

Environmental Crimes in the Perspective of the Law Number 32 Year 2009 Concerning the Protection and Management of the Living Environment

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Abstract: Environmental crime is a crime as stipulated in Article 97 Law number 32 year 2009 on Environmental Protection and Management, there are 19 forms of action or action that can be sentenced to criminal sanctions. However, in its application, although there are laws and regulations that are applied for the purpose of providing protections to environmental sustainability by providing a serious threat of criminal sanction, but the reality in the field shows from time to time in the region both at the provincial, district and municipal levels, environmental conditions that have caused environmental problems that have caused material and immaterial loss. The number of such cases, indicating the inconsistency of the government that resulted in weak policy and enforcement of environmental law in Indonesia. Such conditions should not be allowed to drag on (remember the time span of existence of law No. 32 of 2009 has entered 9 years). Therefore must be immediately sought the root of the problem whether in terms of environmental legislation is not yet complete, or whether the lack of capacity of the apparatus and the compliance of the citizens to the prevailing laws and management of the environment of the environment, through research that will be carried out with the aim to discuss of environmental crime.

1 INTRODUCTION

On October 3, 2009, the Government of the Republic of Indonesia issued Law Number 32 Year 2009 on Environmental Protection and Management, which aims to protect the territory of the Unitary State of the Republic of Indonesia from pollution and / or environmental damage. The need for such protection, due to the declining quality of the environment coupled with the depletion of natural resources stocks and the emergence of various environmental problems have made people aware of the importance of environmental support and the role of natural resources to life in the universe.

Environmental law in the implementation of environmentally sound development serves to prevent the occurrence of pollution and or destruction of the environment so that the environment and natural resources are not disturbed continuity and carrying capacity. In addition, environmental law serves as a means of legal action for acts that damage or pollute the environment and natural resources. Strictly speaking, environmental law must be able to

act as a safeguard for the continuation of environmentally sound development.

However, in practice, although there are laws and regulations that are applied for the purpose of providing protection to environmental sustainability by providing a severe threat of criminal sanctions, the facts indicate in fact that the time period in the region at both the provincial, district and cities, environmental conditions that have caused environmental concerns.

From some aspect to interpret environmental crime as an act against the law in the form of pollution and / or destruction of the environment either natural / physical environment, artificial environment, and socio-cultural environment, which is done by everyone, therefore can be given limitation on environmental crime as follows: "Any violation of national and international environmental laws, or breaches of rules that ensure the conservation and sustainability of the world's environment, biodiversity and natural resources.

Documents obtained from Polri and Polda Headquarters are 39 covering plantation, forestry and

mining crimes, and 14 cases are still in the investigation stage, and 23 cases are under investigation. Similarly, cases handled by the State Ministry of Environment and Forestry, by 2015 there are 118 cases, in 2016 there are 150 cases means an increase in cases of 32 cases handled by the Ministry.

Based on case data that reached the court during 2009 until 2010, five cases were sentenced to 14 cases of pure free verdicts and one case of trial verdict. In 2016, data obtained from the Directorate General of Law Enforcement, Ministry of Environment and Forestry (KLHK) has received 632 complaints of environmental crime with 416 cases of prosecution. The remaining 216 reports are under review and 20 cases are under investigation and recommendation.

2 RESEARCH APPROACH

The approach in this research is normative and normative juridical empirical, through:

The statutory approach (*statute approach*) is by reviewing the legislation consisting of primary and secondary legal materials that relate to the substance and problems in this study. Conceptual approach (*conceptual approach*) is views, opinions, doctrines that develop in the settlement of environmental crimes which are crimes. Case study approach (*cases study approach*), discuss cases relating to environmental crimes starting from the Examination Minutes (BAP) from the relevant agencies and analyzing decisions that have permanent legal force over environmental crimes.

3 RESULTS AND DISCUSSION

3.1 Environmental Crime

Environmental crime or environmental offense is a law and order of the law to the legal subject which if violated is threatened by the imposition of criminal sanctions, including imprisonment and fines with the aim of protecting the environment as a whole and elements in the environment such as forests, animals, land, air, and water and humans. Therefore, with this definition the environmental delicacy of life is not only the criminal provisions formulated in Law No. 32 of 2009 on Environmental Protection and Management (UUPPLH), but also the criminal provisions formulated in laws and regulations as long

as the provisions of the provisions are intended to protect the environment as a whole or its parts.

The provisions of criminal law in Law Number 32 Year 2009 are regulated from Articles 97 to 120. Article 97 of the law provides that the criminal act in this law constitutes a crime.

The Law on Environmental Protection and Management (UUPPLH) does not impose legal restrictions on environmental crimes, but the law classifies the types of good deeds in the form of vandalism and pollution both individually and corporately, as well as criminal provisions as a result of committing criminal acts environment. Therefore, based on some understanding of environmental crimes, it is understood that the criminal act as regulated in UUPPLH is a form of crime against the environment or an environmental offense.

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The Indonesian Forum for the Environment (WALHI) in its publication defines an environmental criminal as a person or institution that undertakes a "Deprivation Measure" or the omission of the life of the people directly through influence, capital, political power and power (position) within a business entity / government or TNI-POLRI that causes and leads to the continuous destruction or

destruction of the environment and the livelihoods of the people and the threat of the security of human life.

Environmental crime is the Super Extra Ordinary Crime because it harms the State's finances compared to other crimes, such as forest fires.

3.2 Nature and Extent of Environmental Crime

The diminishing quality of the environment has threatened the survival of human life and other living things as a result of environmental

Environmental pollution is the entry or inclusion of living things, substances, energies, and / or other components into the environment by human activities so as to exceed the established environmental quality standards. In Article 1 number 14 UUPPLH.

Narrowly environmental pollution is a criminal event that is regulated in Articles 202 and 203 of the Criminal Code. While in Law no. 32 of 2009 in broad and in relation to the violation of the right of every person to the good and healthy environment as mandated in Article 28 H of the 1945 Constitution of the Republic of Indonesia, and described in Article 65 paragraph 1 of Law no. 32 Year 2009.

The nature and extent of the problem of crime against the environment, essentially determining the criteria of crimes against the environment should be assessed by looking at the following aspects: *First*, from personal impacts as well as institutional impact. *Second*, the impact on the physical environment caused by biotic and abiotic.

3.3 Type of Environmental Crime

Within the Penal Code, there are several types of criminal offenses, including:

1. The material offense is the offense or offense that is prohibited by law which is deemed to have been perfect or fulfilled if the deed has caused a result, that is in the formula:

Article 98 as follows:

First, from the provisions of paragraph (1) of the above article, the levers are related to causing injuries and / or human health hazards.

3.4 Implementation of Regulations on Environmental Crime

1. Environmental Crime, which undertakes the management of B3 waste without permission or any person producing B3 waste and does not undertake the management and or any person who does business or activity without environmental

permit or if the environmental crime is committed by, for, or over name of business entity, criminal lawsuit and criminal sanction shall be imposed on business entity and or person ordering to perform the criminal act or person acting as the activity leader in such crime as meant in Article 102 jo Article 59 paragraph (4) and / or Article 103 in conjunction with Article 59 and or Article 109 in conjunction with Article Verse (1) and or Article 116 of the Indonesian Republic Law Number 32 Year 2009 on Environmental Protection and Management.

2. Environmental Crime in the form of deliberately performing acts that resulted in the excess of ambient air quality standard, water quality standard, seawater quality standard or environmental defect criteria or due to its negligence resulted beyond the ambient air quality standard, water quality standard, seawater quality standard , or the standard criteria of environmental damage on dredging activities in the context of Criminal Acts of Land Burning, deepening the shipping and harbor pools, as intended by Article 98 paragraph (1) or Article 99 paragraph (1) or Article 104 of Law of the Republic of Indonesia Number 32 of 2009 on Protection and Management of the environment.
3. Any plantation business actor who opens and / or lands cultivates land by burning and / or a person intentionally committing an act or at least because his negligence resulted in exceeding the standard criteria of environmental damage, as referred to in Article 108 of the Republic Act Indonesia No. 30 of 2014 on Plantations and or Article 98 paragraph (1) of the Law of the Republic of Indonesia Nomlor 32 of 2009 on the Protection and Management of the Environment.
4. Environmental Crime conducts business activities in the form of coastal reclamation / dredging for the development of integrated tourism areas without being equipped with environmental permits as regulated in Article 109 in conjunction with Article 36 paragraph (1) in conjunction with Article 116 paragraph (1) letter a jo Article 118 of the Republic Law Indonesia Number 32 of 2009 on Environmental Protection and Management.

4 CLOSING

Environmental crime or environmental offense is a law and order of the Constitution to any person or legal subject who, if dolanggar, is threatened by the imposition of criminal sanctions, imprisonment and

penalties in order to protect the environment as a whole and the elements in the environment such as forests, animals, land, air and water and humans. Therefore, with this definition environmental delicates are not only criminal provisions formulated in the Law of the Republic of Indonesia Number 32 Year 2009 on Environmental Protection and Management (UUPPLH), but also the provisions of criminal provisions formulated in other legislation as long as the provisions of the provisions are intended to protect the environment as a whole or its parts.

From the results of the research, to the environmental crime in its application there are related legislation, among others, the Law of the Republic of Indonesia Number 41 Year 1999 on Forestry, in the settlement of criminal acts of Forest Fire and land. Law of the Republic of Indonesia Number 4 Year 2009 regarding Mineral and Coal Mining to environmental crime related to mining.

- (1) In the application of legislation related to environmental crime there are cases as follows:
 - a. Environmental Crime, which undertakes the management of B3 waste without permission;
 - b. Environmental Crime in the form of deliberately performing acts that result in exceeding ambient air quality standard;
 - c. Crime of Burning Land;
 - d. Environmental Crime conducts business activities in the form of coastal reclamation / dredging for the development of integrated tourism areas without being equipped with environmental permits;
 - e. Environmental Crime and Forestry field of fire within the concession area.

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