

# THE EFFECTS OF CRIMINAL LAW ON LEGAL SUBJECTS OF WASTE MANAGEMENT THAT DAMAGES THE ENVIRONMENT

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## Abstract

Article 28H of the 1945 Constitution of the Republic of Indonesia establishes constitutional and human rights for all citizens, outlining principles for managing the environment. These principles include state responsibility, justice, and sustainability. Despite the constitutional emphasis on the right to a good and healthy environment, environmental crimes are prevalent in Indonesia, particularly where companies dispose of waste directly into rivers, leading to pollution. While Article 28H, paragraph (1) underscores the right of individuals to live prosperously in a physically and mentally healthy environment, the reality contradicts these rights. Business activities in certain regions, especially along rivers, do not align with these principles. The prevalent criminal acts often involve improper waste disposal into rivers, causing environmental degradation. It is essential to consider Law No. 32 of 2009 on Environmental Protection and Management to tackle these challenges. According to Article 1, 14 of this legislation, environmental pollution is defined as human activities leading to the introduction or involvement of living beings, substances, energy, or other environmental elements, exceeding the quality standards set for environmental conditions. This study employs a normative juridical research method that incorporates three distinct approaches. The first approach is the statutory approach, involving a thorough examination of legal regulations relevant to the central focus of the research. The second approach, the conceptual approach, involves comprehending the legal concepts that underlie the research, including the values inherent in the norms. Lastly, the case approach analyzes legal norms or principles applicable to Environmental Criminal Offenses, encompassing regulations, accountability, and possible legal consequences. Environmental pollution can be explained based on Article 1, number 14 of Law No. 32 of 2009 concerning Environmental Protection and Management.

**Keywords:** Waste, Environment, Criminal

## INTRODUCTION

Natural resources play a major role in the lives of humans and other living entities. The use and exploitation of natural resources is important to meet human needs, but must be done with consideration of environmental factors. The environment involves all the objects and conditions around us that have an impact on our lives. Theoretically, the space in question includes everything without limits, but practically, the space is always limited according to needs that can be determined. Therefore, it is important for humans to use natural resources wisely in order to maintain environmental balance and ensure the sustainability of the ecosystem. One of the constitutional rights and human rights for all Indonesian citizens is regulated in Article 28H of the 1945 Constitution of the Republic of Indonesia. According to this article, environmental management in Indonesia must be based on certain principles, including the principle of state responsibility and the principle of justice, and the principle of sustainability. The criminal acts that most frequently occur and are reported to the authorities in Indonesia are crimes related to the environment.

In an area, especially along a river, many companies operate and dispose of their waste directly into the river, causing environmental pollution. Even though Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia confirms the right of every person to live in physical and mental prosperity, have a place to live, and have a good and healthy living environment, unfortunately reality shows that these business activities are not in harmony with these rights. Regarding environmental issues, this is regulated in Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management (abbreviated to Law No. 32 of 2009). This law was created with the consideration that every Indonesian citizen has the human right to a good and healthy living environment. Therefore, efforts to protect and manage the environment need to be intensified in accordance with the principles stated in the law. Serious and consistent environmental management must be carried out by all interested parties, as stated in the Consideration Section of Law No. 32 of 2009. Definition of the environment according to Article 1 number 1 of Law no. 32 of 2009 is "the unity of space with all objects, forces, circumstances and living creatures, including humans and their behavior, which influence nature itself, survival and the welfare of humans and other living creatures." Any business activity is prohibited from causing environmental pollution. In accordance with Article 1 number 14 of Law no. 32 of 2009, pollution is the entry or entry of living things, substances, energy, and/or other components into the environment by human activities, which exceeds the established environmental quality standards. Therefore, if environmental quality standards are exceeded, it can be concluded that environmental pollution has occurred.

The prohibition is accompanied by sanctions as stated in Article 100 paragraph (1) of Law no. 32 of 2009 confirms that every individual who violates waste water quality standards, emission quality standards, or nuisance quality standards can be subject to punishment, including imprisonment for a maximum of 3 (three) years and a fine of up to IDR 3,000,000,000.00 (three billion rupiah).

The same thing applies to Article 104 of Law no. 32 of 2009, which states that the act of disposing of waste and/or materials into the environment without a permit, as explained in Article 60, can result in a prison sentence of up to 3 (three) years and a fine of IDR 3,000,000,000.00 (three billion rupiah). This penalty is determined to encourage compliance with regulations and maintain environmental quality in accordance with statutory provisions.

The government has an obligation to comply with and implement environmental laws and regulations, especially in the process of managing and granting environmental permits. Apart from that, the function of laws and regulations relating to the environment must be carried out effectively. The role of the government, judicial institutions and all Indonesian society is very important in maintaining it environment and overseeing all issues related to the environment and environmental crimes in Indonesia.

## RESEARCH METHOD

This paper applies normative juridical research using three approaches. First, a statutory approach is carried out by examining legal regulations related to the subject matter of this research. Second, the conceptual approach involves understanding aspects of the underlying legal concepts, or even includes the values contained in the norms. Third, the case approach is used to study legal norms or rules that can be applied, especially related to environmental crimes, including regulations, responsibilities and legal consequences that arise.

The legal research approaches used in this paper are the Statute Approach and the Case Approach. First, the legal approach. The statutory approach is a method used to analyze legal issues by thoroughly examining all laws and regulations related to the issue. Second, The case approach in normative research aims to examine the application of legal norms or rules in legal practice.

## RESULTS AND DISCUSSION

### Criminal Responsibility of Perpetrators of Environmental Pollution Crimes

The theory of fault or culpability is an integral element of criminal responsibility, which basically carries a monodualistic principle, namely balancing the principle of fault which is based on the value of justice with the principle of legality which is rooted in the value of legal certainty. Although the concept of criminal liability is based on the principle of fault, it needs to be acknowledged that there are situations where vicarious liability and strict liability arise. Roeslan Saleh explained that criminal responsibility can be interpreted as a continuation of objective criticism of a criminal act, which is accompanied by a subjective element where a person is eligible to be punished for his or her actions. Objective censure refers to an action carried out by an individual that is in line with legal prohibitions, whether prohibitions originating from formal law or material law.

In this context, actions that are expressly prohibited by law are the main focus. On the other hand, subjective censure refers to the individual who committed the prohibited act, or in other words, it relates to the perpetrator violating or going against the law. If a person commits a prohibited act, but there is a reason for his fault that causes his inability to take responsibility, then criminal liability may not apply.

According to Chairul Huda, the basis for criminal acts is the principle of legality, where perpetrators can be punished based on the mistakes they have committed. This means that a person will be criminally responsible if he is involved in wrongful and unlawful acts. Basically, criminal liability is a mechanism created to provide a response to violations of certain acts that have been recognized as violating the law.

In the common law legal system, criminal liability is always related to mens rea (error of mind) and punishment. The relationship between criminal responsibility and society is an integral part of this system, where accountability has a role as a function of social control. This means that criminal responsibility is not only related to punishment, but also has a role in maintaining social balance and control in society to prevent criminal acts from occurring. The Criminal Code (KUHP) does not explicitly describe the criminal responsibility system adopted. Several articles in the Criminal Code often refer to errors, whether intentional or negligent, without providing an explicit definition regarding the meaning of these two types of errors. Although there is no detailed explanation regarding intentional or negligent errors, doctrinal views and opinions of legal experts state that the articles in the Criminal Code include elements of intentional or negligent errors which must be proven by the court.

Thus, to convict someone involved in a criminal act, apart from proving that the criminal act occurred, the court must also prove an element of error, whether intentional or negligent. Although the definition of these two types of error is not explained in detail in the law, the court must ensure that sufficient and clear evidence shows the existence of an intentional or negligent error by the perpetrator. In the environmental sector, the Environmental Protection and Management Law (UUPPLH) functions as the parent regulation or "umbrella act".

Article 116 paragraphs (1) and (2) UUPPLH states that legal entities can be considered to have committed criminal acts. The principle of "no responsibility without fault" is in line with Article 87 paragraph (1) of the UUPPLH, which explains that prosecution of environmental disputes must cover the following matters: unlawful acts, environmental pollution and/or damage, losses to other people or the environment, the person responsible for the business and/or activity, and the obligation to pay compensation and/or take certain actions. If there is damage to the environment, the "person responsible for the business and/or activity" is obliged to pay compensation and take certain actions. They are responsible for being the party that causes harm to society, animals or the environment. Thus, these articles ensure that business actors who commit pollution must bear legal consequences, including payment of compensation and implementation of certain actions, in an effort to offset the negative impacts caused by their actions on society and the environment. Environmental pollution can be interpreted by referring to Article 1 point 14 of Law No. 32 of 2009 concerning Environmental Protection and Management. According to this provision, environmental pollution is defined as human actions that result in the entry of living creatures, substances, energy or other components into the environment, exceeding the quality standards that have been set for the environment. In this law, criminal aspects are described starting from Article 97 to Article 120. In general, environmental offenses are divided into material and formal offenses. Environmental offenses refer to actions carried out intentionally or through negligence, which result in violations of ambient air, water, sea water quality standards, and/or environmental damage criteria, as outlined in Articles 98 and 99 of Law no. 32 of 2009.

In addition, Article 122 in the same law explains environmental offenses which can cause environmental pollution and/or damage with the impact of loss of human life. A number of criminal

acts related to environmental damage and pollution include the act of throwing rubbish carelessly, managing waste without a permit, burning land to open up new land, carrying out business activities in the environmental sector without official permits, and lack of supervision from the government towards business actors in environmental sector.

### **The consequences of waste management laws that damage the environment**

Based on Law no. 22 of 1999 concerning Regional Government, Regional Government has the authority to manage national resources in its territory and is responsible for maintaining their sustainability. In order to anticipate the implementation of this law, the Office of the State Minister for the Environment/Bapedal has prepared an interpretation regarding the authority for environmental management in accordance with this regulation. The government has issued the latest Government Regulations dealing with waste management, including hazardous and toxic (B3) and non-B3. This regulation is regulated in Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management, which is a derivative of Law Number 11 of 2020 concerning Job Creation.

With the issuance of Government Regulation Number 22 of 2021, five previous regulations were simultaneously revoked. The regulations that have been revoked include Government Regulation Number 101 of 2014 concerning Management of Hazardous and Toxic Waste, Government Regulation Number 27 of 2012 concerning Environmental Permits, Government Regulation Number 82 of 2001 concerning Water Quality Management and Water Pollution Control, Government Regulation Number 41 of 2001 1999 concerning Control of Air Pollution, and Government Regulation Number 19 of 1999 concerning Control of Marine Pollution and/or Destruction. Apart from that, this new regulation also includes changes to Government Regulation Number 46 of 2017 concerning Environmental Economic Instruments. Based on Article 104 of Law Number 32 of 2009 concerning Environmental Protection and Management, there are several elements that must be fulfilled, namely:

#### **a. The "Everyone" Element**

The first element, namely "everyone," clearly shows that the subject of the criminal act is an individual. This element is very important in determining the existence of a criminal act, because to confirm the existence of a criminal act, there must be a subject who committed the criminal act, in this case, the individual is a person. The "whoever" element in this case refers to SU as the subject of the criminal act. Therefore, this element can be considered to have been fulfilled. In criminal acts there are various aspects which should be able to aggravate the position of the perpetrator, such as repeated acts and involving more than one person.

#### **b. Elements of "dumping to environmental media"**

The second element, namely "dumping into environmental media." The act of dumping includes illegal activities of introducing waste into the environment, as occurs when waste is dumped directly into rivers. This practice is considered a form of environmental pollution and violates legal provisions governing waste management.

#### **c. The element "Without permission as intended in Article 60"**

The third element, "without permission as intended in Article 60," Article 60 stipulates that every activity that has the potential to pollute the environment must obtain official permission from the authorities before carrying out the action.

Engineering methods for technology to carry out planning and management of sociology itself are explored. Typically, enforcing criminal sanctions against legal entities involved in environmental pollution often involves the use of sanctions in the form of fines. In general, the initial approach to law enforcement regarding environmental pollution is more inclined towards the use of administrative sanctions, followed by civil sanctions. If these two types of sanctions do not produce the desired effect, then criminal sanctions will be applied.

Main penalties and additional sanctions are categories in various types of criminal sanctions. Fines as the main form of crime are regulated by the latest criminal law in Indonesia. Meanwhile, disciplinary actions are declared as additional criminal sanctions in accordance with the provisions of the law. The main criminal offenses and additional sanctions can be applied to individuals or entities involved in environmental pollution. In this context, fines as the main criminal sanction have only been regulated by Indonesian criminal law for perpetrators of criminal acts of environmental pollution. Article 10 of the Criminal Code stipulates the main and additional criminal sanctions that can be applied to parties involved in criminal acts of environmental pollution, which include:

##### **a. Principal Crime**

It is a crime consisting of:

- 1) Death penalty.

- 2) Prison sentence.
- 3) Criminal Cage: V.
- 4) Criminal fine.
- b. Additional Penalty
  - It is a crime consisting of:
    - 1) Revocation of certain rights.
    - 2) Confiscation of certain items.
    - 3) Announcement of the judge's decision.

Imposing prison sanctions on business entities (corporations) is not possible, in accordance with the provisions of the law which stipulate that the sanctions that can be applied to perpetrators of criminal acts of environmental pollution are fines.

## CONCLUSION

In the context of Law Number 22 of 1999 and Government Regulation Number 22 of 2021, the Indonesian government emphasizes the authority of Regional Governments in managing national resources and protecting the environment. The issuance of PP 22/2021 which revokes five previous regulations marks a significant step in simplifying and strengthening regulations related to waste management, both hazardous and non-hazardous. In the context of law enforcement against criminal acts of environmental pollution, the main focus is on administrative and civil sanctions, with the possibility of applying criminal sanctions, fines, especially for business entities involved, as a form of the government's commitment to maintaining environmental sustainability through more effective regulations and appropriate sanctions. with the level of violation.

## REFERENCES

- Amrani, Hanafi, Mahrus Ali, 2015, Criminal Accountability System, Jakarta, Rajawali Press
- Erwin, Muhammad. (2011). Environmental Law in the Environmental Development Policy System. Bandung: Refika Aditama, Bandung.
- Hanafi Amrani, Mahrus Ali, 2015, Criminal Accountability System, Jakarta, Rajawali Press
- Harun, M. Husein. (1992). Environmental Impact Analysis. Jakarta: Bumi Literacy.
- Hasibuan Imelda, Sunariyo, Juridical Analysis of Bribery in Corruption Crimes, Journal of Legal Studies "THE JURIS" Vol. VII, No. 2, December 2023 ISSN 2580-0299, e-ISSN 2580-8370 <http://ejournal.stih-awanglong.ac.id/index.php/juris>.
- Huda, Chairul, 2006, From Criminal Acts Without Fault Towards No Criminal Responsibility Without Fault, 2nd Printing, Jakarta, Kencana
- Johni Ibrahim, 2007, Normative Legal Research Theory & Methodology, cet. III, Malang: Bayumedia Publishing
- Kusuma Diah, Tri Joko, and Nikie Astorina, "Study of Household Hazardous and Toxic Waste Generation (B3) in Sendangmulyo Village, Tembalang District, Semarang City," Public Health Journal 5, no. 5 (2017): 766–775, <http://ejournal3.undip.ac.id/index.php/jkm>
- Moeljatno. (2015). Principles of Criminal Law Fifth Printing. Jakarta: Rineka Cipta.
- Peter Mahmud Marzuki, 2010, Legal Research, Jakarta: Kencana
- Saifullah, 2007, Reflections on the Sociology of Law, PT Refika Aditama, Bandung.
- Saleh, Roeslan, Thoughts on Criminal Responsibility, First Printing, Jakarta, Ghalia Indonesia,
- Soemarwoto, Otto. 2004. Ecology, Environment and Development. Jakarta: Bridge
- Suparni, Niniek. (1992). Conservation, Management and Enforcement of Environmental Law. Jakarta: Sinar Graphics.
- Yulianingrum, AV, Sunariyo, "Coal Mining Management Policy in American Countries, China, Indonesia. (Normal and comparative studies), Scientific Journal "Advocacy", Faculty of Law, Labuan Batu University. Vol 10 No.02 September 2022.