



Enforcement of Environmental Criminal Law For Corporations: Solution or Problem in Crime Prevention?

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Abstract. Environmental law enforcement is an important effort to protect the environment from damage and pollution. However, the effectiveness of environmental criminal law enforcement in Indonesia is still weak and ineffective. This study aims to analyze environmental criminal law enforcement solutions or problems in combating crime in Indonesia and identify factors that influence the effectiveness of environmental criminal law enforcement. The research method used is normative juridical, using secondary data, literature books, research results, and journal publications relevant to the research topic. The research specification uses descriptive analysis, employing a conceptual approach, a legislative approach, and a case approach. The analysis uses qualitative analysis using doctrine and legislation as the analytical tools. The results of the study show that the enforcement of environmental criminal law in Indonesia still faces limitations in terms of resources, corruption, and abuse of power. In addition, public awareness of the importance of environmental protection is still low. The use of criminal sanctions in addressing environmental crimes has not been effectively implemented, considering that the impact of imposing criminal sanctions on large corporations affects the economy and the employment needs of the surrounding community. The findings of this study indicate the need for integrated law enforcement through the use of both penal and non-penal sanctions. Penal measures must be accompanied by non-penal measures in order for criminal law enforcement to be effective. This study recommends that the government increase the resources and capacity of environmental law enforcement agencies and raise public awareness of the importance of environmental protection.

Keywords: Enforcement of Environmental Criminal Law; Corporation; Crime Prevention; Solution or Problem.

1 Introduction

Recently, there have been many natural disasters. One example is the flash floods in West Sumatra, North Sumatra, and Aceh, where the dragging of logs is suspected to be the cause of flash floods in a number of areas on the island of Sumatra[1]. The Ministry of Forestry's Forest Law Enforcement Agency itself found five locations where logging was not in accordance with regulations. All five are suspected to have triggered the floods in Sumatra. Director General of Forestry Law Enforcement Dwi Januanto Nugroho said that preliminary analysis showed that, in addition to extreme rainfall, there were indications of environmental damage upstream of the Batang Toru and Sibuluan river basins. This is just one example of environmental damage caused by nature and human activity[2]. In addition to forest destruction, another environmental problem in Indonesia is river pollution. Companies that do not process their waste properly, resulting in disruption to the river ecosystem and rendering river water unusable for daily needs. In fact, rivers are very important as a source of clean water and a habitat for aquatic creatures. Environmental damage caused by corporations and individuals cannot be ignored, considering that the earth we live on will be inherited by our children and grandchildren. Environmental damage has a domino effect that threatens health, the economy, and even social life. If left unchecked, future generations will bear the consequences. The purpose of this study is to analyze the enforcement of environmental criminal law against corporations, solutions or problems in combating crime in Indonesia, and to identify factors that influence the effectiveness of environmental criminal law enforcement.

Environmental issues are broadly categorized into pollution and environmental degradation. Under Article 13, Paragraph (3) of Law No. 32 of 2009 on Environmental Protection and Management, the mitigation of these issues is a collective mandate. It requires the central government, regional authorities, and business entities to manage environmental impacts according to their specific legal powers and operational duties.

Businesses and/or activities, such as corporations, are required to control pollution and/or environmental damage by complying with environmental documentation requirements for their operations[3]. Government Regulation No. 22 of 2021, Article 4, stipulates that every business plan affecting the environment must be supported by an appropriate

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environmental permit, whether it be an AMDAL, UKL-UPL, or SPPL, based on its respective impact level. In implementing environmental management and monitoring of business and/or activities, business and/or activity operators are required to refer to environmental documents that have been approved by the government in accordance with the environmental impact that will be caused by their business and/or activities in order to remain sustainable and preserve the environment.

The Regent/Mayor has the authority to supervise this matter as stipulated in Article 493 of Government Regulation No. 22 of 2021, which is an instrument for environmental law enforcement. According to Article 500 paragraph (4) of Government Regulation No. 22 of 2021, environmental law enforcement is a strategic effort to ensure compliance with existing regulations and legal requirements. This process involves rigorous supervision and the issuance of recommendations for legal actions, which may manifest as administrative, civil, or criminal sanctions. Persuasive measures within the corridor of environmental law enforcement are efforts to apply legal rules known as *Ultimum Remedium*, whereby the application of criminal sanctions is the last resort of environmental law enforcement measures in order to deter and ensure compliance by business actors with environmental laws and regulations. As a last resort, the government prioritizes sanctions in the form of administrative and civil sanctions. It is this last resort that is often misinterpreted by business actors and law enforcement officials, leading to corruption, collusion, and nepotism (KKN). This raises the question of whether criminal enforcement of environmental law for corporations is a solution or a problem in combating crime. How effective is environmental law enforcement using criminal sanctions?

2 Research Method

This research uses a normative juridical research type. Secondary data is the main data taken from books, research results, and journal publications relevant to the research topic. The research specification uses descriptive analysis, describing the real conditions in the field, which are then analyzed using law enforcement and crime prevention theories. The methodology of this study is framed around three primary analytical lenses: a conceptual approach, a legislative approach, and a case-based approach. This research is analyzed using qualitative analysis. The analysis tool uses legal theories, legal principles, doctrines, arguments, and applicable laws and regulations.

3 Discussion

3.1 Enforcement of Environmental Criminal Law Against Corporations: Solution or Problem in Crime Prevention

Social development or modernization does not only have a positive impact on society, but can also produce negative aspects that can endanger people's lives. One example of social development is the emergence of large industrial companies in various areas of society. The establishment of these large companies not only has a positive impact on society in terms of creating job opportunities for the communities around the companies, but also has a negative impact on the environment. Environmental destruction and pollution occur, which have consequences for the ecosystem and also social impacts. Developmental activities that prioritize natural resource exploitation without adequate environmental safeguards lead to a decline in environmental carrying capacity and productivity, eventually imposing a significant social burden. Consequently, Indonesia's environment must be managed through the principles of state accountability, sustainability, and equity. Such management should yield integrated economic, social, and cultural benefits, guided by precautionary principles, environmental democracy, decentralization, and the integration of local wisdom. Based on the above considerations, the government issued Law No. 32 of 2009 concerning In accordance with environmental protection and management mandates, it is compulsory for both central and local authorities to perform Strategic Environmental Assessments (KLHS). This requirement ensures that sustainability principles are not only foundational but also seamlessly integrated into regional development plans and policy frameworks. Preventive efforts in controlling environmental impacts must be carried out by maximizing the use of monitoring and licensing instruments. In cases where environmental pollution and damage have already occurred, repressive efforts in the form of law enforcement must be carried out.

Criminal law enforcement under this Law follows the principle of *ultimum remedium*. This principle mandates that criminal sanctions should only be applied as a last resort, specifically when administrative enforcement measures have been pursued and proven ineffective. Criminal law enforcement as a last resort often raises the debate of whether it is an effective solution or actually exacerbates social problems. The approach of using criminal measures often fails to address the root causes of crime, such as poverty and social injustice. Similarly, criminal law enforcement against corporations promises accountability for ecosystem damage, but is often hampered by weaknesses in implementation and evidence.

Criminal law is one of the means of combating crime. However, the use of criminal law as a means of combating crime is meaningless if social and development policies are actually factors that cause crime (criminogenic factors) and factors that cause victims. For example, in the case of forest logging in West Sumatra, North Sumatra, and Aceh. The large number of logging permits issued by the government, which are not balanced with supervision and enforcement against violations, pose a danger of natural disasters and social impacts. Similarly, in Aceh, massive deforestation and land conversion have exacerbated natural disasters such as flash floods and landslides. These illegal activities damage the forest's function as a water reservoir and soil stabilizer. Experts and Walhi state that the floods and landslides in Aceh are not merely natural phenomena, but have been significantly exacerbated by years of environmental crimes[4].

Corporate criminal liability for environmental offenses is established under Article 116 of Law No. 32/2009 and the New Criminal Code (Law No. 1/2023). While these regulations allow for severe disciplinary measures—such as the confiscation of illicit profits, business closure, environmental remediation, and up to three years of judicial supervision—practical enforcement often falls short. In many instances, the sanctions actually imposed are limited to administrative fines that fail to reflect the true extent of the ecological damage (Article 119).

Even though the above additional criminal sanctions have been regulated, very few cases of environmental destruction and pollution by corporations are subject to criminal provisions. Criminal liability is more often imposed on the business operator, not the company. In court proceedings, it is the fault of the business operator (person) that is proven, who is ultimately held accountable for their actions and subject to criminal sanctions[5]. According to Nyoman Serikat Putra Jaya, holding corporations accountable and punishing them will be difficult because corporations do not have a conscience or *mens rea* element. In addition, it is also difficult to determine the appropriate criminal punishment for corporations, considering that criminal sanctions in criminal law are designed to be imposed on natural persons or humans[6].

An example of this is Supreme Court Decision Number 527 PK/Pdt/2023. The judge's decision prioritized civil sanctions over criminal sanctions. The chronology of the case is as follows: A palm oil plantation company (PT Kumai Sentosa) was sued for a fire that burned 2,358 hectares of peatland. In Supreme Court Decision Number 527 PK/Pdt/2023, the defendant was acquitted of criminal charges under Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) by the corporation. However, civil proceedings are still possible for the corporation to be held civilly liable due to the nature of its business activities that pose a great risk to the environment and society. The criminal acquittal cannot invalidate the civil ruling, as civil and criminal liability have different bases. The defendant was still ordered to pay compensation in the amount of IDR 175,179,930,000.00 and to take action to restore the environment. In this case, liability remains with the business operator without having to prove *fault/strict liability* as long as there is damage and causality[7].

Unlike the above case, in the case below, the judge dared to impose criminal sanctions even though they were not optimal. Decision No. 162/Pid.B/LH/2023/PN.Bls, on behalf of the defendant Erik Kurniawan as director of PT Sawit Perkasa. The chronology of the case began with the collapse of four (4) of the thirteen (13) wastewater treatment ponds owned by PT SIPP, causing wastewater from the collapsed ponds to flow into the land surrounding the factory and into the river, thereby affecting the community's land. The defendant in this case was convicted of violating Article 60 Jo Article 104, namely dumping waste into the environment without a permit, and was sentenced to 1 year imprisonment and a fine of Rp. 200,000,000, with the provision that if the fine is not paid, it will be replaced with 2 months imprisonment. An additional penalty was also imposed in the form of remedial measures for the criminal act, namely: environmental restoration costs amounting to Rp. 250,000,000 within a maximum period of 6 months, improving the performance of the wastewater treatment plant (IPAL) so that the wastewater discharged into the environment meets the quality standards within a maximum period of 1 year, periodically checking the quality parameters of wastewater at least once a month at the company's expense at a reference laboratory, and its implementation is supervised by the Bengkalis Regency Environment Agency.

In case 1 (the first case), the judge was unable to prove that the corporation was at fault, and therefore acquitted it. Regarding this, Barda Nawawi Arief argued that: "Although the principle of *strict liability* is recognized, it is not easy to prove fault in environmental crimes and corporate misconduct[8]. According to Moeljatno, a person cannot be convicted of a crime if they did not commit a criminal act, but even if they did commit a criminal act, they cannot always be convicted [9]. For criminal liability, it is not enough to have committed a criminal act; there must also be fault or a reprehensible mental attitude.

The absence of a criminal verdict sets a precedent that large companies can avoid legal liability simply by paying administrative compensation. This reinforces the need for courage and consistency from law enforcement officials in prosecuting corporations through criminal channels when there are elements of intent or serious negligence that cause environmental damage.

Meanwhile, in the second case, it appears that the use of criminal sanctions to combat crime has been implemented by judges by imposing prison sentences on business actors, although this has not been optimal. The penalties imposed are still far from the maximum threat in Article 104. The threat in Article 104 is formulated cumulatively, consisting of imprisonment and fines. The formulation of criminal sanctions within legislation constitutes a core element of criminal law policy, which is nested within the broader framework of crime prevention and law enforcement. Criminal law enforcement policy is executed through a tripartite process: the legislative stage (drafting and formulation), the judicial stage (application of the law in court), and the executive stage (enforcement and administration of sanctions). These three stages of law enforcement policy contain three powers or authorities, namely the legislative authority that formulates or determines acts as punishable acts and their criminal sanctions. The authority to apply the law by law enforcement officials and the authority to execute or implement the law in concrete terms by authorized officials/agencies. Errors/weaknesses in the legislative/formulation stage are strategic errors that can hinder efforts to enforce the law in concreto. The policy of combating crime through the creation of criminal laws is essentially an integral part of efforts to protect society. Therefore, criminal law policy is an integral part of social policy. Social policy can be defined as a rational effort to achieve public welfare and, at the same time, protect the community[10].

From the two cases above, it appears that environmental law enforcement through the imposition of criminal sanctions is *the ultimum remedium*, prioritizing the sustainability of a healthy and safe environment for the community. However, this does not address the community's sense of justice, because nature damaged by environmental crimes cannot be restored to its original state in a short period of time[11].

The two case examples above show that the enforcement of environmental criminal law against corporations is still a dilemma between imposing criminal sanctions as a deterrent and the importance of environmental remediation as an effort to ensure a safe and prosperous environment for future generations. The solution to this problem is that law enforcement is needed, but not only through penal sanctions, but also through non-penal sanctions. An integrated approach between penal and non-penal policies is needed. The concept of an integrated crime prevention policy implies that all rational efforts to prevent crime must be integrated[12].

According to G.P Hoefnagels, crime prevention efforts can be pursued through penal and non-penal measures. Penal measures include the application of criminal law, while non-penal measures include prevention without punishment and influencing public opinion on crime and punishment through the mass media.[1] According to Sudarto, "Roughly speaking, crime prevention efforts through penal measures focus more on repressive measures after a crime has been committed[13]. Meanwhile, non-penal measures focus more on preventive measures before a crime is committed. This is said to be a rough distinction because repressive measures can also be seen as preventive measures in a broad sense[14].

Inasmuch as non-penal crime prevention strategies are inherently preventive, their primary objective is to mitigate the root causes of criminality. These measures focus on addressing socio-economic conditions and environmental factors that may, directly or indirectly, facilitate criminal behavior. Consequently, non-penal approaches maintain a strategic and pivotal position within the broader framework of crime prevention policy.

This answers the research question that the enforcement of environmental criminal law against corporations is not only a solution to crime prevention, to satisfy the public's sense of justice, and to avoid conflict in society, but can also become a problem if the law is not enforced appropriately, because the sustainability of the environment is neglected. especially if the judge imposes a penalty of closing the company entirely or partially, or placing the company under guardianship, as stipulated in Article 119, then social problems related to employment will arise. The difficulty of finding work will become a criminogenic factor for the emergence of other crimes. Therefore, the use of criminal sanctions must also be accompanied by the use of non-penal sanctions in an integral manner.

3.2 Factors Affecting the Effectiveness of Law Enforcement

According to Soerjono Soekanto, "law enforcement is the activity of harmonizing the values embodied in rules and views of ultimate values to create, maintain, and preserve peace in social relations. The essence of law enforcement is to realize values or rules that embody justice and truth[15]. There are five factors that influence law enforcement, namely: the law itself (legislation) or regulations made by the government, law enforcement, infrastructure, public legal awareness, and legal culture[16].

When this issue is linked to environmental law enforcement, it becomes clear that this law is crucial. When the government issues many permits to businesses without conducting structured supervision, this will lead to negligence and violations of the agreed permit provisions. One example of a violation of environmental utilization permits can be found in the case of flash floods in North Sumatra. Minister of Environment Hanif Faisol Nurofiq said, "His party will not hesitate to impose sanctions on local governments if, based on scientific studies, their policies worsen the landscape conditions," he said[17].

Another factor contributing to weak law enforcement is poor supervision and the many court decisions that acquit perpetrators of environmental damage, which certainly indicates that the courts, which are the spearhead of law enforcement, are not sensitive to the environmental crisis and the public's sense of justice, and still prioritize formal and procedural truth over the pursuit of substantive justice[18].

Another cause of weak enforcement of environmental criminal law is the existence of corrupt forestry officials, the involvement of TNI and police personnel in the field, illegal timber brokers, and forest concession holders operating outside of HPH contracts.

Another reason is that the handling of several forestry crime cases is often considered a failure because the perpetrators, both the financiers and officials involved in forestry crimes, cannot be touched by the law, one reason being the weakness of the indictments and charges filed by the Public Prosecutor[19].

The lack of legal awareness among the public and business actors also contributes to weak law enforcement. This lack of legal awareness among the public is due to insufficient socialization of environmental laws to the community. As a result, the community plays a minimal role in environmental law enforcement, whether in monitoring or reporting environmental crimes, or in monitoring and controlling government policies related to the environment.

The culture of law enforcement tends to process conventional cases, treating environmental cases as ordinary cases and as complaints, so that many cases of environmental damage committed by large companies go unpunished.

4 Conclusion

The enforcement of environmental criminal law against corporations is not only a solution to crime prevention, but can also become a problem if the law is not enforced appropriately. The rarity of criminal liability cases against corporations threatens the sustainability of environmental damage and pollution. The weakness of environmental criminal law enforcement is not only due to weak government supervision but also the low legal awareness of business actors, who are only pursuing profits. The weakness of law enforcement is also related to the difficulty of proving corporate liability. Therefore, priority is given to an administrative approach of paying *Pays Polluter*. The government does not dare to impose sanctions of business closure, considering that this would have a social impact. The difficulty of finding work would become a criminogenic factor for the emergence of other crimes. Based on the above considerations, environmental law enforcement using criminal sanctions has not been effective in combating environmental crimes. Therefore, it is necessary to consider non-penal measures to combat crime. The integration of penal and non-penal measures in combating crime is urgent so that a clean, healthy, and prosperous environment for future generations can be realized.

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