

THE ENVIRONMENTAL OF CRIMINAL LAW ENFORCEMENT BASED ON PANCASILA'S JUSTICE

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Abstract

The environmental problems can no longer be said to be purely natural problems, because humans provide a very significant causative factor for environmental events. The purpose of this research is to find out and analyze environmental criminal law enforcement based on Pancasila justice, which is a legal concept that upholds the values of justice, equality and humanity. the approach method used in this study uses a normative juridical approach, the resulting research results state that the 2009 Environmental Protection and Management Law defines a crime as an act that can result in exceeding ambient air quality standards, water quality standards, seawater quality standards, or standard criteria for environmental damage. Enforcement of environmental criminal law based on Pancasila justice is a legal concept that upholds the values of justice, equality and humanity.

Keywords: *Environmental; Criminal; Justice; Pancasila.*

A. INTRODUCTION

The environment is a gift from God Almighty that must be preserved and developed so that it can still be a source of life support for humans and other living things for the continuity and improvement of the quality of life itself. The environment is the space occupied by humans and other living things. Humans and other living things certainly do not stand alone in the process of life, interact with each other, and need each other. Life that is characterized by regular interaction and interdependence is an ecosystem order in which there is an important essence, where the environment is a unity that cannot be discussed separately.¹

Environmental problems are natural problems, i.e. events that occur as part of natural processes. These natural processes occur without significant consequences for the environmental system itself and can recover later naturally. In However, today environmental problems can no longer be said to be purely natural, as humans provide a very significant and variable causal factor for environmental events. It cannot be denied that environmental problems that are born and developed due to human factors

1 Muhammad Amin Hamid, Penegakan Hukum Pidana Lingkungan Hidup Dalam Menanggulangi Kerugian Negara, *Journals of Law: Legal Pluralism*, Vol. 6, No. 1, 2016, page 88-117

are far greater and more complicated than the natural factors themselves. Humans with their various dimensions, especially with their growth mobility factor, mind with all the development of aspects of culture, as well as the process of time or era that changes human character and outlook, are factors that are more appropriately attributed to environmental problems.²

Research conducted by Mahoro Jean Claude Geofrey it needs strong law and regulations concerning environmental protection and management and their effective implementation to preserve all components in the ecosystem. However, the effects of regional autonomy led to a plurality in implementation of the environmental law regardless of the Constitutional green provisions. Under the free-market domination, different public utilities have been put in the management of private companies that led to environmental damage in different parts of the country, mainly in Kalimantan and Papua. Also, the sea components were not well ensured as there was no effective maritime policy.³

The decline in the quality of the environment not only has a direct impact on human life but also has an indirect impact on global conditions that show unfriendly indicators. The decline in the quality of the environment and natural resources is due to the lack of human awareness of the sustainability of the environment.⁴

One of the strong and powerful tools in protecting the environment is the law that regulates environmental protection.⁵ The form of legal protection is basically a law enforcement effort carried out both by the government and by the community. Law enforcement is conceptually an effort to harmonize the relationship of values that are spelled out in stable rules and manifest in attitudes of action as the final stage of value elaboration to create, maintain and maintain peaceful living relationships.⁶

According to Satjipto Rahardjo, the law is silent, the law contains promises, the law contains ideas or concepts that are classified as abstract. Only through its enforcement by law enforcement can the law be expressed or concretized. So law enforcement can be said to be a process to realize

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- 2 Bernard Arief Sidharta, *Refleksi tentang Fundadi dan Sifat Keilmuan Ilmu Hukum sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia*, Bandung, Disertasi Fakultas Hukum Universitas Padjadjaran, 1996, page.217
 - 3 Mahoro Jean Claude Geofrey, F.X. Adji Samekto, Barriers to the Enforcement of Environmental Law: An Effect of Free Market Domination and Regional Autonomy in Indonesiam *Hasanuddin Law Review*, Vol. 7, Issue. 1, April 2021, page.31-45
 - 4 Kuku Subyakto, Azas Ultimium Remedium Ataukah Azas Primum Remedium Yang Dianut Dalam Penegakan Hukum Pidana Pada Tindak Pidana Lingkungan Hidup Pada Uu Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Pembaharuan Hukum*, Vol. 2, No. 2, 2015. Page 209-213
 - 5 St. Munadjat Danusaputro, *Hukum Lingkungan Buku I: Umum*, Bandung, Binacipta, 1980, page.69-70
 - 6 Ridho Kurniawan, Pertanggungjawaban Pidana Korporasi Berdasarkan Asas Strictliability (Studi Pembaharuan Hukum Pidana Lingkungan Hidup), *Jurnal Yuridis*, Vol. 1, No. 2, 2014, page. 153-168

legal desires into reality. The legal desires referred to here are the thoughts of lawmakers formulated in the legal regulations.⁷

Environmental management certainly cannot be separated from the problem of the application of Pancasila values in terms of environmental management, because Pancasila is a round and complete unity that gives confidence to the people and nation of Indonesia, that happiness in life will be achieved if it is based on harmony, harmony and balance, both in human relations with God Almighty and humans with humans; humans with nature and humans as individuals, in order to achieve physical progress and inner happiness. Between humans, society and the environment there is a reciprocal relationship that must always be fostered and developed in order to remain in harmony, harmony and dynamic balance.⁸ Managing the environment requires Pancasila as a guideline for maintaining and developing the welfare of the community through a harmonious and balanced environment in order to increase the development that is currently underway. The develop a pattern of harmony, harmony and balance both in meeting physical and spiritual needs.⁹

Komang Ayu Suseni, conveyed in her research that environmental law in Indonesia is regulated in Act No. 32 of 2009 in Article 1 as follows: The Environment is a spatial unit with all objects, power, conditions and living things, including humans and their behavior, which affect the continuity of life and welfare of humans and other living things. Legal arrangements of course have sanctions for every violation, in Act No. 32 of 2009 there are 3 (three) types of legal sanctions consisting of: a) Administrative sanctions; b) Civil sanctions; c) Criminal sanctions.¹⁰ Meanwhile Muh Isra Bil Ali explained that with regard to law enforcement efforts, in general it can be carried out through litigation and non-litigation channels, but of course approaches must be used in responding to problems in the Environment. As in the non-Litigas route, there are approaches.¹¹

Pancasila is the spirit/soul of national law. Pancasila as a value system, its existence is abstract, invisible to the eyes of the head, but its existence and role can be captured with the eyes of the heart. If Pancasila is separated from national law, then national law will die. Even if national law exists, it is merely a zombi (undead) that frightens, damages, and disturbs the comfort of life and human life. Because the law in Indonesia requires the

7 Satjipto Rahardjo, *Masalah Penegakan Hukum Suatu Tinjauan Sosiologi*, Bandung, Sinar Baru, 1983, page.24

8 Agus Rianto, Pengamalan / Aplikasi Nilai-Nilai Pancasila Dalam Aspek Pengelolaan Lingkungan Hidup, *Jurnal Yustisia*, Vol. 69, 2006, page 1-6

9 Lusya Indrastuti, Budi Prasetyo, Environmental Protection in Pancasila Perspective, *ANP Journal of Social Science and Humanities*, Vol. 1, No. 1, 2020, page.7-10

10 Komang Ayu Suseni, Penegakan Hukum Lingkungan Sebagai Upaya Membangun Lingkungan Yang Bersih Dan Sehat, *Pariksa-Jurnal Hukum Hindu*, Vol. 5, No. 1, 2021, page.1-7

11 Muh Isra Bil Ali, Aminah, Penegakan Hukum Lingkungan Hidup Dalam Perspektif Keadilan Substantif Di Indonesia, *Jurnal Spektrum Hukum*, Vol. 18, No. 1, 2021, page.15-32

noble values of Pancasila. Because what, positive law is the epistemological basis of Pancasila values.¹²

As a nation that has Pancasila as a philosophy of life, criminal sanctions are part of the criminal law system that is inseparable from the national legal system oriented to Pancasila which contains a balance between religious morals, humanity, nationality, democracy, and social justice. Therefore, in reforming criminal sanctions, it is necessary to study and explore national values sourced from Pancasila.¹³

The purpose of this study is to find out and analyze the enforcement of environmental criminal law based on Pancasila justice which is a legal concept that upholds the values of justice, equality and humanity. So that it can lead to harmonization in enforcing environmental criminal law based on the legal structure, legal system and legal culture.

B. RESEARCH METHODS

This research employed normative juridical research method, in which the data were obtained from literature study by using secondary data. The secondary data are not obtained directly from the field but from library materials. The data collected were then descriptively analyzed.¹⁴

C. RESULTS AND DISCUSSION

1. Environmental Criminal Law Policy in Indonesia

In a good environment, there is a harmonious and balanced interaction between environmental components. The stability of the balance and harmony of interactions between components of the environment depends on human efforts. Because humans are the most dominant component of the environment in influencing the environment. Conversely, the environment also affects humans. So that there is a mutually influencing relationship between humans and their environment. This is the interaction between humans and the environment. Such a close relationship and human dependence on the environment should raise awareness of the importance of sustainable and balanced environmental sustainability so that it needs to be clearly regulated, especially since most countries in the world adhere to the system or claim their country as a state of law.¹⁵

Environmental law is basically a set of legal rules that aim to organize the environment. Environmental law was originally a civil

12 Sudjito, *Negara Hukum Dalam Perspektif Pancasila*, Yogyakarta, Makalah Disampaikan Dalam Kongres Pancasila di Balai Senat UGM, Yogyakarta, 2009, page.54

13 Tommy Leonard, Pembaharuan Sanksi Pidana Berdasarkan Falsafah Pancasila Dalam Sistem Hukum Pidana di Indonesia, *Jurnal Hukum Yustisia*, Vol. 5, No. 2, 2016, page.468-489

14 Haris Budiman, Anis Mashdurohatun, Eman Suparman, A Comparative Study of Spatial Policy in Indonesia and The Netherlands, *Jurnal Dinamika Hukum*, Vol. 18, No. 3, 2018, page.295-300

15 Lalu Sabardi, Peran Serta Masyarakat Dalam Pengelolaan Lingkungan Hidup Menurut Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, *Jurnal Yustisia*. Vol. 3, No. 1. 2014, page 67-79

aspect, but along with the times it shifted to state administrative law, in accordance with the increasing role of government in participating in various aspects of life that developed in society.¹⁶ From the various impacts of one of the factors causing the shift in law in her research, Maret Priyanta stated that environmental permits issued by the government were widely questioned by many parties because they were issued too quickly, giving rise to allegations of the impropriety of the project becoming a legal issue. Based on environmental law, to scale the project, the time needed to complete the Environmental Impact Assessment process is six months. However, in less than one month, the government issued an Environmental Permit-Based Environmental Impact Assessment,¹⁷ the problem was that there was a denial of permits, causing sanctions from legislation.

Environmental crimes are regulated in Chapter XV, which consists of 23 articles, starting from Article 97 to Article 120 of the Law on Environmental Protection and Management. Article 97 states that the criminal offenses referred to in Chapter XV are crimes. Thus, crimes against the environment are regulated in that chapter. In addition to the Law on Environmental Protection and Management, crimes against the environment are also regulated in the Criminal Code (KUHP), for example in Article 187, Article 188, Article 202, Article 203, Article 502, and Article 503 of the KUHP. Crimes against the environment are also found in legislation outside the Criminal Code and outside the Law on Environmental Protection and Management.

Regarding environmental destruction, it is explicitly stated in Article 1 point 14 of the Environmental Protection and Management Act No. 32/2009, namely that "environmental destruction is an action that causes a direct change in its physical and/or biological characteristics which results in the environment no longer functioning in supporting sustainable development."

Act No. 32/2009 on Environmental Protection and Management contains provisions for sanctions, including: administrative sanctions, civil sanctions and criminal sanctions. In addition to explaining the provisions of sanctions, environmental law enforcement is an action and / or process of coercion to comply with the law based on provisions, laws and / or environmental methods. Act No. 32 of 2009 concerning Environmental Protection and Management has emphasized 3 steps of law enforcement systematically, namely starting with administrative law enforcement, out-of-court dispute resolution or through court and investigation of environmental crimes.¹⁸

16 Tarya Sonjaya, etc Kebijakan Hukum Pidana Dalam Upaya Penegakan Hukum Lingkungan Berdasarkan Prinsip Pembangunan, *Lambung Mangkurat Law Journal*, Vol. 5, No. 2, 2020, page. 203-214

17 Maret Priyanta, Cut Sabina Anasya Zulkarnaina, Sustainable Infrastructure Legal Policy in Indonesia: A National Strategic Project Approach for National Development, *Sriwijaya Law Review*, Vol. 7, Issue. 1, January, 2023, page.1-18

18 Sri Sufiyati, Munsyarif Abdul Chalim. Kebijakan Hukum Pidana Dalam Upaya Menanggulangi Tindak Pidana Lingkungan Hidup (Studi Kasus Penanggulangan Limbah Bahan Berbahaya

Based on the study of criminal law theory, there is an opinion that criminal sanctions are the *ultimum remedium* for every environmental offense. This opinion is based on the understanding that environmental management is a government matter that takes the form of administrative action. This administrative action begins with the determination of permits by authorized agencies or institutions. If there is a violation, then the violation is an administrative offense and the violators can be subject to administrative sanctions.¹⁹

The 2009 Environmental Protection and Management Law formulates a criminal offense as an action that can result in the exceeding of ambient air quality standards, water quality standards, seawater quality standards, or standard criteria for environmental damage (as stipulated in Article 98). The 2009 Law on Environmental Protection and Management also regulates punishment for violations of quality standards (as stipulated in Article 100), expansion of evidence, integration in criminal law enforcement, and regulation of corporate criminal acts.

Environmental crimes or offenses are contained in various laws and regulations other than the Law on Environmental Protection and Management and the Criminal Code. Therefore, the accuracy of law enforcers, especially investigators, public prosecutors and judges is needed in finding laws and regulations relating to environmental crimes in various laws and regulations. This reality is a portrait of criminal law enforcement in environmental cases, which is still far from the hopes and aspirations of the community.²⁰ In other words, which legislation will be used, depending on what resources the environmental crime was committed. Environmental protection and management is essentially an effort to apply ecological principles in human activities towards and/or with environmental dimensions. In his research Mahrus Ali mentioned that acts forbidden by environmental legislation safeguard the environment, but the criminal threat weight is not geared toward environmental preservation. Existing penalty aggravations are limited to only two sorts of criminal sanction, namely incarceration and fines, where have no direct relevance to environmental protection. Hence, to protect environment, weighting criminal sanction refers to the altering quality and quantity aspects. Quality considerations centered on the transition from criminal sanction to treatment or from one type of

Dan Beracun Padat Sisa Dari Pembakaran Batubara Mesin Boiler), *Jurnal Hukum Khaira Ummah*, Vol. 12, No. 3, 2017, page.457-466

19 St. Munadjat Danusaputro, dalam Teguh Sulistia dan Aria Zurnetti, *Hukum Pidana Horizon Baru Pasca Reformasi*, Jakarta, PT Raja Grafindo Persada, 2011, page.170

20 Ainun Jiwanti, Eko Soponyono, The Urgency of Judge's Legal Reasoning in Deciding on an Environmental Crime Case Based on an Ecocentric Approach (Review of Case Decision No. 640/PID.B/LH/2021/PT.PBR), *Jurnal Jurisprudence*, Vol. 12, No. 1, 2022, page.71-91

treatment to other, while quantity element centered on the doubled system of criminal fine.²¹

2. Environmental Criminal Law Enforcement Based on Pancasila Justice

Law enforcement is a necessity carried out by the state in protecting its citizens, because crime is an urgent community problem to be overcome in order to achieve a harmonious, orderly and serene life as a form of a peaceful society. Various records on criminal law enforcement are widely reported by both print and electronic mass media. This illustrates the increase and intensity of news coverage of criminal cases, which means that the public feels the need for security, order and justice.²²

Pancasila serves as the source of all sources of state law. The basic law of the state is the 1945 Constitution of the Republic of Indonesia. The articles of the 1945 Constitution of the Republic of Indonesia as *staatvervassung* are positioned under the Preamble of the 1945 Constitution of the Republic of Indonesia as a *staatsfundamentalnorn* or fundamental state rule based on the values contained in Pancasila. Thus, all articles in the 1945 Constitution are an elaboration of the values of Pancasila. The 1945 Constitution as the basic law is further elaborated in the laws and regulations under it. The elaboration of Pancasila in laws and regulations, among others, can be seen from the inclusion of a philosophical foundation in each law.²³

Environmental criminal law enforcement based on Pancasila justice is a legal concept that upholds the values of justice, equality, and humanity. Where law enforcers are required to prioritize the interests of society in general and not only the interests of certain individuals or groups.

In environmental criminal law enforcement, the first principle of Pancasila emphasizes that God is the source of all justice and truth. Therefore, the implementation of the Law on Environmental Protection and Management must be carried out by taking into account these values and providing equal protection to all people without discrimination. The application of law must be based on the principles of justice and humanity, so that no one experiences unfair treatment. In addition, law enforcement must also be based on moral and ethical values according to religious teachings, so as to provide a sense of responsibility and social awareness to the community to preserve the environment.

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- 21 Mahrus Ali, Rofi Wahanisa, Jaco Barkhuizen, and Papontee Teeraphan, Protecting Environment through Criminal Sanction Aggravation, *JILS (Journal of Indonesian Legal Studies)*, Vol. 7, No. 1, 2022, page.191-228.
- 22 Vivi Ariyanti, Kebijakan Penegakan Hukum Dalam Sistem Peradilan Pidana Indonesia, *Jurnal Yuridis*, Vol. 6, No. 2, 2019, page.33-54
- 23 Rofi Wahanisa, Sепthian Eka Adiyatma. Konsepsi Asas Kelestarian Dan Keberlanjutan Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup Dalam Nilai Pancasila, *Bina Hukum Lingkungan*, Vol. 6, No. 1, 2021, page.93-118

The second principle of Pancasila, "Just and Civilized Humanity", can mean that every individual is responsible for their actions towards the environment. Law enforcement must ensure that anyone who commits actions that damage the environment must be responsible and receive criminal sanctions in accordance with their actions. By prioritizing the concept of fair and civilized humanity, environmental criminal law enforcement can help preserve the environment for future generations.

The meaning of the third principle which reads "Indonesian Unity" in environmental criminal law enforcement is that law enforcement must pay attention to the interests of the Indonesian people in preserving the environment, law enforcement must also pay attention to aspects of sustainable development so as to preserve the environment without sacrificing national development. Education and socialization efforts are important aspects in preserving the environment from an early age, it is hoped that people will be more aware and care about environmental sustainability.

The fourth precept "Democracy led by wisdom in representative meetings", in environmental criminal law enforcement can be interpreted as involving community participation and environmental organizations in the process of formulating policies related to the environment and open in prosecuting cases of violations of environmental criminal law. Openness in prosecution and policy formulation is needed so that it can be accepted and accounted for by the entire community.

In enforcing environmental criminal law based on the 5th principle which reads "social justice for all Indonesian people" can be done by prioritizing the protection of the socio-economic rights of the community by imposing sanctions on parties who destroy the environment by taking into account the socio-economic impacts of law enforcement. The sanctions given not only improve environmental sustainability but also must improve the social and economic conditions of the community by carrying out environmental restoration activities involving the surrounding community so as to provide socio-economic benefits for the surrounding community.

D. CONCLUSION

Environmental law is basically a set of legal rules that aim to organize the environment. Act No. 32 of 2009 concerning Environmental Protection and Management has emphasized 3 steps of law enforcement systematically, namely starting with administrative law enforcement, out-of-court dispute resolution or through the courts and investigation of environmental criminal offenses. Environmental criminal law enforcement based on Pancasila justice is a legal concept that upholds the values of justice, equality, and humanity. Where law enforcers are required to prioritize the interests of society in general and not only the interests of certain individuals or groups.

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