities, namely pollution carried out by ship owners and industries in Indonesian waters which results in threatening the sustainability of the sea, namely oil spills usually occur into the sea, of course, this increasingly results in increased sea damage. A good and healthy environment is a right for all citizens. Therefore, the state, government and all stakeholders are obliged to protect and manage the environment in the implementation of sustainable development. This is so that the environment can remain a source and support for society and other living things. Good and healthy natural resources are guaranteed sustainability, one of which is by maintaining the marine environment. In conditions that connect to the nature of the sea, as well as management systems in seeking existing natural resources. The growing awareness created in coordinating the sea or in meeting the needs of the sea is a step to realize the preservation of the marine environment.¹⁷

Destruction of the Marine Environment In general, the purpose of environmental protection and management law is to create a balance of *environmental harmony*.¹⁸ Thus, environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement.¹⁹

According to the understanding contained in article 1 of Law No. 32 of 2009 concerning Environmental Protection and Management, it contains the definition of the environment as a unity of space with all objects, forces, conditions, and living things, including humans and their behavior, which affect nature itself, the survival of life, and the welfare of humans and other living things. A healthy and clean living environment is the dream and hope of every living thing. And this is in line with article 28 H paragraph (1) of the 1945 Constitution which reads: "*Everyone has the right to live a prosperous life outwardly and mentally, to reside, and to get a good and healthy living environment and the right to health services*". But to create such conditions, namely comfortable, healthy and clean conditions, it turns

out that it requires challenges, discipline, cooperation, rules and awareness of all people, especially from the human side or society as agents in charge of social control or social control. As for actions in environmental cleanliness, it has the basis of a person's perspective and understanding of environmental cleanliness.²⁰

The basis of the National Law on Pollution in the Sea is spread in various existing laws and regulations, namely:

- a. Law of the Republic of Indonesia No. 5 of 1983 concerning Indonesia's exclusive economic zone. The provisions regarding marine pollution are specified in article 8 of the above law.
- b. Law No. 5 of 1990 concerning the Conservation of Biological Natural Resources and their Ecosystems,
- c. Law Number 17 of 2008 concerning Shipping.
- d. Law Number 32 of 2009 concerning Environmental Protection and Management.
- e. Government Regulation of the Republic of Indonesia Number 20 of 1990 concerning Water Pollution Control, as well as other legal rules relating to Regulation of prevention of oil pollution at sea by ships in Indonesia.
- f. Government Regulation of the Republic of Indonesia Number 19 of 1999 concerning control of pollution and/or destruction of the sea.
- g. Government Regulation of the Republic of Indonesia Number 21 of 2010 concerning maritime environmental protection.
- h. Presidential Decree No.109 of 2006 concerning Emergency Management of Oil Spills at Sea.
- i. Ministerial Regulation Number 29 of 2014 concerning Prevention of Maritime Environmental Pollution.²¹

There are several types of marine pollution including:

- a. Oil *spiles*
- b. *Marine* debris
- c. Dumping
- d. Industrial waste pollution
- e. Accidents of ships loaded with non-oil mines at sea²²

Penal arrangements in Law No.32 of 2009 concerning Environmental Protection and Management (UUPPLH) can be imposed on individuals, corporations and authorized officials. As stipulated in Article 98, environmental crime in paragraph (1) is materially formulated which means that environmental crime will occur if there is a consequence of the act committed. Paragraph (2) There is an additional element, namely the element of causing serious injury and / or danger to human health. This element is the ballast of paragraph (1) which is done deliberately. In paragraph (3), the additional element is that the victim of environmental pollution is seriously injured or to death, so the criminal threat is more severe than paragraph (1) and paragraph (2). Article 99, The formulation of article 99 is also a material formulation, meaning that the actions of the perpetrators cause pollution and / or environmental damage.²³

Article 99 has similarities with the formulation of article 98 of the UUPPLH, except that the criminal threat is lighter than article 98. Article 100, the formulation of the criminal act article 100 paragraph

(1) is a formal formulation, that is, there is no need for the consequences of the act that the act has been committed so that there is a violation of wastewater quality, emission quality, or impaired quality. In paragraph (2) the criminal provisions stipulated in paragraph (1) will be able to be given to the offender if the administrative sanction has been imposed on him or the offender has committed the violation more than once. Administrative sanctions are the freezing of environmental permits, written reprimands, government coercion and revocation of environmental permits.²⁴

Article 101, the formulation of environmental crimes in article 101 is formulated formally, meaning that the act of releasing a product from genetic engineering into the environment has been carried out, then environmental crimes have occurred. The consequences of this action do not need to be sought, because when there is an act into the surrounding environmental media releasing a product from genetic engineering, an environmental crime has occurred. Article 104, In article 104, everyone is prohibited from disposing of waste and hazardous materials into media from the environment without having a permit. Waste is defined as the rest of a business product and / or so on. Dumping is the act of disposing, inserting, and/or placing waste and materials in a certain concentration, amount, location and time.²⁵

Article 105, in article 105 that everyone may not enter waste into Indonesian environmental media where its origin is outside the reach of the territory of the Unitary State of the Republic of Indonesia. It is intended to protect the State as a container for disposal of waste waste from abroad. Because Indonesia has a fairly large area and uninhabited islands and lack of supervision. Article 112, Efforts to protect the environment, monitoring factors have an important objective for the realization of the preservation of environmental functions. Therefore, officials authorized to carry out supervision must supervise the compliance of business actors and/or activities in compliance with laws and regulations relating to environmental protection and management and environmental permits.²⁶

Law Enforcement of Waste Pollution Cases in Marine Areas

Referring to Law No. 27/2007 and Law No. 32/2009 concerning Environmental Protection and Management, which uses 3 (three) legal instruments in the enforcement of environmental laws related to marine pollution in coastal areas, namely:

a. Administrative Law Enforcement

In coastal area management, administrative law can be utilized, because Law No. 27/2007 on Management of Coastal Areas and Small Islands and UUNo.32/2009 on Environmental Protection and Management give broad authority to local governments to exercise all government authority in the field of environmental protection and management and coordinate with other agencies.

The provisions regarding administrative sanctions are not contained in the Environmental Law, because in general administrative sanctions are related to the licensing system. A person who does not carry out the provisions as stated in the permit granted is subject to administrative sanctions given by the agency authorized to give the permit. In the Environmental Law, provisions are held with administrative sanctions, so that clearer provisions can be obtained, which can be applied by the relevant agencies.

In paragraph (5) it is stated that rescue, response and/or maintenance measures as referred to in paragraph (1) can be replaced by payment of a certain amount of money. The provisions in paragraph (5) are applied, if the person in charge of the business and/or activity concerned does not have hardware in the form of tools, or software in the form of technical capabilities to carry out these actions, so that he submits certain money sufficient for such actions by government agencies or other parties who have the ability to do so.

Article 27 of the Environmental Protection and Management Law states:

1. Certain violations may be sanctioned in the form of revocation of business and/or activity licenses.
2. Regional heads can submit proposals to revoke business and/or activity licenses to authorized officials.
3. Interested parties can apply to the competent authority to revoke business and/or activity licenses because they harm their interests.

Efforts to enforce administrative sanctions by the government consistently in accordance with existing authorities will have an impact on law enforcement, in order to preserve the environmental functions of coastal areas.

In this regard, the enforcement of administrative sanctions is at the forefront of environmental law enforcement in coastal areas. If administrative sanctions are considered ineffective, then criminal sanctions will be used as the ultimate weapon.

The application of administrative sanctions can be in the form of forced government efforts in the form of all certain actions for business actors to prevent and end the occurrence of environmental violations, overcome the consequences caused by a violation, restore the environment to its original state at the expense of business actors (in the form of government coercion, forced money, closure of business premises, termination of company machinery activities, and license revocation).²⁷

b. Civil Law Eaters

With the occurrence of marine pollution due to garbage waste and destruction of coastal areas, there will be disadvantaged parties due to garbage waste pollution and destruction of coastal areas, and the disadvantaged parties can be individuals and communities, especially coastal communities.

The occurrence of waste pollution and environmental destruction of coastal areas means that there have been civil disputes in the coastal area.

1. Lawsuits over coastal environmental cases can be made by; 1. People/victims directly affected by environmental pollution/destruction (163 HIR). 2. Environmental Organizations (NGOs) that have the right to sue (*ius standi*) under the law for the purpose of preserving environmental functions (vide Article 38 paragraph (1) of the Environmental Law). 3. Government installations responsible for the environment, acting in the interests of the community if environmental pollution and/or destruction occurs in such a way as to affect the basic livelihoods of the community (vide Article 37 paragraph (2) of the Environmental Law).
2. The form of lawsuit of people / victims who are directly affected by environmental pollution / destruction is 2: 1. Individual lawsuit (vide Article 163 HIR) 2. Class action (vide Article 37 paragraph (1) of the Environmental Act Jo. Per. MA No. 1 of 2002).

The settlement of civil disputes in coastal areas can be reached through the courts and outside the court is explained in the General Explanation point 5 of the second paragraph of Law No.32/2009 which states: "... *Civil law provisions include the settlement of environmental disputes outside the court and in court.*

Settlement of environmental disputes in court includes class actions, environmental organization lawsuits, or government lawsuits."

Through these methods, it is hoped that in addition to causing a deterrent effect, it will also increase the awareness of all stakeholders about the importance of protecting and managing the environment of coastal areas for the sake of present and future generations".²⁸

c. Criminal Law Enforcement

In point (6) of Law No. 32/2009 which states: "*criminal law enforcement in this Law introduces the threat of minimum punishment in addition to the maximum, expansion of evidence, punishment for violations of quality standards, integration of criminal law enforcement, and regulation of corporate crime. Environmental criminal law enforcement continues to pay attention to the principle of ultimum remedium which requires the application of criminal law enforcement as a last resort after the implementation of administrative law enforcement is considered unsuccessful. The application of the principle of ultimum remedium only applies to certain formal crimes, namely punishment for violations of wastewater quality standards, emissions, and disturbances*".

Criminal acts threatened in Law No. 32/2009 are acts that according to the Law are threatened with criminal sanctions for anyone who commits prohibited acts. Likewise, criminal prohibitions are directed at the act, while criminal threats are directed at the person who caused the incident, then between the prohibition and criminal threats there must be a close relationship, between the incident and the criminal threat there must be a close relationship, between the incident and the person who caused the incident there must be a close relationship as well.

Criminal provisions in coastal environmental cases are determined by taking into account a person's inner intentions (*mens rea* or mental elements) which are often referred to as the fault of the perpetrator (*schuld-verband*). A person's inner intent in criminal liability in environmental law is distinguished by willfulness and negligence. Based on their intention, a person can be criminally prosecuted for cases that result in pollution and/or destruction of the coastal area's environment.

Intentionally committing acts that result in pollution and/or destruction of the coastal environment, the criminal threat is imprisonment for a maximum of 10 (ten) years and a maximum fine of Rp.500,000,000.00 (five hundred million rupiah) (vide article 41 UULH) for negligence in committing acts that result in pollution and/or destruction of the environment, punishable by imprisonment for a maximum of 3 (three) years and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah) (vide article 42 UULH).

Case of use of Hazardous and Toxic Substances (B3) (vide PP no. 74 of 2001) intentionally releasing or disposing of substances, energy and/or other components that are harmful or toxic entering above or into the ground, into the air or into surface water, importing, exporting, trading, transporting, storing these materials, running hazardous installations, even though knowing or very reasonable to suspect that such actions may cause pollution and / or environmental destruction or endangering public health or the lives of others, punishable by imprisonment for a maximum of 6 (six) years and a maximum fine of Rp. 300,000,000.00 (three hundred million rupiah) (vide article 43 UULH) for failure to commit acts as referred to in article 43, punishable by imprisonment for a maximum of 3 (three) years and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah) (vide Article 44 UULH).²⁹

The occurrence of marine pollution due to human activities that have an impact on the sustainability of the ecosystem of other living things. The regulation of violations of marine pollution crimes has been regulated in article 99 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management which reads "*Any person whose negligence results in exceeding sea water quality standards or standard criteria for environmental damage, sentenced to 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,- (one billion rupiah) or a maximum fine of Rp.3.000.000.000,- (three billion rupiah)*".³⁰

In the enforcement of coastal environmental law through criminal law instruments, there is an application of *the principle of ultimum remedium*. In accordance with its function, this Law has quite well referred to administrative and criminal sanctions that already exist in sectoral laws. This means that if the PWP2K Law, PPLH Law or other related laws regulate administrative or criminal sanctions, then these sanctions are used.³¹

CONCLUSION

The results showed that;

1. Penal arrangements in Law No.32 of 2009 concerning Environmental Protection and Management (UUPPLH) can be imposed on individuals, corporations and authorized officials. As stipulated in Article 98, environmental crime in paragraph (1) is materially formulated which means that environmental crime will occur if there is a consequence of the act committed. Paragraph (2) there is an additional element, namely the element of causing serious injury and / or danger to human health. This element is the ballast of paragraph (1) which is done deliberately. In paragraph (3), the additional element is that the victim of environmental pollution is seriously injured or to death, so the criminal threat is more severe than paragraph (1) and paragraph (2). Article 99, the formulation of article 99 is also a material formulation, meaning that the actions of the perpetrators cause pollution and / or environmental damage.
2. Referring to Law No. 27/2007 and Law No. 32/2009 concerning Environmental Protection and Management, which uses 3 (three) legal instruments in the enforcement of environmental laws related to marine pollution in coastal areas, namely administrative law, civil law, and criminal law.

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