

Environmental Crime Victims under Criminal Justice System: A Study on the Development of Environmental Victimology

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Abstract

Lack of attention to environmental crime victims under criminal justice system has led to the development of the study of environmental victimology. This study focuses to acknowledge victims' losses as an impact of environmental crime and victimization process. In the study of criminology, environmental crime is generated by environmental damaging activities, such as pollution, illegal hazardous substances dumping, land burning, illegal logging, etc. The damaging activities inflict harms not merely to the sustainability of the environment, but also to human and other creatures. Environment degradation has caused issues on health, economic, social, and cultural, as well as inequality. However, in some incidents, environmental crime is endorsed by state; the fact has created complexity in dealing with the crime. Furthermore, environmental crime is also related to other forms of crime, such as corruption and money laundering. Therefore, a multi-doors approach is established by involving several institutions to investigate the crimes. However, the approach does not sufficiently restore victims' losses. The environmental victimology study is expected to enable criminal justice system to accommodate environmental crime victim's interests for restitution or compensation. Therefore, this article overviews the widespread environmental crimes and the rise of attention to this issue. Consequently, it also describes the issue on criminal law enforcement to environmental crimes. Furthermore, it reviews environmental victimology study and the process of environmental victimization. Lastly, it analyzes the importance of environmental victimology study in arranging a policy on restoring the victims' losses. The study employed normative legal research by applying statutory, comparative, and case study approaches.

Keywords: criminal justice system, environmental crimes, environmental victimology.

Korban Kejahatan Lingkungan dalam Sistem Peradilan Pidana: Kajian terhadap Perkembangan Viktimologi Lingkungan

Abstrak

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Rendahnya perhatian dari sistem peradilan pidana terhadap korban kejahatan lingkungan menjadi dasar kajian viktimologi lingkungan. Melihat pada kerugian yang dialami korban sebagai dampak dari kejahatan lingkungan dan proses viktimisasi menjadi kajian dari viktimologi lingkungan. Dalam kajian kejahatan, kejahatan lingkungan timbul karena adanya aktivitas-aktivitas yang merusak lingkungan, seperti pencemaran, membuang bahan berbahaya secara illegal, membakar lahan, pembalakan liar, dll. Perilaku-perilaku merusak tersebut telah menimbulkan kerugian tidak hanya terhadap keberlangsungan lingkungan hidup, melainkan juga terhadap manusia dan makhluk hidup lainnya. Degradasi lingkungan telah menyebabkan timbulnya masalah kesehatan, ekonomi, sosial dan budaya, serta ketidaksetaraan. Akan tetapi, dalam beberapa kasus kejahatan lingkungan, terdapat keterlibatan negara yang menambah kompleksitas dalam penyelesaian perkaranya. Lebih lanjut, juga terkait dengan kejahatan lainnya, seperti korupsi dan pencucian uang. Oleh karena itu, pendekatan multi-door diterapkan dengan melibatkan beberapa institusi untuk menyidik kasus-kasusnya. Akan tetapi upaya tersebut ternyata tidak secara memadai mampu memulihkan kerugian korban. Melalui kajian viktimologi lingkungan, harapannya bahwa sistem peradilan pidana dapat mengakomodir kepentingan korban kejahatan lingkungan untuk mendapatkan restitusi atau kompensasi. Sehingga di dalam artikel ini, pertama-tama akan diuraikan mengenai maraknya kasus kejahatan lingkungan dan meningkatnya perhatian terkait dengan permasalahan ini. Selanjutnya, isu terkait dengan penegakan hukum terhadap kejahatan lingkungan akan dideskripsikan. Berikutnya, kajian viktimologi lingkungan dan proses viktimisasi akan dikaji. Terakhir, analisa mengenai pentingnya kajian viktimologi lingkungan dalam membentuk kebijakan untuk memulihkan kerugian korban. Metode penelitian dalam artikel ini adalah penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan, perbandingan, dan studi kasus.

Kata kunci: *kejahatan lingkungan, sistem peradilan pidana, viktimologi lingkungan.*

A. Introduction

Attention to environmentally damaging activities is rising due to its harmful effects on the environment, such as environmental degradation and ecological destruction that causes global warming. In turn, the effects can influence human life. For instance, climate change is an impact of global warming that is lowering human health and threatening animal extinction.

In criminology study, environmental crime is also recognized as green crimes. There are two main clusters for green crimes, namely (1) primary green crimes and (2) secondary or symbiotic green crimes. The primary green crimes are crimes related to human actions that cause the degradation or destruction of earth's resources. Such crimes include crimes of deforestation, air pollution, special decline of animal rights, and water pollution. The secondary or symbiotic green crimes are crimes that violate environmental laws or regulations. The crimes are state violence

against oppositional groups, hazardous waste, and organized crime.¹ These crimes also become a concern for the Indonesian government due to excessive incidents of environmental crimes.

Assertively, during the last three years, the Ministry of Environment and Forestry of The Republic of Indonesia (KLHK) has been taking legal actions for several environmental crimes. There have been 519 environmental cases that has been brought before criminal trial; and civil lawsuits are filed against 18 corporations.² As a result, administrative, civil, and criminal sanctions are imposed on the corporations. Government coercion, license suspension and/or revocation, as well as fines and costs worth 17.9 trillion rupiahs are imposed on 518 corporations.³ Specifically, related to land burning activities in the forest, administrative sanctions are imposed on 171 corporations that have been found guilty in land burning cases. In addition, because of civil lawsuits that filed against 11 corporations, the government has claimed 1.4 trillion rupiahs for compensation.⁴ The Ministry's actions can be understood since Indonesia has been criticized by other impacted states.

Moreover, a multi-door approach is applied to deal with environmental crimes. The approach enables perpetrators to be indicted by several laws or regulations for several crimes, such as corruption and money laundering, are also related to environmental crimes. As a consequence, the investigation for these crimes involves several law enforcement institutions, such as the KLHK, the Police, the Corruption Eradication Commission, the General Attorney, etc.

Legal process on environmental crime cases is very complicated. It involves a complex evidentiary procedure to determine the victims. This complexity involves much scientific evidence presented at the trial to find nexus between the action and the harmful effect. Expert involvement at the trial plays an important role to explain the scientific evidence to non-scientific fact finders such as judge, prosecutor, and lawyer.⁵ Expert testimony is an important factor to find nexus between alleged crimes that inflicted harm to the environment and the perpetrator's criminal liability. Simultaneously, the victims of those crimes are also revealed. However, under criminal justice process, victims are rarely acknowledged.

¹ Eamon Carrabine (et.al.), *Criminology: A Sociological Introduction*, London: Routledge, 2004, pp. 316 – 319.

² Ministry of Environment and Forestry of The Republic of Indonesia (KLHK), "Pemerintah Konsisten Perangi Kejahatan Lingkungan Hidup dan Kehutanan", <http://www.menlhk.go.id/siaran-296-pemerintah-konsisten-perangi-kejahatan-lingkungan-hidup-dan-kehutanan.html>, accessed on September 2018.

³ *Ibid.*

⁴ *Ibid.*

⁵ United States Supreme Court Amicus Brief, *William Daubert (et.al.), v. Merrel Dow Pharmaceuticals, Inc., on Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit*, Appellate Brief, WL 13006281, 1993, p. 5.

In victimology study, environmental crime victims are individuals who suffered because of damaging activities to the environment.⁶ In this matter, those damaging activities are acknowledged as environmental crime. Under the Law Number 32 of 2009 on Environmental Protection and Management (Environmental Protection and Management Law), environmentally damaging activity is an individual action that causes a direct or indirect change to environmental physical, chemical, and/or biological traits so that environmental damage standard criteria are exceeded.⁷ Activities such as polluting, illegal hazardous substances dumping, land burning, etc. are some activities enacted as a crime under the Law number 32 of 2009 and an object to criminal prosecution. Beside the Law number 32 of 2009, damaging behaviors in forest area are regulated specifically under the Law number 18 of 2013 on the Prevention and Eradication of Forest Destruction. Under this law, activities such as illegal logging, forest destruction, and illegal use of forest area are prohibited.

Furthermore, victims of environmentally damaging activities are often being ignored while also having to be involved in criminal justice process. Although victims are the most suffered from environmentally damaging activities, there is still a lack of attention in restoring victims' losses. Criminal law enforcement focuses its attention on penalizing the perpetrator and ignoring the nature of environmental crime victims that are distinct from other types of predominantly traditional victimhood such as rape, murder, etc.

In many cases, there are difficulties to raise awareness to the victims' existence under criminal justice system since the perpetrator involved in environmental crime cases is at least endorsed by the state.⁸ For instance, an alleged corruption case of the Mayor of Kendari, Adriatma Dwi Putra, in the road construction project. According to Indonesian Center for Environmental Law (ICEL), the Mayor should also be allegedly involved in environmental crime since this project required reclamation and clearing land in a forest area, which ignored the environmental administration.⁹

When the state is involved in environmental crime, such as the aforementioned case, the victims become deserted. Victims are experienced secondary victimization under criminal justice system, even though they experience the most

⁶ Matthew Hall, "Environmental Victims: Challenges for Criminology and Victimology in the 21st Century", *Varstvoslovje Journal of Criminal Justice and Security*, Vol. 13, No. 4, 2011, p. 371.

⁷ See Article 1(16) of Law Number 32 of 2009 on Environment Protection and Management [*Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup*] (Environment Protection and Management Law).

⁸ Matthew Hall, *op.cit.*, p. 374.

⁹ Indonesian Center for Environmental Law (ICEL), "Dugaan Suap Proyek Jalan Wali Kota Kendari, ICEL: Galis Juga ke Perkara Lingkungan", <https://icel.or.id/dugaan-suap-proyek-jalan-wali-kota-kendari-icel-gali-juga-ke-perkara-lingkungan/>, accessed on February 2019.

harmful effect of environmental degradation, such as health impacts, economic impacts, social and cultural impacts, victims of reduced security, also inequality of impact.¹⁰

Environmental victimology emerged due to the lack of acknowledgement of the victims' losses and the victim as a neglected party under criminal justice system. Due to the "limit of law" in addressing environmental victimization, this study endeavors to develop a predictable legal mechanism to deal with environmental harms.¹¹ Therefore, this article initially reviews the widespread environmental crimes and the rise of attention to this issue. Subsequently, it also describes the issue on criminal law enforcement to environmental crimes. Furthermore, it reviews environmental victimology study and the process of environmental victimization. Lastly, the study analyzes the importance of environmental victimology study in arranging a policy in regards to restoring the victims' losses. To analyze the issue comprehensively, this study employed normative legal research. Some approaches are used in this study, such as statutory, comparative, and case study approaches.

B. Issue on Criminal Law Enforcement to Environmental Crime

Under legal definition, crime is defined as prohibited behaviors, which are regulated under criminal law. Initially, criminology focuses more on "blue collar crime" and less to "white collar crime". However, the criminal law policy has raised its attention to eradicating this crime due to the harmful effects of white-collar crime. According to Sutherland, the followings are several characteristics of white-collar crime.¹²

1. It involves respected individuals as perpetrators. When their action cost financial, limb, and life loss, it also should be considered as a crime.
2. The perpetrator is involved in a business or an occupation that is correlated to their criminal actions.
3. In some industries, white-collar crime is more prevalent.
4. The involvement of some firms in white-collar crime is more often rather than other firms.
5. The motivation of the perpetrator is driven by economic deprivation, sociopathic, or psychopathic attribution.
6. There are no differences between the explanations for lower class crime and white-collar crime incidents.
7. To study about white-collar crime is by understanding its legal definition.

¹⁰ Matthew Hall, *op.cit.*, pp. 377-383.

¹¹ *Ibid.*, p. 384.

¹² Sally Simpson (et.al.), *The Criminology of White-Collar Crime*, United Kingdom: Springer, 2009, p. 16.

A broader range of activities of white-collar crime has divided it into some sub-categories. These sub-categories are based on the status of perpetrator, which refers to elite crime or power-holder, corporate, and state crimes. Crimes of power or occupational crimes are conducted to gain personal financial benefit from consumer, clients, or employers costs by engaging in illegal activities, such as embezzlement and corruption.¹³ In contrast, illegal activities of a corporation in corporate crime or organizational crimes are motivated to enhancing corporate's profitability or efficiency. Breaking or ignoring safety regulation is one of the activities related to corporate crime.

In environmental crimes, both types of crimes, occupational and organizational crimes can be intertwined. This fact has underlaid the establishment of a multi-door approach. This has required several law enforcement institutions to cooperate due to its complex evidentiary. As already mentioned, environmentally damaging behaviors is not a single incident. Besides damaging behaviors, which are regulated under related laws of environmental crimes, corruption and money laundering are also detected under an incident of environmentally damaging behaviors. Therefore, through a multi-door approach, several laws or regulations are indicted to the alleged perpetrator.

However, developing cooperation among institutions to deal with environmental crime is difficult. A common issue for law enforcement in combating environmental crime is lack of interagency cooperation. In the case of illegal logging in Indonesia, the cause of lack of interagency cooperation is a "lack of coordination between agencies and between local, provincial, and central offices of single agencies".¹⁴ Lack of coordination among authorized institution usually mainly occurs in issuing licenses.¹⁵ Moreover, lack of coordination between forestry institution, police, general attorney, and court becomes an obstacle in law enforcement.

According to Pecar, environmental crime is "every permanent or temporary act or process, which has a negative influence on the environment, people's health or natural resources, including building, changing, abandonment and destruction of buildings; waste processing and elimination of waste; emissions into water, air or soil; transport and handling of dangerous substances; damaging or destruction of natural resources; reduction of biological diversity or reduction of natural genetic

¹³ Hazel Croall, *Understanding White Collar Crime*, USA: Open University Press, 2001, p. 11.

¹⁴ Goncalves, Larilye Pereira (et.al.), "Justice for Forests: Improving Criminal Justice Efforts to Combat Illegal Logging", World Bank, https://siteresources.worldbank.org/EXTFINANCIALSECTOR/Resources/Illegal_Logging.pdf, 2012, p. 14.

¹⁵ Sadino, "Laporan Akhir Tim Pengkajian Hukum Tentang Peran Serta Masyarakat Dalam Pembalakan Liar Hutan (Illegal Logging)", Kementerian Hukum dan HAM RI, Badan Pembinaan Hukum Nasional, Jakarta, 2011, p. 5.

resources; and other activities or interventions, which put the environment at risk.”¹⁶

About environmental crime, Skinnider notes that “many environmental disruptions are actually legal and take place within the consent of society. Classifying an environmental crime involves a complex balancing of communities’ interest in jobs and income with ecosystem maintenance, biodiversity, and sustainability.”¹⁷ Therefore, dealing with environmental crime is very complicated. In a criminal case of late D.L. Sitorus, as convicted in illegal palm oil plantation in protected forest area as wide as 47.000 hectares, difficulties are met in order to restore the protected forest area since the KLHK and the prosecutor have not confiscated the plantation. Meanwhile, the execution of this case has run for ten years in 2008.¹⁸ The difficulties in confiscating the plantation are due to communities’ rejection, which is potential to raise conflict between prosecutor and communities.¹⁹ State loss for late D.L. Sitorus act is predicted to amount to 1.6 trillion.²⁰

Moreover, in several environmentally damaging activities, a state is allegedly involved or promoted the crime. Usually crimes related to license issuance. For instance, the corruption case of the Mayor of Kendari, Adriatma Dwi Putra, which according to ICEL should also liable for damaging environment due to reclamation and clearing land in a forest area which ignored the environmental administration. This fact raises concerns that comprehensive measures are needed to deal with environmental crime.

Environmental crime is costly. It includes not only loss of money and property, physical injuries or death, but also harm to the physical and ecological environment. Harm to environment has inflicted health issue for human being. Moreover, air and water pollution as well as deforestation are difficult to be valued.²¹

Critics to judicial system raise since it is assumed ineffective to overcome environmental crime. In its development, the cost of environmental or ecological

¹⁶ Nigel South, “Green Criminology, Environmental Crime Prevention and the Gaps Between Law, Legitimacy and Justice”, *Revija za Kriminalistiko in Kriminologija/Ljubljana* 65/2014/4, Vol. 65, No. 4, 2014, p. 374.

¹⁷ Matthew Hall, Environmental Harm and Environmental Victims: Scoping Out a “Green Victimology”, <http://eprints.lincoln.ac.uk/15846/4/EnvVics201RV-9.pdf>, accessed on February 2019.

¹⁸ RZR, “KPK Bantu Siti Nurbaya Eksekusi Lahan DL Sitorus”, <https://www.cnnindonesia.com/nasional/20180219133649-12-277157/kpk-bantu-siti-nurbaya-eksekusi-lahan-dl-sitorus>, accessed on February 2019.

¹⁹ Nurul Tirsari Sari, “Dikawal Warga, Kejagung Sulit Eksekusi Lahan Kelapa Sawit DL Sitorus”, <https://www.merdeka.com/peristiwa/dikawal-warga-kejagung-sulit-eksekusi-lahan-kelapa-sawit-dl-sitorus.html>, accessed on February 2019.

²⁰ Detik News, “Kasus Korupsi, DL Sitorus Disidangkan PN Jakpus”, 23 Januari 2006, <https://news.detik.com/berita/524637/kasus-korupsi-dl-sitorus-disidangkan-di-pn-jakpus>, accessed on February 2019.

²¹ Neal Shover and Aaron S. Routhe, *op.cit.*, p. 329.

destruction is considered as restitution and become the accused liability. In other words, the judicial system provides less attention on the harmful impact of environmental crime.

The well-known definition of victim is narrow by only human that would qualify as a victim. This definition reflects *anthropocentric* perspective where the perceiving human is not as a part of the whole ecosystem. In contrary, *ecocentric* perspective views “human beings as merely one component of a complex ecosystem that should be preserved for their own sake. Here the victim is specific environments and non-human species. Scholars from the animal rights perspective take the position that animals are themselves victims as ‘individuals’, not just part of nature.”²² Through this perspective, human and non-human are included as victim. Subsequently, under *biocentric* perspective, victim is understood as “any human activity that disrupts a biotic system as environmental crime.”²³ From *ecocentric* and *biocentric* perspectives, human interest is no longer the most important, yet the intrinsic value of ecosystem is the most important to be preserved.²⁴

Understanding the victim is a significant key to conduct environmental policy arrangement. Moreover, not only humans, but non-humans as components of complex ecosystem are understood as victim. Therefore, the policy will include environmental protection due to its importance to assure life on earth.

C. The Development of Environmental Victimology Study

Crime can be studied from many perspectives; one of the studies is criminology. Crime and criminal are the main inquiry of this study. Criminology evaluates motive or reason behind the accused criminal behaviors. The purpose is to determine appropriate reactions for the behavior, which will be useful for criminal policy formulation.

As suggested by Michael Lynch in 1990, green criminology should be at the center of the discipline’s development with environmental justice as a central concept.²⁵ The main study of green criminology involved both criminal and non-criminal behaviors that inflict harm to the environment.

In order to protect the ecological and physical environment, some behaviors are prohibited under an enacted statutory provision. This is what so-called as an environmental crime. Under criminology study, this prohibition can be understood by acknowledging “rational-choice” of perpetrators. At this point, many studies

²² Nigel South, *op.cit.*, p. 376.

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ Matt Greife (et.al.), “Corporate Environmental Crime and Environmental Justice,” *Criminal Justice Policy Review*, 2015, p. 3.

have contributed to the study of environmental crime, such as economic research, investigation of regulatory problems and dynamics, social research on environmental harm, public policy studies, and environmental management analysis.²⁶ These related studies to environmental crime have assisted criminologist to understand motives or reasons behind environmentally damaging behavior.

In perceiving crime, criminology mostly focuses on criminal. Nevertheless, it should also pay attention to victim. Ignoring victim may result in them suffering from both the impacts of the crime itself and from how the criminal justice system treats them. In the process, the role of victim under the criminal justice process is merely to report a crime and to provide evidence in order to penalize perpetrator. However, this process does not serve justice for the victims, since their loss are never restored. The protractedly ignorance of victim under criminal justice system has raised some scholars to develop the study of victimology by perceiving the relation between crime and victim, as well as victimization process.

Some aspects of victimization are addressed under victimology study. Those aspects are theories of victimization, the needs of victim, fear of crime, impact of victimization, and victim surveys.²⁷ Harmful acts or known as crime and victims are perceived only as a part of crime problems. This narrow perspective has neglected prolonged and complex experience of traumatic or other harmful effects of the incident for victims. This issue has raised a concern about the study of victimology.

Debate to shift attention to the victim of crime occurs during the process of criminal policy arrangement. The impact of crime is not merely a criminal issue but also related to the issue of crime victim. Through criminal victimization survey, the identification of facts about victim of crime appears and leads into a criminal policy arrangement to prevent victimization.²⁸ Victim crime survey determines victims' experience in its relation to crime. This experience may be determined before, during, or after they become a victim. It is challenging, yet the information from this survey is important to examine trend and to map the distribution of victimization.

In understanding victim, there are three strands within victimology study. Each strand develops different assumption, scope, and focus of study. The three strands are conservative, liberal, and radical-critical strands.²⁹

Under the conservative strand, "lifestyle" of an individual victim is examined to perceive its contribution to the process of victimization. Through this examination,

²⁶ Neal Shover and Aaron S. Ruthe, "Environmental Crime", *Crime and Justice*, Vol. 32, 2005, p. 322.

²⁷ Lorraine Wolhuter (et.al.), *Victimology: Victimization and Victims' Rights*, New York: Routledge-Cavendish, 2009, p. 13.

²⁸ Sandra Walklate, *Understanding Criminology: Current Theoretical Debates*, 3rd edition, New York: Open University Press, 2007, p. 10.

²⁹ Eamonn Carrabine (et.al.), *op.cit.*, pp. 117-118.

the pattern of victimization is identified. Extending its focus, liberal strand of victimology endeavors to focus also on hidden types of crime, such as corporate or business crimes. In its study, victims of these crimes are unaware of their victimization and reach the media's attention due to the high-profile perpetrators and the enormous amount of money. By this study, the restorative justice approach, such as restitution, mediation, or reconciliation, becomes prominent to restore the victims' loss. Furthermore, radical-critical strand extends its study to all forms of human suffering and critics to criminal justice system. According to radical-critical strand, social harmful, like poverty, malnutrition, or unemployment, is as harmful as any behaviors that are counted as "crime problem". Subsequently, criminal justice system also becomes a problem that contributes to victimization.³⁰

Victim of environmental crime has specific characteristics. According to Skinnider, characteristics of an environmental victim are as follows.³¹

1. The victim is unaware of his/her victimization.
2. Since the victim is unaware of his/her victimization, the victimization is often delayed.
3. The victim does not recognize who should be blamed for his/her victimization.
4. A large number of victims are affected by the crime, which causes victimization to be serious.
5. Repeated offense is a part of victimization.

Specifically, victim of environmental crime is large by numbers and cross international border. The impact of environmental degradation has victimized victims, yet in many incidents, victims do not realize of their victimization. Victims' suffering may be prolonged and may not be identified immediately since the reach of environmental crime impacts is very wide. For instance, in land burning cases, the inhabitant who lives near the burning land is not the only victim. They who lives miles away from the burning land are also the victims. Victim, in this case, suffer from respiratory illness and other harmful effects since the earth's quality is also impacted.³²

Considering the harmful effects of environmental crime, a study of environmental victim and victimization is developed since both are not well-recognized under any criminal justice system. For instance, many criminal justice systems do not deal with "mass victimizations". The aforementioned facts lead to the development of environmental victimology study.

³⁰ *Ibid.*

³¹ Matthew Hall, "Environmental Harm and Environmental Victims: Scoping Out a "Green Victimology", *loc.cit.*

³² Neal Shover and Aaron S. Routh, *op.cit.*, p. 323.

Voices of environmental crime are often excluded from related literature or policy debates. In this matter, a process of victimization occurs. Some reasons for this action are as follows.³³

1. Environmental crime is perceived as a victimless crime. This is because the victim of this crime is often unidentified.
2. The victim is unable to disclose their suffering. The victim in this matter is not only human but also flora and fauna.
3. The issue of community consent in a environmental crime incident has caused numbers of environmental crime to be not criminalized. This, of course, has caused environmental crime victim not to fit with the criminal justice system.

Under environmental victimology, the aforementioned reasons will be accommodated under its study on victim of crime. Through this study, integrated knowledge about environmental crime will be developed.

D. Environmental Victimology under Criminal Law Policy Formulation

Lynch coins green criminology to study environmental crime and environmental issue. Lynch and Stretesky define green criminology as “a means for studying problems related to environmental harm and crime, victimization, law, environmental justice, environmental regulation, and moral/philosophical issues as these issues relate to humans, non-humans animals, plant species, and so on, and the ecosystem and its components”.³⁴ Moreover, many criminologists perceive green criminology in relation to essence conceptualization, extent, victim and offender of environmental harm and crime.³⁵ From the definitions, green criminology is perceived as an environmental crime from a broader perspective, including victimization, which is important in any criminal incident.

Environmental crime is related notoriously to its impacts. Fact shows that environmental crime is very dangerous and covers an enormous number of victims, and it is very costly to clean up.³⁶ Many environmental laws do not accommodate restoration for this enormous number of victims. The study of environmental victimology has an important role to understand who the victims are. Victimization process and data on the impact of environmental crime have been fruitful for criminal law policy arrangement.

However, to fit victim with a legal definition as a crime with actual victims is difficult. Although the negative impact of environmental crime is enormous, this

³³ Anh Ngoc Cao and Tanya Wyatt, “The Conceptual Compatibility Between Green Criminology and Human Security; A Proposed Interdisciplinary Framework for Examinations Into Green Victimization”, *Critical Criminology*, Vol. 24, 2016, p. 8.

³⁴ Semarco S. Johnson, “The Status of Green Criminology in Victimology Research”, *McNair Scholars Research Journal*, Vol. 10, Issue 1, 2017, p. 91.

³⁵ Anh Ngoc Cao and Tanya Wyatt, *op.cit.*, p. 2.

³⁶ *Ibid.*, p. 92.

crime is often perceived as victimless crime. Different from conventional crime, the victim of environmental crime has less support service offered.³⁷ The victims of environmental crime mostly consist of low-income citizens and minorities. Therefore, the victim suffers the most in the incident of environmental crime.

According to William, environmental crime is defined as “those of past, present, or future generations who are injured as a consequence of change to the chemical, physical, microbiological, or psychosocial environment, brought about deliberate or reckless, individual or collective, human act or omission.”³⁸ The change in environment caused by any damaging activities of the perpetrator, individually or collectively, generates victim and/or potential victim.

Law enforcement is ineffective against environmentally damaging activities. For instance, many countries fail in managing their forest law enforcement to overcome the issue of illegal logging. The study found that “enforcement of natural resource and biodiversity laws and regulations is abysmal in these biodiversity-rich countries. The existing enforcement regimes in the countries we studied are weak, and not one of them provides an adequate disincentive to offset the incentives that are driving illegal environmental activities.”³⁹ The ineffectiveness of law enforcement against environmental crime has severe impacts on human, non-human and to the environment itself.

Environmental degradation has become a prominent issue since the industrial revolution. The development in many technical and organizational innovations has increased the use of main energy sources, such as coal, oil, waterpower, gas, etc. This, of course, has raised the environmental problems, such as water pollution, acid rain, smog, and socio-environmental (slum area).⁴⁰ These environmental problems are aggravated by many irresponsible human actions in exploring natural resources. Such actions, in many incidents, are correlated with criminal acts or crimes. Crimes, which inflict harms to the environment, have formed into many crimes, such as corruption, illegal logging, and other forms of environmental crimes.

These crimes have caused environmental degradation, which inflicts harmful effects for human beings. Global warming is the evidence of environmental degradation impact, which is indicated by the increase in Earth’s temperature. As an impact, the lives of human beings are threatened due to global warming, while the costs to restore the environment will be very costly.

³⁷ *Ibid.*, hlm. 94.

³⁸ Matthew Hall, “Exploring the Cultural Dimensions of Environmental Victimization”, <https://www.nature.com/articles/palcomms201776>, accessed on March 2019, p. 2.

³⁹ Marilyne Pereira Goncalves (et.al.), *op.cit.*, p. 5.

⁴⁰ Sjur Kasa, “Industrial Revolutions and Environmental Problems”, <https://pdfs.semanticscholar.org/40b7/36a52efc708f744c7ecff9d6a3510d3a5c17.pdf>, accessed on January 2019, p. 71.

To overcome environmentally damaging activities, environmental law is promulgated. According to Lazarus, environmental law is distinguished from any other branch of law. Under environmental law, the expectation to change the pattern of behavior is acknowledged as a nation's aspiration for environmental quality by implementing civil, administrative, and/or criminal sanctions. Furthermore, environmental law is dynamic and evolutionary since it is closely related to science and politic, thus it raises complexity to be implemented.⁴¹ Contestation between legislative and executive branches tends to increase in order to formulate environmental law. Complexity in science to indicate the destruction of environment has raised many perspectives to perceive this issue, especially related to the accused criminal liability.

In regulating environmental law, political context plays an important role in shaping the goal of the promulgated law. It will be very complex in regulating process since it involves numbers of institutions, community representatives, economic matters, ecological matter, and so on. The fact that state may endorse many incidents causes tension in environmental laws' arrangement. This indicates a characteristic of environmental crime as occupational crime. For instance, in the bribery case involved Nur Alam, former Southeast Sulawesi governor, who issued a mining license to PT. Anugerah Harisma Barakah (PT. AHB). An ecological destruction occurred from the mining activities of PT. AHB. This case indicates patronage-rent seeking relation that will perpetuate the environmental destruction activities. Patronage-rent seeking relation becomes an obstacle to reducing tension among legislative and executive branches to produce an appropriate related environmental protection law, not to mention the fact that some communities depend on the illegal business that potentially inflicts harm to the environment and raise conflicts with the state. For instance, in the criminal case of late D.L. Sitorus, the rejection of community has caused difficulties for the prosecutor to confiscate the illegal palm oil plantation of late D.L. Sitorus.

Moreover, a criminal justice process requires scientific evidence to calculate the cost of ecological destruction. However, scientific evidence is difficult to be understood by non-scientific fact finders, such as judge, prosecutor, and lawyer. Lack of understanding of scientific evidence causes difficulties in finding nexus between ecological destruction and criminal liability of the accused. Although the prosecutor has also indicted Nur Alam for restitution according to the expert's calculation for ecological destruction caused by mining activities of PT AHB, the Judges of Jakarta Corruption Court did not find any nexus between the destruction and Nur Alam criminal liability. Therefore, Nur Alam was not liable to pay for any

⁴¹ Chaitanya Motupalli, "Intergenerational Justice, Environmental Law, and Restorative Justice", *Washington Journal of Environmental Law Policy*, Vol. 8, 2018, pp. 339-340.

cost of environmental restoration worth over 2.5 trillion rupiahs based on the expert's calculation. In their verdict, judges imposed 12 years of imprisonment and a 1 billion rupiah fine.⁴² However, to include the calculation for ecological destruction cost in the prosecutor indictment is a breakthrough for criminal law enforcement.

Lack of experience in dealing with environmental crime has caused judges to fail in scaling the inflicted harmful effect of environmentally damaging activities. This situation is aggravated with lack of sentencing guideline for judges in environmental cases. Furthermore, environmental crime can be a catalyst for corruption, usually in issuing a license. An individual, who is a government official or has authority or power, tends to perceive environmental crime as an opportunity to cash in.⁴³ This is indicated in some cases, such as the Nur Alam's bribery case, alleged corruption case of the Mayor of Kendari, Adriatma Dwi Putra, and other environmental crime cases that involve parties of authority as perpetrators.

The Nur Alam's bribery case indicates that environmentally damaging behavior is not a single incident. It also involves other crimes such as environmental crime and money laundering. Considering its complexity, a multi-door approach is established to overcome the issue, especially in conducting investigation. This approach enables to perceive environmental crime not only from an environmental law perspective but also from corruption and/or money laundering law perspective.

Conceptually, multi-door approach is a model of integrated environmental criminal law enforcement for environment protection and management. Under this approach, several institutions are involved, such as KLHK, Police, Prosecutor, KPK, Customs, Central of Financial Transaction Report and Analysis (PPATK), etc. The impose of harsh criminal punishment is expected to result deterrence effect. Commitment to implement multi-door approach also intends to cover a wide range of victimization of environmentally damaging activities as long as the calculation for ecological or environmental destruction costs is considered to be imposed.

In its development, Environmental Alternative Dispute Resolution or Environmental Conflict Resolution (ECR)⁴⁴ has been developed in the United States to deal with environmental enforcement cases. Consideration to implement ECR is

⁴² Aditya Mardiasuti, "Hakim: Kerugian Negara di Kasus Nur Alam Rp. 1.5 Triliun", <https://news.detik.com/berita/d-3942411/hakim-kerugian-negara-di-kasus-nur-alam-rp-15-triliun>, accessed on March 2019.

⁴³ Environmental Investigation Agency, "Environmental Crime: A Threat to Our Future", https://www.unodc.org/documents/NGO/EIA_Ecocrime_report_0908_final_draft_low.pdf, accessed on February 2019, p. 3.

⁴⁴ Joseph A. Siegel, "Alternative Dispute Resolution in Environmental Enforcement Cases: A Call for Enhanced Assessment and Greater Use", *Pace Environmental Law Review*, Vol. 24, No. 1, 2007, p. 189.

due to its benefit to the environment. Those benefits include *faster resolution of issues; more creative, satisfying, and enduring solutions; reduced transaction costs; increased likelihood of compliance with environmental laws; and better environmental outcomes*.⁴⁵ ECR in this matter is in contrast with coercive traditional litigation, which focuses on judicial decision-making process.⁴⁶ Restoration justice in this matter prevails to overcome the issue of environmental crime. Restorative justice has some features to be considered while dealing with this issue, such as (1) victim can be identified; (2) victim is voluntarily involved in the process; (3) responsibility for offender's criminal behavior is accepted by the offender; and (4) the offender involvement is non-coerced.⁴⁷ By implementing this approach, restoration for victim and environment can be fulfilled.

Restorative justice is perceived as more relevant to deal with environmental crime rather than existing environmental law remedies. More challenges will be met under judicial system to accommodate the interest of environmental sustainability since it involved constantly new analysis and discoveries, which are difficult to be followed, by judicial system. The burden for judicial system is too great to serve as the guardian of legality, while at the same time also responsible for environmental sustainability.⁴⁸

According to United Nations Office on Drugs and Crime (UNODC), the definition of restorative justice is as follows.

“Restorative justice is an approach to problem-solving that, in its various forms, involves the victim, the offender, their social networks, justice agencies, and the community. Restorative justice [programs] are based on the fundamental principle that criminal [behavior] not only violates the law, but also injures victims and the community. Any efforts to address the consequences of criminal [behavior] should, where possible, involve the offender as well as these injured parties, while also providing help and support that the victim and offender require. Restorative justice refers to a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict.”

Through this approach, the attention is shifting, not merely to penalize the accused but more to restore the loss of the victim and environmental degradation.

In Indonesia, a similar concept with ECR is implemented. Environmental Dispute Resolution (EDR) is acknowledged to overcome incident of “tension,

⁴⁵ *Ibid.*, p. 194.

⁴⁶ *Ibid.*, p. 188.

⁴⁷ Motupalli, Chaitanya, *op.cit.*, p. 344.

⁴⁸ *Ibid.*, p. 347.

disagreements, altercations, debates, competitions, contests, conflicts, or fights over some element of the natural environment".⁴⁹ In other words, they are known as environmental dispute. The dispute involves land use, natural resourced management, and use of public lands, water resources, energy, air quality, and toxic.⁵⁰

According to Article 1(25) of the Environment Protection and Management Law, environmental dispute is a conflict among two or more parties, which is inflicted from activity that has potential and/or impact to environment. Under this law, the dispute can be settled out-of-court settlement or brought before court.⁵¹ The purposes of out of court settlement are as followed:⁵²

- (1) to settle about restitution;
- (2) to settle about restoration as an impact of polluting or damaging activities;
- (3) to settle about certain measures to prevent polluting or damaging activities from reoccurring; and
- (4) to settle about measures to prevent the negative impact on the environment.

Various measures to overcome many issues of environmental crime indicate that environmental crime victim restoration gets more attention. Awareness on the issue of environmental degradation is increased due to enormous attention to its harmful impact in reducing quality of life. Criminal justice system is beginning to adapt with victimization issue of environmental crime. At the same time, government policy on environmental issues shifts to give more attention to the sustainability of the environment and avoid conflict with communities. This measure is also in order to enhance voluntary compliance of the parties who involved or engaged in environmental management.

E. Conclusion

The rise of understanding on the issue of environmental crime has led to the study of its victim. Through environmental victimology study, all aspects of environmental crime victim are inquired. As a result, criminal justice system could recognize not only the role of victim in the process but also the victim's needs to be more acknowledged and gain restoration or compensation for losses. In its development, perspective to accommodate victim's interest under criminal justice system begins to rise through several policies. In Indonesia, a multi-door approach is established to overcome the obstacles in an investigation, since other forms of crime, such as corruption or money laundering may also occur in conjunction with environmental crime. The expectation is to optimize law enforcement for crime-

⁴⁹ David Nicholson, *Environmental Dispute Resolution in Indonesia*, Leiden: KITLV Press, 2009, p. 1.

⁵⁰ *Ibid.*

⁵¹ See Article 84(1) of Environment Protection and Management Law.

⁵² See Article 85(1) of Environment Protection and Management Law.

related environmental also to improve compensation/restitution for victim by restoring the environment. Furthermore, restorative justice also becomes a basis to overcome the issue of environmental conflict. Environmental Conflict Resolution (ECR) and Environmental Dispute Resolution (EDR) are established to accelerate restoration of victim and environment. Those measures indicate that environmental victimology, which the main study is environmental crime victim and process of victimization, has contributed to the formulation of laws or regulations that prioritize the interests of victims.

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