

JURIDICAL REVIEW OF ENVIRONMENTAL POLLUTION LAW ENFORCEMENT IN INDONESIA

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Abstract

The purpose of this study is to analyze: 1) what are the laws and regulations on the environment in Indonesia? 2) How is the enforcement of environmental pollution laws in Indonesia? The method used in this study is the descriptive method of analysis, which is a method that presents an event or symptom systematically, factually with accurate preparation. The results showed that: 1) Environmental management is an integrated effort to preserve environmental functions which include policies for structuring, utilizing, developing, maintaining, restoring, supervising, and controlling the environment. Sustainable development with an environmental perspective is a conscious and planned effort that integrates the environment, including resources, into the development process to ensure the ability, welfare, and quality of life of present and future generations. Ecosystem is an order of environmental elements that is a comprehensive whole unity and influences each other in forming the balance, stability, and productivity of the environment. 2) The Environmental Law enforcement system has regulated all forms of violations and crimes, for perpetrators both committed by individuals and entities with prevention and repressive efforts. In the practice of disputes regarding the environment, the resolution can be through the State Administration Law, Civil Law and Criminal Law.

Keywords: Review, Juridis, Enforcement, Law, Pollution, Environment, Living, Indonesia.

INTRODUCTION

Background

According to Law No. 4 of 1982 Article 1 Paragraph (1), what is meant by the environment is the unity of space with all objects, forces, conditions, and living things, including humans and their behavior that affect the continuity of life and welfare of humans and other living things. Law No. 4 of 1982 opens the possibility to regulate various policies regarding environmental maintenance with its own provisions.¹

The scope of Indonesian life includes space, where the Unitary State of the Republic of Indonesia with Nusantara Vision in exercising its sovereignty, sovereign rights, and jurisdiction. This means that the Government is obliged to manage the environment which includes policies for structuring, utilizing, maintaining, restoring, supervising, and controlling the environment within the scope of the Indonesian environment. Therefore, the government has a function as a control holder in these

environmental management activities. The government is a tool for making rules in the form of institutions whose focus is sustainable and sustainable management.

In Law Number 32 of 2009 concerning Environmental Protection and Management, it is explained that environmental management and protection 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.²

In accordance with Law Number 32 of 2009 concerning Environmental Protection and Management, it is also explained that the use of natural resources must be in harmony, harmony, and balance with environmental functions. As a consequence, development policies, plans, and/or programs must be imbued with the obligation to preserve the environment and realize sustainable development goals.³

In relation to Environmental Protection and Management, the disposal and management of waste produced by factories must certainly meet the provisions of waste management in accordance with the mandate of Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management in order to ensure legal certainty for management businesses and all stakeholders so that environmental pollution or destruction does not occur.⁴

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*".⁵

Environmental law enforcement is not only aimed at punishing environmental destroyers or polluters. However, it is also intended to prevent the occurrence of actions or actions that can cause damage and / or pollution of the environment. Therefore, environmental law enforcement is not only repressive, but also preventive.⁶ Enforcement of repressive environmental laws is aimed at tackling environmental destruction and/or pollution by imposing or imposing sanctions (penalties) on environmental destroyers or polluters which can be in the form of criminal sanctions (imprisonment and fines), civil sanctions (compensation and or certain actions), and / or administrative sanctions (government coercion, forced money, and license revocation). While preventive environmental law enforcement is aimed at preventing the occurrence of actions or actions that can cause environmental damage or pollution. Currently, the legal instruments aimed at the enforcement of preventive environmental laws are AMDAL (Environmental Impact Analysis) and Licensing.⁷

Problem Statement

- 1) What are the environmental laws and regulations in Indonesia?
- 2) How is environmental pollution law enforcement in Indonesia?

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

In every research, a scientific work always requires complete and objective data and has certain methods in accordance with the research problem to be discussed and the steps to be taken. The method used in this study is the descriptive method of analysis, which is a method that presents an event or symptom systematically, factually with accurate preparation. Review of legal research is¹⁶ empirical legal research, which is descriptive.¹⁷ The type of data used in this study is secondary data contained in the literature, in the form of related laws and regulations, journals, research results, articles, and other books.

RESEARCH RESULTS

Environmental Laws and Regulations in Indonesia

In the Constitution of the Republic of Indonesia Year 1945 along with its amendments as a constitutional basis requires that natural resources be used for the greatest prosperity of the people, it is as stated in Article 33 paragraph (3) of the 1945 Constitution that *the Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.*¹⁸

In Law No. 4 of 1982 concerning Basic Environmental Provisions, based on Article 4 letter e regulated environmental impacts that are transnational borders which read: "*Protection of the State against the impact of activities outside the territory of the State that cause environmental damage and pollution*". Then the Law on the main provisions of environmental management was created in 1982, namely Law No. 4 of 1982, which has now been amended by Law No. 23 of 1997. Repealed Law No. 4 of 1982 and replaced by Law No. 23 of 1997, regulations that reach across national borders are regulated in Article 4 letter f of Law No. 23 of 1997, which reads: "*Protection of the Unitary State of the Republic of Indonesia against the impact of businesses and/or activities outside the territory of the State that cause pollution and/or environmental destruction*".¹⁹

The definition of the environment and its scope is fully explained in Law No. 32 of 2009 concerning Environmental Protection and Management, in Article 1 as follows: *Environment is the unity of space with all objects, forces, conditions and living things, including humans and their behavior, which affect the continuity of life and welfare of humans and other living things.* Environmental management is an integrated effort to preserve environmental functions which include policies for structuring, utilizing, developing, maintaining, restoring, supervising, and controlling the environment. Sustainable development with an environmental perspective is a conscious and planned effort that integrates the environment, including resources, into the development process to ensure the ability, welfare, and quality of life of present and future generations. Ecosystem is an order of environmental elements that is a comprehensive whole unity and influences each other in forming the balance, stability, and productivity of the environment.²⁰

Environmental management to preserve and develop harmonious, harmonious and balanced environmental capabilities to support the implementation of environmentally sound sustainable development, according to Law No. 32 of 2009 concerning Environmental Protection and Management, has goals and objectives including:

- a) protect the territory of the Unitary State of the Republic of Indonesia from pollution and/or environmental damage;
- b) ensuring human safety, health and life;
- c) ensuring the survival of living things and the preservation of ecosystems;
- d) maintain the preservation of environmental functions;
- e) achieve environmental harmony, harmony and balance;
- f) ensure the fulfillment of justice for present and future generations;
- g) ensure the fulfillment and protection of the right to the environment as part of human rights;
- h) control the wise use of natural resources;
- i) realizing sustainable development; and j) anticipate global environmental issues.²¹

There are many laws and regulations governing the environment and its scope, be it laws, government regulations, presidential decrees, ministerial decrees, ministerial regulations, and so on. These laws and regulations include:

- 1) Law Number 32 of 2007 concerning Environmental Protection and Management.
- 2) Law Number 5 of 1983 concerning Exclusive Economic Zones.
- 3) Law Number 5 of 1990 concerning the Conservation of Biological Natural Resources and their Ecosystems.
- 4) Law Number 5 of 1992 concerning Cultural Heritage Objects.
- 5) Undang-Law Number 41 of 1999 concerning Forestry.
- 6) Government Regulation No. 20 of 1990 concerning Water Pollution Control.
- 7) Government Regulation No. 22 of 1982 concerning Water Use Procedures.
- 8) Government Regulation No. 29 of 1986 concerning Environmental Impact Analysis.
- 9) Government Regulation No. 7 of 1990 concerning Industrial Plantation Forest Concession Rights.

- 10) Government Regulation in Lieu of Law No. 1 of 2004, LNRI of 2004 No. 29 Government Regulation in Lieu of Law No. 41 of 1999 concerning Forestry.
- 11) Decree of the State Minister of Population and Environment (KLH) No.: Kep02 / MENKLH / 1988 concerning Guidelines for Determining Environmental Quality Standards.²²

Legal provisions related to the prevention and control of environmental pollution, in addition to Law Number 4 of 1982 concerning Basic Provisions for Environmental Management, include:

a) Law on Prevention and Mitigation of Pollution in the Mining Sector

This is regulated in the Regulation of the Minister of Mines and Energy No. 04/P/M/Pertmb/1997/ concerning General Prevention and Countermeasures. General mining business is a mining business outside of oil and gas mining. The Decree of the Director General of General Mining in the field of Pollution Prevention and Mitigation was also issued, namely No. 8 as a result of mining with dredges and No. 9 as a result of the management and purification of excavated materials.

b) Law on the Prevention and Mitigation of Environmental Pollution in the Industrial Sector

This can be seen in Law No. 1 of 1970 concerning Work Safety. Then the Decree of the Minister of Industry No. 12 / M / SK / I / 78 concerning the Prevention and Mitigation of Environmental Pollution as a Result of Industrial Business, dated January 26, 1978, this decree was later revoked with the Decree of the Minister of Industry No. 134 / M / SK / 3/1988 concerning the Prevention and Mitigation of Pollution as a Result of Industrial Business Activities on the Environment, dated April 28, 1988. Another decision related to environmental pollution law in the industrial sector is Government Regulation (PP) No. 13 of 1987 concerning Industrial Business Licenses. Presidential Decree (Kepres) No. 16 of 1987 concerning Simplification of the Granting of Industrial Business Licenses, then, Minister of Home Affairs Regulation No. 1 of 1985 concerning Pollution Control Procedures for Companies that Invest in accordance with Law No. 1 of 1967 and Law No. 6 of 1968, which was enacted on July 27, 1985.

c) Law on Prevention and Mitigation of Environmental Pollution in the Field of Irrigation

This legal provision is regulated in Law No. 11 of 1974 concerning irrigation and its technical implementation is explained in Government Regulation No. 20 of 1990 concerning Water Pollution Control, on June 5, 1990. In Article 1 of this Government Regulation, it is explained that what is meant by: Water is all water contained in and / or comes from water sources, and is above ground level, not included in this sense is water contained below the surface of the land and sea water.

d) Law on the Prevention and Prevention of Illegal Logging

According to Forest Watch Indonesia (FWI) and Global Forest Watch (GWC), illegal logging is any forestry practice or activity related to harvesting, managing and trading timber that is not in accordance with Indonesian law. Forest destruction according to the explanation of Article 50 paragraph (2) of Law No. 14 of 1999, that what is meant by forest destruction is the occurrence of physical, physical or biological changes, which cause the forest to be disturbed or unable to play a role in accordance with its function. In the Presidential Instruction of the Republic of Indonesia No. 5 of 2001 concerning the Eradication of Illegal Logging and the Circulation of Forest Products in the Leuser Ecosystem and Tanjung Putung National Park, the term Illegal Logging is equated with the term Illegal Logging. An important essence in this illegal logging practice is forest destruction which will have an impact on losses both from economic, ecological and socio-cultural aspects.²³

In the context of environmental management or control of all natural resources and the environment, the responsibility inherent in it is not only owned by the state, but it is also related to the company.

Companies or corporations managing B3 waste have the obligation to carry out social responsibility for the community and the environment around the company's activities. This corporate social responsibility is an effort to create harmonious, balanced relationships in accordance with the environment, values, norms, and culture of the community around the company carrying out its activities. Corporate social responsibility for the community and environment around the company carries out its activities is called *corporate social responsibility (CSR)*.²⁴

Article 68 of Law Number 23 of 2009 concerning Environmental Protection and Management stipulates:

Everyone who conducts business and/or activities is obligated to:

- a) Provide information related to environmental protection and management in a correct, accurate, open, and timely manner;
- b) Maintaining the sustainability of environmental functions; and
- c) Comply with the provisions on environmental quality standards and / or standard criteria for environmental damage.²⁵

Based on Chapter XII of Law Number 32 of 2009, the first part regulates supervision in environmental protection and management from Article 71 to Article 75. Article 71 paragraph (1) ministers, governors, or regents/mayors in accordance with their authority must supervise the compliance of the person in charge of the business and/or activity with the provisions stipulated in laws and regulations in the field of environmental protection and management. Paragraph (2) the minister, governor, or regent/mayor may delegate his authority in conducting supervision to officials/technical agencies responsible for environmental protection and management. Paragraph (3) in carrying out supervision, ministers, governors, regents/mayors shall determine environmental supervisory officials who are functional officials. Environmental laws and regulations must be obeyed and implemented by the government in the management and issuance of environmental permits, in addition to the function of environmental laws and regulations must be carried out properly. The role of the government, judicial institutions, and all Indonesian people must participate in protecting the environment and overseeing all issues related to the environment and environmental crimes in Indonesia.²⁶

Environmental Pollution Law Enforcement in Indonesia

This case of pollution and destruction of the environment is very dangerous for the welfare of mankind. Moreover, pollution and environmental destruction are carried out by companies engaged in various fields of activity, be it mining, forestry and others. If this happens, the loss will not be one or two people, but all mankind on this earth. Therefore, the law enforcement aspect requires maximum attention and empowerment actions, especially for companies that commit environmental destruction and pollution.²⁷

Environmental law is created with the aim of protecting the environment and benefiting society. This means that the regulation is made for the benefit of the community, so it should not happen that, because of the implementation of the regulation, the community actually becomes restless. The third element is justice. In environmental law enforcement must be considered, however, the law is not synonymous with justice, because the law is general, binds everyone, and generalizes. In the structuring and enforcement of environmental laws, the element of certainty, the element of expediency, and the element of justice must be compromised, all three must receive proportional attention. So that the polluted environment can be restored.²⁸

The government will take strict action against every company that has an impact on waste. As explained in article 4 paragraph (1) and 5 paragraph (1) as follows:

Article 4 paragraph (1) of Law No. 32 of 2009

"The Regent is authorized to apply administrative sanctions to the person in charge of a business and/or activity if violations are found in supervision of: a. Environmental Permits; b. Waste Disposal Permit; c. Permit for Temporary Disposal of Limba Hazardous and Toxic Materials; d. Hazardous and Toxic Waste Collection Permit; e. Environmental Documents; and/or f. Regional Law Products in the field of environmental protection and management."

Article 5 paragraph (1) of Law 32 of 2009 (1)

"Administrative sanctions as referred to in article 4 paragraph 1 consist of: a. Written reprimand; b. Government coercion; c. Suspension of permissions; and/or d. Revocation of permission".²⁹

The government adjusts its actions as explained in article 76 paragraph (2) letter (b) of Law No. 32 of 2009 concerning Environmental Protection and Management. That is to carry out government coercion on factory business actors who pollute the environment. Government coercion as referred to in article 76 paragraph (2) letter (b) in the form of:

- a) Temporary government suspension of production activities;
- b) Transfer of means of production;
- c) Closure of sewerage or emissions
- d) Demolition;
- e) Confiscation of potentially infringing goods or tools;
- f) Temporary suspension of all activities; or
- g) Other measures aimed at stopping violations and restoring environmental functions.³⁰

Administrative sanctions based on article 76 paragraph (2) of Law No. 32 of 2009 concerning environmental protection and management provide administrative sanctions consisting of:

- a) Written reprimand;
- b) Government coercion;
- c) Temporary permit suspension; or
- d) Environmental permit revocation

Administrative sanctions are given to those responsible for businesses and/or activities that violate environmental permits. Enforcement of administrative sanctions is intended so that violations are stopped, so that administrative sanctions are a non-judicial preventive and repressive juridical instrument to end or stop violations of the provisions contained in environmental protection and management requirements.³¹

Administrative facilities can be preventive and aim to enforce environmental laws and regulations. Law enforcement can be applied to activities related to licensing requirements, environmental quality standards, environmental management plans (RKL), and so on. In addition to guidance in the form of instructions and guidelines as well as administrative supervision, entrepreneurs in the industrial sector should also be instilled the benefits of the concept of "Pollution Prevention Pays" in the production process. The repressive crackdown by the authorities against violations of administrative environment laws and regulations basically aims to put an immediate end to these violations.³²

Then, the application of criminal sanctions in the enforcement of environmental law is a means of repression after cases of pollution / environmental damage. However, criminal sanctions can provide "deterrent effects" to those who run businesses so as not to cause pollution / environmental damage. Regarding sanctions or criminal threats, the 2009 Law is distinguished in two types of environmental offenses, namely material offenses and formal offenses.

The formulation of material offenses is contained in articles 98-99 of the UUPPLH. In material offenses, what is prohibited is the result of actions, namely exceeding ambient air quality standards, water quality standards, sea water quality standards, or standard criteria for environmental damage. Other consequences are the loss of people or human health hazards. The formulation of formal offenses is contained in articles 100-115 of UUPPLH-2009. In a formal offense that must be proven, it is sufficient whether the act has committed an act by violating the provisions of the applicable legislation. Criminal sanctions (threats) against polluters or environmental destroyers are essentially a last resort (*ultimum remedium*), although it has recently begun to shift to major sanctions (*Primum Remedium*), for example by adding criminal order.

The criminal sanctions for factory or industrial entrepreneurs are: based on article 116 paragraph (1), article 117, article 118, article 98 paragraph (3) and article 99 paragraph (3) of Law No. 32 of 2009 concerning environmental protection and management provides criminal sanctions.³³

In article 94 paragraph (1) of the UUPPLH, it is stipulated that *the investigators in environmental crimes are "In addition to investigators of police officials of the Republic of Indonesia, certain civil servant officials within government agencies whose scope of duties and responsibilities are in the field of environmental protection and management are authorized as investigators as referred to in the criminal procedure law to investigate environmental crimes."* In the criminal justice system, the party who must prove the guilt of the accused at a court hearing is the public prosecutor. According to article 13 of the Code of Criminal Procedure, the public prosecutor is a prosecutor with the authority given an authority by this law for the purpose of carrying out prosecutions and carrying out the determination of the judge.³⁴

In civil sanctions, claims for kerugin compensation and environmental restoration costs can be made based on article 20 paragraph 1 and paragraph 3 of the UULH through court channels. However, regarding this civil law, it is necessary to distinguish between the application of law by authorized agencies and implementing environmental policies and the application of civil law to enforce compliance with environmental laws and regulations.³⁵

The principle of polluters paying is closely related to the provision of liability for environmental pollution. Liability relates to pollution that is the subject or who is polluting the environment. Polluters can be either individuals or groups or legal entities. The basis for the implementation of this principle is Article 87 Paragraph (1) of the Environmental Protection and Management Law (UUPPLH), which is in accordance with the explanation of Article 87 Paragraph (1) that this article is a realization of the polluter paying principle, which reads: *"Every person responsible for a business and/or activity that commits unlawful acts in the form of pollution and/or destruction of the environment that causes harm to other people or the environment must pay indemnification and/or taking certain actions"*.³⁶

The issue of compensation that still requires proof of the element of causal relationship between the act and the loss, which is imposed on the plaintiff as a victim. However, this is contrary to the principle of absolute responsibility in environmental law. This principle is as stated in Article 88 of the PPLH Law *"Everyone whose actions, businesses, and/or activities use B3, produce and/or manage B3 waste, and/or that pose a serious threat to the environment are absolutely responsible for losses incurred without the need to prove an element of guilt."* As stated in Article 100 of the PPLH Law that: *"Any person who violates wastewater quality standards, emission quality standards, or nuisance quality*

standards shall be punished, with a maximum imprisonment of 3 (three) years and a maximum fine of Rp3,000,000,000.00 (three billion rupiah)".³⁷

According to Article 1 number (5) of the Regulation of the Minister of Environment Number 13 of 2011 concerning Compensation for Pollution and / or Environmental Damage. "*Compensation is a cost that must be borne by the person responsible for activities and/or businesses due to pollution and/or environmental damage*". Every person or legal entity that pollutes the environment and is proven, then he must be responsible for the environmental damage that has been done. And burdened costs towards the restoration of an environment that has been polluted. "*The restoration of environmental functions is carried out in stages: stopping sources of pollution and cleaning polluting elements, remediation, rehabilitation, restoration; and/or other means in accordance with the development of science and technology*"

CONCLUSION

The results showed that;

Environmental management is an integrated effort to preserve environmental functions which include policies for structuring, utilizing, developing, maintaining, restoring, supervising, and controlling the environment. Sustainable development with an environmental perspective is a conscious and planned effort that integrates the environment, including resources, into the development process to ensure the ability, welfare, and quality of life of present and future generations. Ecosystem is an order of environmental elements that is a comprehensive whole unity and influences each other in forming the balance, stability, and productivity of the environment.

The Environmental Law enforcement system has regulated all forms of violations and crimes, for perpetrators both committed by individuals and entities with prevention (preventive) and enforcement (repressive) efforts. In the practice of disputes regarding the environment, the resolution can be through the State Administration Law, Civil Law and Criminal Law.

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