

# Environmental Crime and Law Enforcement in Indonesia: Some Reflections on Counterproductive Approaches

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**Abstract.** The enforcement of environmental law in Indonesia shows a contradictory nature. The exploitation of natural resources by corporations has caused unparalleled disasters. Yet, the perpetrators, especially those corporations who work in collective, are rarely able to be persecuted. This research aims to examine the obstacles to environmental law enforcement in Indonesia and analyze the ideal environmental law enforcement model for future use. This research uses a qualitative approach which examines the concepts related to the ideal law enforcement for the future (*ius constituendum*). Our examination finds that there are three main obstacles in enforcing environmental law in Indonesia: the inability to deal with corporations which have strong political backing, overlapping authorities in the process of crime investigation, and difficulties faced by law enforcement officers in finding evidence. In light of these findings, we propose a model of legal protection for victims of pollution and/ or environmental destruction using the principle of restorative justice. In this model, judges can represent facilitators from the state for the initial stage. The value of this model is that rather than only pursuing punishment for the perpetrators, it shifts the focus towards providing compensation for the victims by the perpetrators.

**Keywords:** Environmental law, law enforcement, restorative justice, ideal legal model, Indonesia

## 1. Introduction

Exploiting natural resources has long been regarded as one of the cornerstones of a country's economic growth. This is because, within the paradigm of developmentalism and industrialism, economic growth is the measure of developmental success. However, without regulations being placed and enforced to control the exploitation, we will face a disastrous outcome in the form of unmitigated ecological devastation. Law enforcement's role in environmental problems should not be focused on only giving sanctions for

environmental law violators and preventing more violations in the future.

According to L. Elliott,<sup>1</sup> environmental crime typically refers to any breach of a national or international environmental law or convention in the status quo, to ensure the conservation and sustainability of the global environment. There are many cases of environmental crime in Indonesia which in dire need to control. One of the prominent environmental crimes is forest fires which have become a regular occurrence in contributing to major health concerns surrounding the area, even the neighboring countries.

In general, INTERPOL<sup>2</sup> said there are five areas of environmental crime: the illegal trade in wildlife;

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illegal logging and its associated timber trade; illegal, unreported, and unregulated (IUU) fishing; illegal trade in controlled chemicals (including ozone-depleting substances); and illegal disposal of hazardous waste. According to UN-Environment,<sup>3</sup> environmental crime is affecting 1) the environment, 2) human health, 3) socio-economic development, and 4) state governance and sustainable development. Therefore, Suparni<sup>4</sup> said the main problem in the environment is guaranteeing and making the earth a livable place since environmental pollution can kill 'life' itself. Here, law enforcement takes an important role in protecting the environment. It puts forward a significant effect on protecting the environment. So, law enforcement in the environment should be not only repressive but also preventive.

Rahardjo<sup>5</sup> stated that law enforcement attempts to understand ideas and apply ideas to reality. Law enforcement is a process to realize the desire of the law to become a reality. Desires are law thoughts of the law-making body for making a law. In principle, law enforcement is achieved through preventive and repressive efforts. Preventive efforts are the series of actions as deterrence of law violations, while repressive law enforcement is intended to crack down upon the violation.<sup>6</sup> Implementing law enforcement is not as easy as turning our hands. In certain circumstances, it is difficult to implement, or it simply fails.

Cozens & Love<sup>7</sup> stated that the failure of criminal law enforcement in doing environmental crime prevention is caused by the lack of synchronization and harmony in the level of legal structure, legal culture, and legal substance within the criminal justice system; which involves the police, prosecutors, courts, and correctional services. Therefore, the government must integrate perceptions, beliefs, responses, concepts, and opinions of the people and law enforcers to fight environmental crime as an extraordinary crime, especially since it has tremendous impacts not only on the lives of humans but also on the sustainability of our nature. We need a developmental strategy to avoid further damaging or polluting the environment and collective efforts to prevent and control environmental crimes. Nevertheless, the success of this strategy also lies in considering its structural and cultural aspects.

A similar opinion is given by Maddali et al.<sup>8</sup> They stated that law enforcement on environmental cases tends to dilapidate. Various environmental

cases cannot be handled comprehensively to serve the ecological interest. Administration officials who should have been at the forefront of law enforcement have mostly failed in placing safety measures for future environmental crimes. The main obstacles are weak legal rules, incompetent officials, and corrupt behaviors surrounding law enforcement efforts against environmental crimes. Previous research conducted by Fitriano<sup>9</sup> revealed that the current environmental law enforcement reflects the failure to handle environmental crime due to zero integrated law enforcement. Furthermore, Haris & Syahbudin<sup>10</sup> stated that Law 32/2009 on environmental protection and management has failed to focus on environmental protection during its implementation. In addition, Listiani & Said<sup>11</sup> argued that this law is due to revision since it lacks the act of supervising environmental activities.

Concerning the law enforcement of environmental crime, President Joko Widodo stated:

“Environmental protection and environmental law enforcement have therefore become one of the highest priorities of the Indonesian government, in its attempts to ensure the sustainability of our environment and to provide life-support for our people. “Active environmental regulation is a key component of the government’s platform moving toward inclusive and sustainable economic development that aims to provide food security, energy security, infrastructure development, and sound maritime sector development.”<sup>12</sup>

In the criminal justice system, law enforcement is part of the legal sub-system. As a sub-system, the law becomes the dependent variable influenced by nonlegal factors such as the economy, politics, society, culture, security issues, conflicts of interests, and capital power. According to Friedman,<sup>13</sup> three things influence the process of law enforcement: legal substance, legal structure, and legal culture. These elements are always surrounding the law enforcement process in Indonesia, including environmental law enforcement.

The problems discussed in this study are why there are obstacles in enforcing environmental law in Indonesia, and what should be the ideal law enforcement model for environmental crimes in the future?

## 2. Research Method

This type of research is library research. Library research is research that is carried out by examining library materials. This research includes library research because the data used are mostly primary legal materials in the form of statutory regulations. The approach used in this study is philosophical.<sup>14</sup> The philosophical approach in legal research is to examine the law from the ideal side. This research uses a philosophical approach because what is being studied is the ideal level of the law, namely Indonesia's future environmental law enforcement model.

Sources of data used in this study are primary legal materials. Primary legal materials are legal materials that are binding and have a certain form. Primary legal materials are used as the main reference that is already available in the form of legislation, also supported by secondary legal materials in the form of writings in books, scientific journals, and other written sources. Data collection techniques are carried out through conventional and online searches. The conventional literature review is an activity to find library sources for data storage areas. At the same time, online writing is an activity to find library resources in cyberspace through the internet. Conventional literature searches are carried out by searching for library materials, purchasing books, journals and attending scientific activities (seminars). At the same time, the online search is done by searching on the internet. The data analysis method used is qualitative. Qualitative data analysis is the process of organizing and sorting data into patterns, categories, and basic units of description so that themes can be found that are presented in narrative form. This study uses qualitative data analysis because the data will be presented in a narrative-descriptive manner, not in the form of numbers or numeric.

## 3. Discussion

### 3.1. Obstacles in Environmental Law Enforcement in Indonesia

#### 3.1.1. Political Powerlessness in the Face of Corporations

Enforcement of environmental law in Indonesia is counterproductive because it faces several obstacles.

The Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Management states the forms of efforts for law enforcement, namely administrative law enforcement, criminal law enforcement, and civil law enforcement.<sup>15</sup>

Several factors become obstacles in law enforcement in Indonesia. *First*, there is the power of capital that dominates so that it affects the law enforcement process. *Second*, there is the interference of power that hampers the capital. *Third*, the declining performance of the courts, which is marked by the weak understanding and sensitivity of judges to issues related to the environment and conflicts of interest.<sup>16</sup>

Cases of environmental pollution and/or destruction that are resolved through the courts generally do not provide legal protection to the victims. By imposing criminal sanctions on the perpetrators as if it was enough.<sup>17</sup> There is no sanction on the obligation to pay compensation by the perpetrator to the victim, although the Environmental Law stipulates additional penalties for corporations in the form of taking certain actions.<sup>18</sup>

If you want to sue for compensation, it can be done through civil channels, but it takes a long time, and the compensation obtained is not balanced with the costs incurred.<sup>19</sup> Settlement of environmental disputes that are resolved through out-of-court channels is generally more satisfying to the parties, both perpetrators and victims.

As reported in online legal data, most environmental criminal defendants who are brought to court are either free or only sentenced to probation. Shaifuddin Akbar, Head of Sub-Directorate for Investigation of Environmental Destruction at the Ministry of Environment, said in front of the participants who took part in the Corporate Crime Environmental Sector organized by Mahupiki-Faculty of Law, University of Lambung Mangkurat acquitted; The other 40% are only subject to probation; and 2% on slag van gewijsde (apart from all lawsuits); and the next 2% where the claim is rejected. Only 13% of perpetrators are subject to sanctions in the form of imprisonment and fines.

For example, the settlement of environmental cases that occurred between PT. Palur Raya with the community of Ngringo Village, Jaten District, Karangnyar Regency, represented by the Waste Victim Consortium (KKL) residents of Ngringo Village. At that time, PT Palur Raya was sued by

residents because, based on the results of laboratory examinations carried out by an independent team from Gadjah Mada University, the company's waste contained hazardous toxic materials known as B3. The agreement of both parties between PT. Palur Raya and the community of Ngringo Village, Jaten District, Karanganyar Regency, represented by the Waste Victims Consortium (KKL) on January 19, 2002.

The agreement was taken in good faith from both parties to live well as neighbors. The agreement was made between PT. Palur Raya with the Ngringo village community as victims represented by KKL is a mutually agreed choice between perpetrators and victims. The settlement of disputes through criminal channels has not yet provided legal protection to victims. By imposing criminal sanctions on the perpetrators as if it was enough. Whereas in criminal sanctions, there are also additional criminal sanctions against corporations in the form of taking certain actions. Likewise, PT. Acidatama Chemical Industry (IACI) with the Sumber Rejeki Kanten farmer group, Sroyo Village, Jaten District, Karangnyar Regency was resolved by agreement between two parties.<sup>20</sup>

The above case does not impose a penalty in providing compensation or restitution or in any form as a form of legal protection to the victims who are affected.<sup>21</sup> With the strong backing of perpetrators of environmental destruction, the Corporation will lobby and influence escape prosecution and all punishments. Corporate responsibility for recovering state losses.<sup>22</sup> Destruction of the environment and natural resources is a criminal act that has an impact on state losses, in this case, economic and ecological losses.

### 3.1.2. Obstacles in Investigation Process

The process of investigating environmental crimes is based on the Environmental Law, namely police investigators and Civil Servant Investigators (PPNS) on duty according to the provisions of the legislation. The legal basis for the investigation, apart from being carried out according to Article 94 and Article 95 of the Environmental Law, is also carried out according to the provisions of the Civil Procedure Code (KUHAP).

The implementation of investigations in the context of enforcing environmental law in the field still creates obstacles, including conflicts of understanding and authority of the investigating apparatus, both the police and PPNS. The next

obstacle is that the evidentiary process assessed by law enforcement officials is still too complicated. In line with the provisions of the Criminal Procedure Code, Article 94 paragraph (1) of the Environmental Law stipulates those investigators of criminal acts in the environmental field other than Investigators of Police Officers are also PPNS within government agencies whose duties and responsibilities are in the field of environmental protection and management.<sup>23</sup>

Not all environmental offenses are carried out by PPNS from the Ministry of Environment and Regional Environmental Agency or Office. The investigation of environmental crimes that occurred in the Indonesian Exclusive Economic Zone (EEZ) was carried out by Investigators of the Indonesian Navy (TNI AL) officers. Meanwhile, in the field of fisheries, PPNS of Fisheries, officers of the Navy, Investigators of the Police, and PPNS in the field of forestry are carried out by PPNS in the field of forestry. Environmental and forestry PPNS have obstacles in conducting investigations, namely the lack of human resources.<sup>24</sup>

PPNS also faces various problems in the field where if one takes a wrong step in the investigation, something unexpected will happen, such as the intention to punish the perpetrators of environmental crimes because the perpetrators are not touched. The contributing factors are:

*First*, there is a difference of understanding among law enforcement officers in the application of environmental criminal law. Law enforcement officials still have different perceptions about who should be responsible for environmental damage. *Second*, the proof is complicated. Environmental case investigators do not always have the authority to reveal technical matters. *Third*, the strong backing of perpetrators of environmental destruction. Corporations will try to lobby and influence to escape the law. *Fourth*, corporate responsibility for recovering state losses. In principle, the destruction of the environment and natural resources is a crime that causes harm to the state, and the intended losses are economic losses and ecological losses. Investigators continue to strive so that state losses due to environmental destruction and pollution can be recovered.

Investigators also face another problem: if the state's losses have been recovered, will the criminal legal process continue or stop. So far, investigators have continued this case to the criminal realm, but at the same time, the government has also filed a

lawsuit against the company. For example, a lawsuit was filed against a company suspected of having burned the land.<sup>25</sup>

Many environmental causes are hampered due to the lack of professional law enforcement officers who can handle environmental cases. In addition, it seems impossible for us to expect law enforcers to master various aspects of environmental damage. Because the environment includes comprehensive and complex aspects relating to various disciplines,<sup>26</sup> the lack of knowledge and understanding of law enforcement on these aspects is a very dominant factor in creating a common perception of environmental management.

### 3.1.3. Obstacles in Finding Evidence

As explained above, environmental case investigators cannot always uncover technical matters. Due to limited capabilities, investigators are required to seek expert opinion to explain environmental quality standards. Shaifuddin Akbar, Head of Sub-Directorate of Environmental Destruction Investigation, said that the evidence is scientific, so expert testimony is needed. Investigators also face problems when the experts have different opinions.<sup>27</sup> Especially if the expert presented by the investigator and the expert presented by the company in question exchanged different opinions when proving.

Environmental destruction is very difficult to detect, in contrast to crimes in general, where the victim immediately realizes that he or she is the victim of a crime, for example, theft, robbery, rape, and others. If the crime is environmental destruction, the crimes they commit are not easily known by ordinary people, even by law enforcers who do not understand the environment; besides, the negative impact of environmental damage does not directly show its consequences.<sup>28</sup>

Another difficulty is that there are differences of opinion, namely that the perpetrators of environmental crimes are mostly respected and smart people. They are often known as “the skilled criminals”. Because of their shrewdness, they can avoid investigation and prosecution. So it can be said that the activities of investigating and prosecuting crimes of this type will require time, and the costs of investigation and prosecution are not cheap. In addition, it will be more difficult to collect evidence.

## 3.2. Future Environmental Crime Law Enforcement Model

### 3.2.1. Environmental Regulations in the Draft Criminal Code

Several things have not been included in the scope of environmental crimes in the Draft Criminal Code (RKUHP).<sup>29</sup> *First*, according to Article 385 paragraph (2), 386 paragraph (2), 387 paragraph (2), and 388 paragraph (2), the punishment with weighting is only aimed at acts that cause death or serious injury. The consequences of acts of environmental destruction are not positioned as an environmental crime in which there is no weighting of punishment.

*Second*, the fines written in all of these articles are fines for actions that result in pollution or damage to the environment and endangering a person's life or health and causing the death of a person. Social and economic costs such as local values destroyed due to environmental degradation and reduced income due to environmental pollution are not counted as social costs that must be replaced by environmental crimes.<sup>30</sup> There have been many cases of environmental pollution/destruction followed by the closure of economic access for the community.

*Third*, environmental crimes tend to be oriented towards urban environmental cases full of pollution from industry, such as inserting waste materials into wells, water pumps, and springs, which enter the drinking water supply. Land, surface water, and air that cause or are reasonably suspected of causing harmful effects to human health or life are environmental crimes that commonly occur in urban environments. The formulation in the RKUHP has not fully covered all crimes such as forest fires, soil contamination by roots, and chemicals from palm trees, so it is very difficult to determine whether the act is categorized as an act of entering something either intentionally or unintentionally.

*Fourth*, the formulation of environmental crime sanctions only includes two types of sanctions: imprisonment and fines. Two other types of sanctions, namely carrying out certain actions and compensation that are vital in environmental pollution/destruction, have not been included. Whereas criminal acts in the form of certain actions can be directed to restore environmental functions that have been damaged. Meanwhile, compensation can be aimed at replacing social costs due to environmental pollution/destruction.

The RKUHP does not explain the principle used, whether the *ultimum remedium* principle is punishment as a last resort or the *primum remedium* principle which is the main thing. It is different from the Environmental Law which in general provisions it is explained that the enforcement of environmental crimes still pays attention to the *ultimum remedium* principle if administrative enforcement efforts are deemed ineffective.

One very unfortunate thing is that this principle only applies to certain formal criminal acts, namely punishment of violations such as wastewater quality standards, emissions, and disturbances. In other words, there are certain criminal acts other than wastewater standards, emissions, and disturbances that apply the *primum remedium* principle. The RKUHP does not mention these two philosophies at all, what criminal acts can apply and the conditions under which these principles apply.

The formulation of Article 53 of the RKUHP states “Criminal acts by corporations are criminal acts committed by people who have functional positions in the organizational structure of the corporation who acts for and on behalf of the corporation or act in the interests of the corporation, based on work relationships or based on other relationships within the scope of the corporation. the business or activity of the Corporation, either individually or jointly.” Article 55 states “If a corporation commits a crime, criminal liability is imposed on the corporation and/or its administrators, the giver of orders, or the controlling holder of the corporation.” From these two articles, it can be concluded that there is no corporate responsibility if a subordinate functionary commits a criminal act. Meanwhile, in several cases of violations of environmental law, many criminal acts were found intentionally or carelessly carried out by subordinate functionaries but in instructions from superiors in control of the organization. This indicates that corporate responsibility has not been implemented in the draft codification of environmental criminal law.

Something is overlapping with the additional penalties that are specific to corporations. If you look at Article 130 of the RKUHP, the punishment for corporations is divided into two parts, namely the main crime and the additional punishment. The main penalties are fines and additional penalties in the form of actions according to the rules contained in Article 132 of the RKUHP. However, Article 135

of the RKUHP regulates all actions that have not been stated in Article 132 of the RKUHP.

### 3.2.2. *The Ideal Environmental Law Enforcement Model for the Future*

Enforcement of environmental law is one of the six scopes of environmental protection and management where the implementation of environmental law enforcement, especially for environmental crimes, considers that it is part of environmental law that sees crime as a legal-social problem—the tendency of law enforcement in Indonesia and environmental law enforcement to use the Due Process judicial model.

Because by assuming that law enforcement officials do not or rarely make mistakes and expand their authority without thinking about the procedural stage. Then the Crime Control model is used. It can be simply discussed that the concept of factors influencing law enforcement is second, namely law enforcement factors in the implementation of law enforcement, and is following the theory of the Judicial Due Process model proposed by Packer.

The ideal model of legal protection for victims of pollution and/or environmental destruction following the principles of restorative justice, namely by referring to the body put forward by Tatsuya Oka, the perpetrator, will deal with victims of this case environmental pollution and the state as a facilitator. Judges can represent facilitators from the state for this initial stage. Both the perpetrator and the victim must be heard at the time of trial.<sup>31</sup> The victim is a complement to the sufferer and the main subject who should receive protection. However, in protecting victims, the interests of the perpetrators, in this case, are corporations, must still be considered.<sup>32</sup> Do not let the company run so that investment drops because it is two-sided with the victim. Ideally, there is a balance of interests between the perpetrator and the victim (*daad dader strafrecht*).

In general, at this time the imposition of sanctions on the perpetrators/offenders is directly imposed from the State. So in the process of proceeding in court, there is a relationship between the state and the perpetrator. There is communication and the State as a facilitator with the concept of restorative justice between perpetrators and victims. The settlement out of court is almost similar to restorative justice, and only it does not involve the state.

Restorative justice means justice that can restore to its original state. Restoration in question is in the form of restoring the relationship between the victim and the perpetrator. Restoration of relations takes the form of making a mutual agreement between the two parties concerned, namely the victim and the perpetrator. The victim is allowed to convey the loss he suffered as a result of the perpetrator's actions, and the perpetrator is also allowed to compensate for the loss suffered by victim; this agreement takes various forms such as compensation mechanisms, peace, social work, and other agreements made by the two parties concerned and have been agreed together. Through this restorative justice, it is hoped that victims and perpetrators can actively participate in the process of solving the problem.<sup>33</sup> With the implementation of this restorative justice approach, it is considered that it will lead to many positive changes towards society and the state.

#### 4. Conclusion

Based on the discussion above, it can be concluded that there are three obstacles in enforcing environmental law, namely the inability to deal with corporations, obstacles in the investigation, and obstacles in evidence. The strong backing of the authorities against corporations that destroy the environment makes it difficult for corporations to be caught. The corporation will try to lobby and exert great influence to escape all charges and punishments. There are multiple interpretations in environmental law enforcement. The Environmental Law should provide clear boundaries on who has more authority to conduct investigations between the Police and PPNS.

Many environmental causes are hampered due to the lack of professional law enforcement officers who can handle environmental cases. Environmental crimes that have been listed in the RKUHP are not clear. This will have an impact on the difficulty of law enforcement officers in finding evidence of crimes against environmental destruction. The most visible weakness is criminal fines and substitutes. The ideal model of legal protection for victims of pollution and/or environmental destruction through the principle of restorative justice. Perpetrators will deal with victims of environmental pollution and the state as a facilitator. Judges can represent facilitators

from the state for the initial stage. Perpetrators and victims must both be heard during court hearings. The most important agreement between the perpetrator and the victim is the provision of compensation from the perpetrator to the victim. The nominal amount and compensation mechanism need to be regulated so that it is easy to implement and does not cause harm to the victim.

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