



Strengthening Environmental Criminal Law In Regional Development Policy

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Abstract

Human rights cover various fields, not only economics and politics, but also in the field of providing the need for a good and healthy living environment. The living environment is life that encompasses the order and values of life that exist within it. Orders and values that maintain the sustainability of the environment and natural resources and social justice for human life regarding HAL (Environmental Rights) remain for today and future generations. The study of the environment is an issue that is interrelated with development. The consideration that encourages the integration of environment and development is the impact of balance on the environment's ability to support sustainable development. The research results are an answer to regional development policy problems which show a lack of involvement of environmental legal principles so that attention needs to be paid so that a region can develop without disturbing the existing environmental ecosystem. The method used is the normative juridical method, namely research that uses statutory regulations as a basis for solving the problems raised. The data collection method used in this research is library research. Meanwhile, the data analysis used is qualitative, the analysis is by describing the data in a quality manner in the form of sentences that are orderly, coherent, logical, non-overlapping and effective, making it easier to interpret data and analyze.

1. Introduction

The environment is a gift from God Almighty which must be preserved and developed so that it can continue to be a source of life support for humans and other living creatures for the sake of continuity and improvement of the quality of life itself. A good and healthy living environment is the human right of every Indonesian citizen as mandated in Article 28H Paragraph (1) of the 1945 Constitution of the Republic of Indonesia.¹ On this basis, the state, government and society are obliged to protect and manage the environment in implementing sustainable development so that the environment remains a source and support for life for the Indonesian people and other living creatures.

The Indonesian legal constitution has stipulated that there is the state's right to regulate the environment and the natural resources contained therein as stated in Article 33 of the 1945 Constitution of the Republic of Indonesia which states: "Earth, water and natural resources contained therein are controlled by the state and used as much as possible. for the welfare of the people." Based on the provisions regarding the right to control the state, the state has the right to regulate and establish various policies and regulations as guidance and legal baselines in managing the environment and natural resources in order to realize people's welfare.²

It is a common concern that currently the world is facing a global crisis related to the environment that is hitting the earth, namely

climate change, global warming, pollution and contamination. Indonesia itself, as a developing country, is currently recorded as the fastest forest destroying country in the world. IPBES 2018 data also states that every year Indonesia loses 680 thousand hectares of forest, which is the largest in the Southeast Asia region. Meanwhile, data on river damage collected by the Ministry of Environment and Forestry recorded that, of the 105 existing rivers, 101 rivers were in a condition of moderate to heavy pollution (walhi.or.id, 15 May 2024).

The living environment must be viewed as a whole and have an orderly system and all elements in it must be placed equally. Reform and development have brought many disasters to the environment and humanity, because in this case the view of the environment is interpreted conventionally. The living environment is considered as an object. This point of view is very worrying because it places the environment as an object which means it is a source of wealth and can be used solely to support development, as a result the condition of nature and the environment experiences increasingly severe damage from time to time.

The use of natural resources must be in harmony, harmony and balance with the function of the environment. As a consequence, development policies, plans and/or programs must be imbued with the obligation to preserve the environment and realize sustainable development goals.³

Environmental issues are not only local or translocal, but regional, national, transnational and global. Therefore, environmental protection and management,

¹ See the explanation of the 1945 Constitution of the Republic of Indonesia.

² Dani Amran Hakim, *Politik Hukum Lingkungan Hidup Di Indonesia Berdasarkan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan dan*

Pengelolaan Lingkungan Hidup, Jurnal Fiat Justisia (Vol. 9 No. 2 April-Juni 2015), h. 117.

³ I Putu Sastra Wibawa, *Politik Hukum Perlindungan dan Pengelolaan Menuju Ekokrasi Indonesia*, Jurnal Ilmu Hukum (Vol. 18, No. 1, (April, 2016). h. 53.

in relation to sustainable development, requires the development of an integrated system in the form of a national policy on environmental protection and management which must be implemented in a principled and consistent manner from the central government to the regions.

The phenomenon of natural disasters which is increasing day by day is a sign that environmental damage in Indonesia is becoming increasingly worrying. In fact, it has endangered the lives and livelihoods of every living creature in and around it. This also includes the lives of future generations.

In fact, the essence of the environment is life which encompasses the order and values of life within it. Orders and values that maintain the sustainability of the environment and natural resources and social justice for human life regarding HAL (Environmental Rights) remain for today and future generations. So what needs to be emphasized is that the environment must be viewed and treated as a subject, managed for sustainable living, not solely for development growth.

Efforts to achieve the ideals of a state based on law through the formation of laws based on democracy, should also go hand in hand with Indonesia's efforts to move towards a state that protects and manages a sustainable environment, which is called "ecocracy" through legal instruments. This is in line with Arief Hidayat's opinion which states that apart from democracy, nomocracy, theocracy, ecocracy must also be carried out with environmentally based legal development.⁴ Based on the background above, the author is interested in researching environmental law in regional development policy with the aim of finding out the involvement of

environmental law in regional development legal policy.

Literature Review

The process of reviewing research results relevant to this research has been carried out. However, from the study of research results, there are still various differences both in terms of research objects, research results and conclusions. The following are some of the research results that have been reviewed, including:

Research conducted by Jamaluddin with the research title: Juridical Analysis of Environmental Crimes According to Positive Law in Indonesia. This research discusses the criminal provisions of environmental law in efforts to protect and manage the environment as regulated in statutory and regulatory policies in Indonesia.

The second research was conducted by Fahriza Havinanda, research with the research title: Legal Politics in Renewing the Environmental Criminal Law System and its Impact on Law Enforcement for Environmental Crimes. This research discusses legal political policy in the environmental criminal law system in Indonesia and its impact on the environmental criminal law enforcement process and the phenomenon of problems related to environmental law in Indonesia.

The third research was conducted by Kania Tamara Pratiwi, Siti Kotijah and Rini Apriyani with the research title: Application of the Primum Remedium Principle for Environmental Crime. This research discusses the application of principles in

⁴ Arief Hidayat, *Bernegara Itu Tidak Mudah (Dalam Perspektif Politik dan Hukum)*, Semarang : Universitas Diponegoro, 2010. h. 41-42.

environmental law, namely the principle of *primum remedium* in environmental crimes in Indonesia. The orientation of this research is to show that the application of the *primum remidium* principle in enforcing environmental criminal law is still a serious problem that must be addressed in the environmental criminal law system in Indonesia.

Research Methods

The type of research used is normative legal research, namely research that examines statutory regulations that are related to the object of research study, especially regarding legal principles and norms contained in statutory regulations. In this research, the approach used is the Legislative Approach. (Statute Approach) and Concept Approach (Conceptual Approach).

Legislative Approach (Statute Approach), namely an approach by studying and analyzing laws and regulations that are related to the subject matter of the research.

Conceptual Approach, namely an approach by studying views and doctrines in legal science, concepts and legal principles that are relevant to the main research problem.

2. Results and Discussion

A. Scope of Environmental Criminal Law

Environmental law is a fairly complex legal study. Therefore, to be able to study

⁵ Barda Nawawi Arief, *Masalah-Masalah Dalam Penegakan Hukum*, Jakarta: Prenada Kencana Media Group, 2010. h. 77.

environmental law requires perseverance and knowledge from other branches of science. In a simplified sense, environmental law can be interpreted as law that covers and studies regulating environmental order. This environmental order includes all related matters, both in the form of objects, living creatures, and conditions in which humans are present and participate in influencing the survival and welfare of living creatures that inhabit the environment.

Environmental criminal law or environmental criminal acts is a more specialized study in criminal law, although it still requires study from other branches of science. This is because environmental criminal law is very closely related to other branches of legal science, as well as studies within environmental law itself. The definition of environmental criminal law can be interpreted as orders and prohibitions to legal subjects which, if violated, are threatened with the imposition of criminal sanctions. The aim is to protect the environment as a whole as well as elements in the environment such as forests, animals, land, air and water as well as humans.

As with criminal law in general law, enforcement of environmental criminal law also contains preventive and repressive measures.⁵ Preventive is an effort to prevent violations of the PPLH Law. This effort can be carried out in the form of negotiation, supervision, advice or assistance. On the other hand, repressive law enforcement is law enforcement to resolve cases, in this case environmental crimes, from the police, prosecutor's office to the court level.⁶

⁶ Syahrul Machmud, *Penegakan Hukum Lingkungan Indonesia*, Yogyakarta : Graha Ilmu, 2011. h. 29.

Environmental criminal regulations in Indonesia are based on Article 20, Article 21, Article 28H paragraph (1), and Article 33 paragraph (3) and paragraph (4) of the 1945 Constitution of the Republic of Indonesia. So that environmental offenses are not only from criminal provisions formulated in Law 32 of 2009 concerning Environmental Protection and Management (UUPPLH), but also criminal provisions formulated in other statutory regulations as long as the formulation of the provisions is aimed at protecting the environment.

Law Number 32 of 2009 concerning Environmental Protection and Management regulates criminal acts in Articles 97 to Article 120. Apart from this law, there are also statutory regulations that regulate environmental crimes in sectoral laws, namely, among others; Law Number 5 of 1960 concerning Agrarian Principles, Law Number 5 of 1967 concerning Forestry Principles, Law Number 5 of 1983 concerning the Indonesian Exclusive Economic Zone (ZEEI), Law Number 9 of 1985 concerning Fisheries, Law Number 5 of 1990 concerning Conservation of Biological Natural Resources and Their Ecosystems (called the Biological Conservation Law). Government Regulation Number 22 of 2021 (Implementation of Environmental Protection and Management), Provincial and Regency City Regulations relating to the environment.

The provisions of criminal law in Law Number 32 of 2009 concerning Environmental Protection and Management are regulated in Articles 97 to Article 120. In Article 97 it is emphasized that environmental crimes are crimes. Furthermore, what is meant by crime is *rechtsdelicten*, namely acts which, although

not specified in the law as criminal acts, have been perceived as *onrecht*, as acts which are contrary to the legal order.

Law Number 32 of 2009 is a law that covers almost all legal products related to protection issues and also how to manage the environment since this law was issued. In short, almost all environmental issues are contained in this law, such as damage caused by B3 waste (hazardous and toxic materials), damage, strategic environmental studies which are abbreviated to KLHS, carrying and capacity, and many more.

B. Principles of Environmental Criminal Law and Regional Development

As is known, environmental law has a special nature because it occupies a cross-sectional position across several legal fields such as criminal law, civil law, tax law, constitutional law and even international law, likewise objects and violations of environmental law also occupy cross-sectoral intersections such as the industrial sector, health, agriculture, fisheries, forestry and so on.

Regulations regarding environmental law have two sides, namely, first, are rules or norms, while the other side is instruments which are tools for enforcing those norms. There are three main instruments in enforcing environmental law, namely administrative instruments, civil instruments and criminal law instruments. In practice, the choice of instrument to be used must be studied carefully, even though in principle the three legal instruments are complementary, meaning they complement and support each other.

Due to the nature of environmental law, the handling of environmental crime violations requires a structured and

comprehensive legal policy from the government at the central level to the regional level. Harmonious cooperation between environmental policy implementers and law enforcers such as police, prosecutors and other parties is required. other related matters based on principles, principles and statutory regulations.

The general principles of environmental criminal law include the following:⁷

- 1) The principle of legality, that this principle contains the principle of legal certainty and clarity in formulating criminal law regulations, especially as far as it relates to the definition of environmental crime and sanctions imposed so that perpetrators comply with the norms;
- 2) The principle of sustainable development. This principle emphasizes that economic development actions should not sacrifice the rights of future generations to enjoy a healthy and good living environment;
- 3) The precautionary principle, this principle emphasizes that if there is a danger or threat of serious and irreversible damage, the lack of complete scientific certainty should not be used as an excuse to postpone cost effective measures in order to prevent environmental degradation;
- 4) The principle of control (principle of restraint) that this principle is one of the conditions for criminalization which states that criminal sanctions should only be utilized if civil sanctions and administrative sanctions and other means are found

to be inappropriate and ineffective for dealing with certain criminal acts. In criminal law, there is the principle of subsidiarity or the "ultima ratio principle" or the principle of "ultimum remedium".

Apart from the principles stated above, there are also principles or principles of environmental law in regional development in the legal, economic, political, social and cultural fields, including:

a. Principle of Responsibility

The principles of state responsibility are:

1. The state guarantees that the use of natural resources will provide maximum benefits for the welfare and quality of life of the people, both current and future generations.
2. The state guarantees citizens' rights to a good and healthy living environment.
3. The state prevents the use of natural resources that cause environmental pollution or damage.

b. The Principle of Sustainability and Sustainability, that every person bears obligations and responsibilities towards future generations and towards each other within one generation by making efforts to preserve the carrying capacity of the ecosystem and improve the quality of the environment.

c. The principle of harmony and balance, that the use of the environment must pay attention to various aspects such as economic, social, cultural interests, and

⁷ Muladi, *Prinsip-Prinsip Dasar Hukum Pidana Lingkungan dalam Kaitannya dengan Undang-undang Nomor 23 Tahun 1997*, Dalam Jurnal

Hukum Pidana dan Kriminologi, Volume 1/Nomor 1/1998, Citra Adi Bakti, Jakarta:2003. h. 4.

- protection and preservation of ecosystems.
- d. Principle of Integration, that environmental protection and management is carried out by combining various elements or synergizing various related components.
 - e. The principle of benefit, that all efforts and/or development activities carried out are adapted to the potential of natural resources and the environment to improve community welfare and human dignity in harmony with the environment.
 - f. The Principle of Precautionary Business, that uncertainty regarding the impact of an activity or activity due to limited mastery of science and technology is not a reason to postpone steps to minimize or avoid measures that threaten environmental damage pollution.
 - g. The Principle of Justice, that environmental protection and management must reflect professional justice for every citizen, both across regions, across generations and across gender.
 - h. Ecoregion principle, that environmental protection and management must pay attention to the characteristics of natural resources, geographical conditions of ecosystems, local community culture and local wisdom.
 - i. The Principle of Environmental Biodiversity, that the protection and management of life must pay attention to integrated efforts to maintain the existence, diversity and sustainability of biological natural resources consisting of vegetable natural resources and animal natural resources which together with the surrounding non-biological elements form a whole ecosystem.
 - j. The Polluter Pays Principle, that every person responsible whose business or activity causes environmental pollution or damage is obliged to bear the costs of environmental restoration.
 - k. Participatory principle, that every member of society is encouraged to play an active role in the decision-making process and implementation of environmental protection and management, both directly and indirectly.
 - l. The Principle of Local Wisdom, that in protecting and managing the environment we must pay attention to the noble values that apply in the community's life system.
 - m. The principle of good governance is that environmental protection and management is inspired by the principles of participation, transparency, accountability, efficiency and justice.
 - n. The Principle of Regional Autonomy, that the Government and regional governments regulate and manage government affairs themselves in the field of environmental protection and management by taking into account regional specificities and diversity within the framework of the Unitary State of the Republic of Indonesia

C. Regional Development Policy Based on Environmental Law Principles.

Development is essentially an effort to improve people's standard of living. Thus, activities in any form, if they essentially provide opportunities for people to improve their lives, can be called

development activities.⁸ For example, toll road, airport and factory construction activities carried out by the state and private parties. This development will provide opportunities for the community to improve their standard of living through improving facilities and also increasing the workforce.

Development is an attitude, action and program that is always awaited by almost everyone. Development activities and programs have succeeded in improving human welfare. But on the other hand, due to uncontrolled development, human life is being threatened, the good environment is in danger of being lost, the oceans are getting dirtier, the air is becoming more polluted, the land is becoming more barren, and many types of animals and plants are becoming extinct. On the one hand, there is progress, but on the other hand, environmental damage is found which seriously disrupts human life and the continuity of development itself. So there is a need for awareness that development problems involving the environment must be placed as sectoral problems that are considered seriously.

The study of the environment is a problem that is interrelated with development. So the conflict that presents a choice between "environment" and "development" must be eliminated, because basically this only causes destruction and further distances efforts to achieve just prosperity. The nature of interdependence that exists in the environment and development cannot make them separate sectors, so it is necessary to link the environment and

development with a cross-sectoral approach.

The consideration that encourages the integration of environment and development is the impact of concerns on the environment's ability to support sustainable development. If development is allowed to continue by destroying the environment, then the continuity of development itself will be threatened, so that the possibility of improving the welfare of future generations will also be disrupted. Therefore, the ability of natural resources and the environment to support future processes needs to be preserved. This is an important conclusion to give birth to the concept of "sustainable development".

"Environment" is where we all live, while "development" is what we all do in an effort to improve and improve human destiny. The concept of sustainable development or better known as sustainable development is a development process (land, cities, business, society, etc.) which has the principle of "meeting current needs without sacrificing meeting the needs of future generations" (according to the Brundtland Report from the UN, 1987). The factor faced in achieving sustainable development is how to repair environmental destruction without sacrificing the needs of economic development and social justice.

The formulation of sustainable development contains 2 (two) main ideas, namely, first the idea of "needs" namely essential needs for human sustainability, and second the idea of limitations which

⁸ Saptari, A., *Prinsip-prinsip pembangunan berkelanjutan yang berwawasan lingkungan, dalam Buku Materi Pokok Manajemen Pembangunan dan*

Lingkungan, Modul 1, Jakarta: Universitas Terbuka. 2009. h. 14.

originate from technological conditions and social organization regarding the ability of the environment to meet current and future needs. Thus, concerns overcoming needs and responding to limitations imposed by technology and social organization form the background to environmental and development problems.

Regional development policies based on environmental legal principles need attention so that an area can be developed without disturbing the existing environmental ecosystem. Local communities are not marginalized in their interests in fulfilling their needs for a better life. Meanwhile, for some people, sustainable development policies are closely related to economic growth and how to find ways to advance the economy in the long term, without depleting natural capital. So the concept of regional development policy must grow with the spirit of the concept of "environmentally sound economic growth" which cares for the environment, because the earth's resources themselves are limited.

Environmentally sound development can be measured for its sustainability based on 3 (three) criteria, namely: a. no wasteful use of natural resources or; b. no pollution and other environmental impacts; and c. Activities must be able to increase useable resources or replaceable resources. Sustainable development with an environmental perspective requires solid integration and coordination between the use of natural resources, human resources and artificial resources over a period of time, spatial dimensions and in a

coordinated manner so that they are appropriate, effective and efficient.⁹

This principle has been realized since the environmental conference in Stockholm in 1972, where one of the points of the declaration stated: "That in the context of more rational resource management to improve environmental quality, an integrated and coordinated approach to environmentally sound sustainable development planning has been decided" (Appendix Stockholm Declaration 1972). Environmental considerations involving environmental economics, spatial planning, AMDAL, and social costs must be internalized in every development decision making.

In Indonesia, the definition of the concept of environmentally friendly sustainable development has experienced developments. The official definition of the concept of sustainable development is contained in Law Number 32 of 2009 concerning Environmental Protection and Management Article 1 paragraph 3. This law is expected to have a positive impact on environmental governance in Indonesia and is in line with sustainable development. One of the strategic issues in Law no. 32 of 2009 requires the creation of KLHS (Strategic Environmental Studies), for the preparation and evaluation of Regional Spatial Planning along with detailed plans, for the Provincial and Regency/City levels. Furthermore, Law no. 32 of 2009 is also intended to increase concern, awareness and responsibility of stakeholders (policy makers, implementers and communities affected by development) so that they together realize

⁹ Suhono, A., *Pembangunan Berkelanjutan (Sustainable Development) dalam Perubahan*

Lingkungan Global. Bogor: Institut Pertanian Bogor. 2004. h.31.

the importance of environmental protection and management.

Law Number 32 of 2009 emphasizes that sustainable development policies with an environmental perspective do not only concentrate on environmental issues. More broadly than that, sustainable development covers three policy scopes, namely economic development, social development and environmental protection. United Nation documents, especially documents resulting from the 2005 to 2024 World Summit held in Indonesia, state that these three dimensions are interrelated and are the driving pillars for global sustainable development.

Regional development policies which are meant in terms of sustainable development with an environmental perspective have a broad context, for example development of cities or regions, land, society, business, economy, and so on. The important thing that must be considered is how to improve or maintain environmental quality without sacrificing social justice and the need for economic development.

The perspective on regional development policy must be understood as one of the ethics in development politics, namely a moral commitment to organizing interests in development, carried out to achieve goals without sacrificing other aspects. Environmentally sound development policies are not only about how to maintain the quality of the environment, or how economic development can run properly. Sustainable development with an environmental perspective covers the entire development and how development is carried out, without sacrificing other aspects.

3. Conclusion

Regional development policies that are environmentally friendly are an application of the concept of strengthening environmental criminal law in the national legal system. Regional Development Policy that integrates environmental management principles into development programs and processes by taking into account all aspects ranging from the potential of the local area, the living customs of the community around development activities, or the beliefs held.

Regional development policies based on environmental law create the concept of sustainable development or better known as sustainable development, which is a development process (land, city, business, community, etc.) which has the principle of "meeting the needs of the present without reducing the needs of future generations". The idea of "needs" and the idea of "limitations" in sustainable development shows that there are 3 (three) main pillars in determining development policies based on environmental law, namely social, economic and the environment itself. The principles of sustainable development in detail can be viewed in terms of environmental/ecological principles and socio-political principles which are based on environmental/ecological constraints and socio-political criteria.

The environmental dimension of development is to create justice in generations and maintain harmonious human relations with the environment. This dimension is very important because it will relate to the impact of development on the environment, both negative and positive impacts.

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