

# Legal Environmental Action Aspects, Based on Environmental Conservation, According to Law 32/2009 Concerning Protection and Management of Environment

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**Abstract**— This research aims to theoretically analyze the description of criminal provisions of Law 32/2009 concerning Protection and Management of the Environment. It also discusses criminal sanctions for unlawful environments in Indonesia, comprising of irregularities. Practically, it has awkward or inappropriate dealt with its application. Since the types of environmental crime were not directly related to environmental conservation. This study makes use of a conceptual, law, and case approach. The results of the study stated that environmental protection and management are laws below the specialist. However, in the criminal provisions section, there is no conformity and alignment, as its principle prohibited criminal acts, and upheld the spirit of environmental protection and management. Also, criminal provisions do not consider the environment as their actual victim. Comprehension in the Law on Protection and Management of the Environment is a criminal provision which has not led to environmental protection. The first problem which is imprisonment is substantially clear as there is no influence on the victim (environment). Secondly, following criminal penalties, it is still unclear whether the government uses the cost of fines from defendants for the restoration of damaged environments. The application of these methods tends to create a holistic and integrated policy in managing and optimizing the environment as a source of collective strategy for the benefit of human life.

**Keywords**— *Criminal Law, Environmental Damage, Conservation*

## I. INTRODUCTION

Humans are creatures in need of an environment with natural resources such as forest and sea. Although the earth does not need humans to exist, they are dependent on the surrounding environment for existence. For example, it had provided life for every creature before the existence of humans (dinosaur era), no valuable act has been carried out on earth. Numerous activities not in line with the rules of the existing environmental organizations/institutions, keeps damaging the earth.

Environment also known as ecosystem is the place where biotic and abiotic elements are located in the same place and make both physically and non-physically interaction which contributes to the life of humans[1]. According to some authors, the environment has regular pattern relationship that affects one another, with its characteristics based on several factors, as follows:

1. Kind of elements along with their amount
2. Interaction between each element in the environment
3. Environment condition
4. Non material factors, such as temperature, light, energy, and noise[2].

Global warming has become a global issue, and as a developing country, Indonesia is rapidly destroying the forest, owing to natural and environmental exploitation. In addition, the country has been divided based on planning and land allocation.

One example of environmental damage is forest fire due to the change of function in the flammable land. This is caused by drained peatland after the shifting function of the land. According to Hydrology expert, Sidik Imanuddin from Sriwijaya University, during the process of shifting, the draining procedure always occurs on the peatland by building channels. And the main factor causing this problem is excessive and uncontrolled draining.

In the latest years, data from The Ministry of Environment and Forest, in September 2015, showed 12 provinces facing the burned land problem. Riau took the first place having the most comprehensive burned land with 2.025,25 hectares (ha). It was followed by West Kalimantan (900,20 ha), Central Kalimantan (655,78 ha), Central Java (247,73 ha), West Java (231, 85 ha), South Kalimantan ( 185, 70 ha), North Sumatera (146 ha), South Sumatera ( 101,57 ha), and Jambi ( 92,50 ha)[3]. However, this kept occurring in Malaysia due to poor awareness, weak law as well as the use of the same peatland.

Another case of air pollution was from the industrial sector. According to Uus Koeswoyo, the Head of Local Disaster Management Coordinator (Badan Penanggulangan Bencana Daerah, BPBD) in Banten, industries in this region were divided into 4 zones. The first was from Anyer to Ciwandan border, the second from Ciwandan to Cilegon, the third from Gerem to Cilegon, while the fourth zone was from Cilegon to Merak. These industries produced chemical product with high air pollution, though the data was not yet confirmed. However, those materials contained harmful and poisonous waste (B3)[4].

A menace is likely to emerge from a leak of steam waste and reactor of material processing. Furthermore, assuming the wastes obtained were not properly sterilized, it could harm people in the surrounding. Also, assuming the wastes were directly contaminated by people, it would lead to various diseases such as the Upper Respiratory Tract Infection (Infeksi Saluran Pernapasan Akut, ISPA), which leads to brain cancer. The waste could also cause skin disease when in direct contact with people[5].

Assuming the law showed its power and the government provided adequate awareness, the above-listed ailment associated with environmental pollution, would be controlled. For instance, our neighboring countries with numerous factories and companies kept to the rules and regulation guarding environmental production, and therefore, they did not experience health ailments.

The process of criminal liability and the justice system towards defendants need to be carefully examined. This research therefore aims at developing a new system which emphasizes environmental protection toward the creation of a better life.

Van Bemmelen defined the criminal justice system, as an advanced technique used to prosecute offenders of the law. Furthermore, he stated that criminal institution has certain goals which must be achieved[6]. However, there were some miscommunications among researchers towards the goal of the criminal justice system. It could be seen as follow:

- 1.) To change the crime into a better version.
- 2.) To make people (charge in crime) quit participating.
- 3.) To prevent people (charge with crimes) from participating in other crimes[7].

Criminal justice system towards defendants of environment cannot be separated from legislative regulation written in the act of environment based on Law 32/2009 on environmental protection and management. It is also written in the sectorial Law 5/1983 on Indonesian Exclusive Economic Zone (Zona Ekonomi Eksklusif Indonesia, ZEEI), Law 31/2004 on fisheries, Law 5/1990 on living resource conservations, and Law 17/2008 on sailing. Regarding the norms of the criminal justice system of environmental conservation, the theoretical and normative plan above should be changed, especially when seen from quantity and quality aspect of the defendants. While discussing the law incapable of covering up the environment as an actual victim, the theory of exclusive prevention (*bijzondere preventieve theories*) focusing on achieving its goal which focuses on changing a crime into a better version to make people quit participating in it, can be implemented.

Based on the explanation above, the researcher determines the problem of the study as follows: Does the criminal provision of the environment fit its conservation-based on norms?

## II. RESULT AND DISCUSSION

### A. GENERAL OVERVIEW OF ENVIRONMENTAL LAW

A conference of United Nations (UN) on the environment was held from 5-16 June 1972 in Stockholm, Sweden. The guideline (literature review) considered in this conference as the pioneer of environmental law development, both national and international. During this conference, a document

entitled[8] "Declaration of Human and Environment," which was also known as the Stockholm Declaration was made the source for the development of environmental law. This conference also marked 5 June as World Environment Day.

In 1983, the general assembly of the United Nations created the World Commission on Environment and Development (WCED) following the Stockholm conference. This was known as the Brundtland Commission during which a report containing an integrated approach towards the problem of environment and development was published[9].

Considering the recommendations made by Brundtland commission, the general assembly decided to hold the Rio De Janeiro conference in Brazil (1992). This conference was attended by representatives of 178 countries, 115 Heads of States and Governments, and 1400 representatives of Non-Governmental Organizations.

This conference was named Earth Summit since it represented the interest of several countries. Some agreements made in this conference are as follows:

1. Rio Declaration on environment and development;
2. Convention of biodiversity;
3. Convention of climatic change;
4. Agenda 21, an 800-page document containing "blue print" sustainable development in the 21st century;
5. Unbind principles of forest management;
6. Continual development from a legal instrument of the convention on desertification, the convention of marine pollution (that mostly came from the land);
7. An agreement to create Commission of Sustainable Development focusing on the implementation of Rio agreement and Agenda 21[10].

The importance of United Nation Declaration on Environment towards the countries involved could be seen from the representatives who stated that declaration was "a First step in developing international environmental law." According to the Secretary-General of UN, Maurice Strong; "A new and important strategy with an indispensable beginning and an attempt to articulate a code of international conduct for the age of Environment is required.[11]" .

The impact of the Stockholm conference towards awareness of environment was seen from the development and creation of environmental national law. This was further discussed in the development of Indonesia's environmental law.

Southeast Asian Countries created awareness to protect and maintain the environment by collaborating and integrating ideas. Some of these collaborations could be seen through the "Tripartite Agreement" and "Manila Declaration." The Tripartite Agreement was made by *Indonesia, Malaysia, and Singapore, which focused on the marine pollution in the Strait of Malacca and Singapore. This agreement had concluded to make marine traffic management in both straits written in "Indonesia-Malaysia-Singapura (IMS) Traffic Separation Scheme, Rules and Recommendations.[12]" .*

The development and protection have long been arranged, with its focus on development, prosperity, and health among today generation and future. It became the major reason why the awareness towards environmental problem was intensified. In Indonesia, many lawbreakers (of environment problem) did not take responsibility for their actions.

## B. GENERAL OVERVIEW OF CRIMINAL AND CRIMINAL PROVISION

Before discussing the various attributes of criminal provision, which is majorly based on environmental conservation, it is ideal to elaborate on the term "criminal." According to Van Hamel, Criminal or *strafe* is particular distress sentenced by authorized supremacy to give criminal provision towards offenders (defendants) in the form of responsibility[13].

Based on this law, Simons, criminal, or *straf* is a kind of pain (distress) which breaks the norms sentenced by the judge for law breakers/criminals[14]. Algra-Jensen also stated that a criminal is a tool used by the judge to warn the people charged for crimes. Reaction from these powerful people has revoked some of the protection given to the defendant comprising the right to life, freedom, and wealth, assuming no crime was committed[15]. Based on the definition of criminal *straf* above, P.A.F and Theo Lamintang made the following conclusion:

A criminal does not have a purpose and will never have any. Furthermore, it warns Indonesia not to get affected by the messy point of view of Dutch writers since they often mentioned that criminals have a purpose. Also, a couple of them translated the term does *der straf* as the purpose of the law, while in actual fact it meant the purpose of criminal provision[16].

The term criminal is considered the same with punishment, but in fact, they are different[17]. Punishment, in general, is kind of pain sanctions (consequences) towards someone, while criminal has a particular relation with law. It still has the same meaning and kind of sanctions (consequences) towards someone[18]. According to Herbert L. Packer, to categorize sanctions as criminals, it should consist of the following six characteristics as follows:

1. It must involve pain or other consequences normally considered unpleasant.
2. It must be for an offense against legal rules.
3. It must be imposed on the actual or supposed offender for this offense.
4. Human beings other than the offender must intentionally administer it.
5. It must be imposed and administered by an Authority constituted by a legal system against which the offense is committed.
6. It must be imposed for the dominant purpose of preventing offenses against legal rules or of exacting retribution from the offender, or both[19].

According to Sudarto, the criminal is the synonym of punishment. He further stated that *Penghukuman* originally came from the word '*hukum*' which means punishment. It means how punishment is decided toward someone (berechten). Criminal law is also civil law. Since this paper focuses on criminal law, therefore, there is a need to limit the explanation to it. Criminal law means the law for criminal cases, which is similar to the criminal provision by a judge. This is also the same as the term sentence or *verviideling*[20].

## C. CRIMINAL PROVISION OF ENVIRONMENT BASED ON ENVIRONMENTAL CONSERVATION

Environmental problem is examined from the criminal law perspective. The researcher emphasized the study legal rights towards the environment. The law which is based on environmental conservation could be analyzed by examining four aspects:

### 1. Consideration

Law concerning Protection and Management of the Environment considering which states (*Undang-Undang Perlindungan Dan Pengelolaan Lingkungan Hidup, UUPPLH*) that:

- a. a proper and healthy environment constitutes of human right for every Indonesian citizen as mandated in Article 28 of the Constitution of 1945;
- b. national economic development as mandated by the Constitution of 1945 is executed based on sustainable and environmentally-sound development principles;
- c. the regional economic spirit in the execution of the public administration of the Unitary State of the Republic of Indonesia has brought about changes in relations and authority between the state and regional government in the field of environmental protection and management;
- d. the decreasing environmental quality has threatened the continuation of human life and other creatures, thereby, providing all stakeholders with the need to protect and manage the environment seriously and consistently;
- e. the increase in global warming has caused climate change thereby, worsening the environmental quality, leading to protection and agreement;
- f. to better guarantee legal certainty and protect the right of every human, a proper and healthy environment is required, and as part of extensive protection, it is necessary to renew Law 23/1997 on Environmental Management;
- g. based on the consideration as referred to letters a, b, c, d, e, and f, it is necessary to enact a law on environmental protection and management[21];

The pollution and environmental damage that became worse along with the developing issue associated with the international and national environmental law was behind this law. The spirit to protect environmental aspect became the main key of the Law 32/2009 substituting Law 23/1997.

This consideration also showed that the purpose of arranging Law concerning Protection and Management of the Environment was based on maintenance of the ecosystem along with protecting the environment from pollution and damage caused by nature and human[22]. The environment is an important asset of development, therefore, that there is no wrong for human and government in protecting it[23]. It should be noted that development could give a negative impact towards the environment. However, it is also one of the ways to build the life standard of human and country development. According to the author, the contradiction between environment and development needs another perspective to ensure it is properly aligned.

The active role from the law concerning the maintenance and protection towards the environment cannot be separated. This is because the law has an active role in development and justice. To guarantee the in-line and balance, the law needs to take the issue of global warming serious in accordance to Law 32/2009 on protection and management of the environment, due to our ability to feel the climate changes and the decreasing quality of the environment.

## 2. *Basis of Principles*

According to article 2 of Law 32/2009 on environmental protection and management, there are 14 basic principles as follows:

- a. State Responsibility, this principle means that the; a) state guarantee the utilization of natural resources with huge benefits for prosperity and quality life of citizens, for the present and future generation; b) state guarantees right of citizens towards good and healthy environment; c) state prevents natural resource exploration that causes pollution and damages to the environment.
- b. Conservation and sustainability mean that every person is tasked with the responsibility of maintaining the ecosystem and improving the quality of the environment.
- c. Harmony and equilibrium mean the environment should consider every aspect, such as economic, social, cultural, protection, and ecosystem maintenance.
- d. Integration means the protection and management of the environment are executed by combining several aspects or synergizing the related components.
- e. Benefit means every activities and development should fit the natural resources and environment to increase prosperity and human dignity in line with the environment.
- f. Prudence means uncertainty towards the impact of activities and development because lack of knowledge from stakeholders and technology is not an excuse to delay steps in preventing threat towards pollution and environmental damage.
- g. Justice means the protection and management of the environment should be proportional for citizens, irrespective of their region, generation, and gender.
- h. Eco-region means protection and management should consider the characteristics of natural resources, ecosystem, and local wisdom.
- i. Biological diversity means protection and management should consider integrated action to protect the existence, diversity, as well as continuous existence of living (plants and animals) and non-living natural resources that create the ecosystem.
- j. Polluter pays means every stakeholder that causes pollution and damage should take responsibility by paying the cost associated with maintenance.
- k. Participation means every community should actively participate in the deliberation process of protection and management implementation, both directly or indirectly.

- l. Local wisdom means protection and management of the environment should consider old norms applied in the society.
- m. Good governance means protection and management of the environment should have participative, transparent, accountable, efficient, and justice principles.
- n. Regional autonomy means state and local government should organize and manage the environment by considering the differences and diversity of regions in accordance with The Republic of Indonesia.

These fourteen principles reflect the importance of the environment for human across sustainable generation. It should be underlined that environmental protection has many shields, and the change to run from punishment is very small due to its numerous principles. The threat towards environmental damage is very big; therefore, the state needs to actively participate in protecting the environment.

## 3. *Prohibited acts*

The Law concerning Protection and Management of the Environment considering (UUPPLH) regulates some prohibited acts capable of polluting the environment with various adverse effects on people[24]. Furthermore, these acts also organized sanctions to prevent violation and to make the perpetrator of the UUPPLH to adequately build manage and protect the environment. UUPPLH guarantees legal certainty to establish environmental criminal to minimize the emergence of crimes causing pollution and environmental damages[25].

Environmental criminal is classified into two types, which are based on environmental and human protection. The following 42 articles which consist of these orientations were written as follows:

1. Article 98 paragraph (1), article 99 paragraph (1), article 100 paragraph (1) which prevents anyone from committing any form of action depreciating the standard quality of ambient air, water, sea and the standard criteria for environmental damage or any other violation towards emission and disturbance;
2. Article 101 manages anyone releasing or distributing genetically engineered products to environmental media without the permission of laws and regulation;
3. Article 102, 103, and 104 prevents anybody producing B3 waste without permission from the minister, governor, regent/mayor or without conducting proper treatment;
4. Article 105, 106, and 107 prevents anybody importing B3 waste into the territory of the Republic of Indonesia;
5. Article 108 prevents people from land burning;
6. Article 109 prevents people from running business activity without an environmental permit;
7. Article 110 prevents anyone formulating AMDAL without having a certificate of competence;
8. Article 111 paragraph (1) prevent officials from issuing an environmental permit without AMDAL or UKL-UPL and also prevent them from issuing business and activity without an environmental permit;

9. Article 112 prevented every authorized officially not intentionally supervising the compliance of personnel in charge of business and activities to legislation and the environmental permit and activities that cause pollution and/or environmental damage that can also cause death;
10. Article 113 prevents anybody from providing fake, misleading, disappearing, damaging or untrue information needed for supervision and law enforcement concerning environmental protection and management;
11. Article 115 prevents anybody intentionally preventing, impeding or aborting the execution of the asks of environmental supervision and civil servant investigators.

Articles with environmental and human protection orientation are written in article 98 paragraphs (2) and (3) as well as in article 99 paragraphs (2) and (3). The essence of this article is to prevent anybody from committing action disrupting the standard quality of ambient air, water, and sea that are harmful to human health.

The essence of this article written in UUPPLH is to classify two types of protection, namely protection towards the environment and human. It is made to protect the environment from the negative impact of its management, such as pollution and environmental damage, which leads to a decrease in the ecosystem. It also causes (1) people to acquire wound, and (2) leads to death.

The essence of writing environmental articles in UUPPLH is also to classify two types of protection. It is made to protect the environment from the negative impact of its management, such as pollution and damages, which leads to a decrease in the ecosystem. It also (1) injures people, and (2) leads to death. Also, this article is not only tailored to protecting the environment but human.

#### 4. *Types of Sanction*

Law 23/1982, defines a criminal sanction as prison term and fine Jail term sentenced to people who commit environmental crimes while those charged with a violation are sentenced to imprisonment without additional sanction.

The sanction is only basic like imprisonment term and fine but not sentence. The absence of imprisonment is because all environmental law breakers are qualified as criminals, according to Law 32/2009. However, it should be underlined according to the pattern used (inside/outside KUHP) while making imprisonment a possible result[26].

All the sentences of crime and fines were arranged cumulatively, except in article 112, which was arranged alternatively. Besides that, the period of subject of imprisonment varies, such as, a minimum of one year and maximum of 3 years, a minimum of two years and maximum of six years, a minimum of three years and maximum of ten years, a minimum of four years and maximum of twelve years, a minimum of five years and maximum of fifteen years. However the fine comprises; a minimum of 1 billion and maximum of 3 billion, a minimum of two billion and maximum of six billion, a minimum of three billion and maximum of ten billion, a minimum of four billion and maximum of twelve billion ,

and a minimum of five billion and maximum of fifteen billion.

Furthermore, according to Law 32/2009, the disciplinary violation should be liable to an additional penalty in the form of:

- a. Seizure of profits earned from the crime
- b. Closure of business and activity place wholly or partly
- c. Improvement of impacts of the crime
- d. The requirement for outright neglect;
- e. Placement of company under custody for a maximum of three years.

According to the explanation above, the types of sanction in Law 32/2009 on environmental protection and management with imprisonment and fine utilized cumulative and alternative technique. Unfortunately, the sanction is only applied to the stakeholders, which is different from Law 23/1997, which states that the sanction could also be applied to the individual and corporate. Article 1 of Law 32/2009 has clearly explained that it is not focused on each individual, unlike article 119, but on the stakeholders/corporate.

#### 5. *The comprehension of Criminal Provision in the Law 32/2009 about Environmental Protection and Management*

The principles, prohibited actions, as well as other sanctions, lead the researcher into conducting a deeper study in Law 32/2009 on environmental protection and management. Furthermore, the ability of the environmental criminal to consider the surrounding environment as its actual victim, all made the researcher more curious.

A consideration from UUPPLH showed that the purpose of creating the law was to organize environmental management based on ecosystem maintenance and also protect the environment from pollution or environmental damage caused by nature or human. The environment was an important asset for the state. Therefore, the country has the responsibility to protect it. The UUPPLH has shown good consideration in making the environment a very important place. Its conservative characteristics comprising of natural resources, maintenance, and utilization, fulfilled the requirements[27].

The principles which became the foundation of environmental protection and management were written in article 2 of UUPPLH. It consists of 14 basic principles, State Responsibility Conservation and sustainability, Harmony and equilibrium, Integration, Benefit, Prudence, Justice, Eco-region, Biological diversity, Polluter pays, Participation, Local wisdom, Good governance, and Regional autonomy. Those principles required environmental protection and management, and explanations that could give conservative aspect of the environment.

Prohibited actions or types of criminal activities written in UUPPLH managed the various inconsistencies associated with pollution and prohibited environmental damage. Those articles made the perpetrator to stop committing the crime. UUPPLH guaranteed legal certainty to establish environmental crime to minimize its emergence, with only minor chances for the doer to violate the law, since its

protection is very strong and based on protection towards the environment and human life.

Society tries to comprehend this relation to be more intensive in preventing pollution and environmental damage. Types of sanction in chapter XV of criminal provision showed that when the action was considered a crime, there was a problem. In the principles and consideration prohibited action written in UUPPLH lies on the orientation of environmental protection, therefore, the sentence should focus on how it could protect the environment.

There are two types of criminal in UUPPLH, which are those imprisoned and fined. Imprisonment does not focus on environmental protection because assuming the freedom of someone is repealed, it won't benefit the environment. The writer argued that criminal law is not merely about imprisonment, which is in line with Andi Hamzah statement on modern criminal law. Therefore, the prison is the last option for an offender (*ultimatum medium*).

The uncertainty of fine is also a problem, as no one is able to determine where it goes after the defendants make payment. No one knows whether they are really allocated for the maintenance of the damaged environment. It is such an irony since the principles, consideration, and type of sanction are not oriented to environmental protection with no relationship.

The Law of Environmental Protection and Management is also applied to the defendants of the environment, based on the Law number 32 year 2009. Assuming the UUPPLH becomes the big umbrella of environmental law, it should be applied to all the criminal actions. However, there is no such regulation towards other environmental laws.

It is very pitiful to know that the sanctions could only be applied to stakeholders, while it should be to all offenders of environmental crime (individual and corporate). The implementation of additional criminal laws makes the basic lose their place. The judges are unable to determine the sanction without accelerating it with imprisonment and fine. It means once the judges impose the basic criminal law (acceptable by the assembly), the additional cannot be imposed and there is no protection towards the environment.

UUPPLH, which was arranged cumulatively, has weakness due to its imperative characteristic, which did give freedom for the judges. However, it would be very difficult for them to impose the sanction as a corporation or legal institution, not as one led by a leader[28]. The book of criminal law recognizes cumulative of basic crime to the environment, with imprisonment and fine. It means the judges have no right to impose two types of sanction at the same time. This also becomes a problem among the judges where they have imposed the fine sanction, but the defendants have no money, therefore, they will change the sanction into imprisonment, six months at the maximum, or even eight months assuming there is an objection[29]. Therefore, imprisonment is not effective for environmental crimes, especially for the fines that give offenders the opportunity to run from their responsibility.

This kind of criminal activity cannot be effectively implemented among environmental crimes, owing to lack

of comprehension among legislatures. They fail to understand that the main victim is the environment itself, followed by the country and human. The need to integrate the orientations of goals in the form of consideration, principle, types of crime, and sanction in the criminal justice system is really important.

### III. CONCLUSION

Consideration, principle, criminal /prohibited action written in Law 32/2009 on Environmental protection and management is general law guiding the environment. However, during the implementation, criminals do not consider the environment as the actual victim of crimes, and as a result of this, UUPPLH failed to focus on environmental protection. The main problem associated with this research is, first, imprisonment had no essence towards the victims (environment), and secondly, the undetermined state of the fines. No one knew whether the government used the fines (from the defendants) to maintain the damaged environment.

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