

Research Article

The Role of Criminal Law as Protection of Human Rights Against Environmental Crimes

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ORCIDNaavi'u Emal Maaliki: <https://orcid.org/0009-0003-0040-2157>**Abstract.**

Environmental crimes not only damage ecosystems but also violate human rights (HAM), especially the right to a healthy environment. This article highlights how criminal law can be a tool for protecting human rights in the context of the climate crisis. Using a normative legal approach and case studies, this article discusses the effectiveness of criminal law in protecting the rights of communities, including indigenous peoples and future generations, from the impacts of environmental crimes. It is found that even though environmental criminal law is available, human rights protection through this mechanism is still weak due to an approach that emphasizes ecological losses rather than aspects of individual and collective rights. An approach is needed that places environmental rights as part of fundamental human rights. The policy of formulating criminal law in Indonesia to protect victims of environmental crimes in the future is to improve criminal sanctions and add sanctions such as restitution and compensation as part of the main crime. This is important to provide better protection to victims, especially in cases of environmental crimes by corporations. The addition of restitution and compensation sanctions is also regulated in environmental law, including the mechanisms and amounts of compensation. This concept must be regulated in implementing regulations to avoid uncertainty and harm to victims in implementation in the field.

Keywords: criminal, crisis, environmental, victim

1. Introduction

The environment is a place where humans and other living things exist. This view views the environment as an object that has wealth that can be utilized solely to support development. As a result, the current state of nature and the environment is getting worse over time. Natural resources and the environment play an important role in national development, both as a stock of raw materials for economic development and as a support for life systems. The right to a healthy environment has been recognized as part of human rights. In the context of the climate crisis and massive environmental damage, violations of these rights often do not receive an appropriate legal response. Environmental crimes must be viewed not only as violations of the state or nature, but

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as violations of basic human rights. Criminal law has great potential in ensuring the restoration and protection of human rights in this context.

In accordance with Law No. 32 of 2009, the Environment is a unity of space with all objects, power, conditions, and living things, including humans and their behavior, which affect nature itself, the continuity of life, and the welfare of humans and other living things.

The purpose of the formation of this Law is to create a good and healthy Environment for all Indonesian citizens, because currently the quality of the existing environment has decreased and threatens the survival of humans in the future, and because a good and healthy environment is one of the human rights that must be protected by the Indonesian state. In the Environmental Law, there are several things that really need attention from business actors, namely, the existence of criminal provisions that must be obeyed by all companies in Indonesia.

The following are several types of Environmental crimes that threaten companies regulated in Law No. 32 of 2009, as follows: 1). Business Actors who commit acts that result in exceeding ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria, 2). Violation of waste water quality standards, emission quality standards, or disturbance quality standards, 3). Release and/or distribution of genetically engineered products into environmental media, 4). Management of B3 waste without a permit or Business Actors who produce B3 Waste but do not manage the waste, 5). Dumping waste and/or materials into environmental media without a permit, 6). Importing waste and/or B3 Waste into the territory of the Unitary State of the Republic of Indonesia without fulfilling the permit and requirements, 7). Carrying out Land Burning, 8). Carrying out certain businesses and/or activities without having an environmental permit, 9). Preparing an environmental impact analysis without having an environmental impact analysis compiler competency certificate, 10). Providing false or misleading information, eliminating information, damaging information, or providing incorrect information required in relation to supervision and law enforcement related to environmental protection and management, 11). Prevent, obstruct, or thwart the implementation of the duties of environmental supervisory officers and/or civil servant investigators.

If the environmental crime above is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions are imposed on the business entity and/or the person who gave the order to commit the crime or the person who acted as the leader

of the activity in the crime. And if the crime above is committed by a person, who based on an employment relationship or based on another relationship who acts within the scope of the business entity's work, criminal sanctions are imposed on the person who gave the order or the leader and the business. This provision requires company leaders or directors to seriously ensure that their employees do not violate the environmental criminal provisions stipulated in Law No. 32 of 2009.

2. Methods

The research method is a way or procedure used to conduct research to be more focused and can answer the formulation of the problem and research objectives and can be scientifically accounted for (Soejono Soekanto, 1981). This research uses the Normative legal method, because this research is aimed at written regulations so that this research is very closely related to the library because it will require secondary data in the library. Normative juridical legal research means the careful and precise rediscovery of legal materials or legal data to solve legal problems (I Made Pasek Diantha, 2016).

3. Results and Discussion

Environmental degradation in Indonesia has become a very serious issue in recent decades. Various problems such as air pollution, water pollution, land degradation, forest fires and loss of biodiversity show that environmental protection efforts require a more effective and sustainable approach. The increase in environmental pollution cases and the decline in environmental carrying capacity, among other factors, are caused by rapid population growth, infrastructure development, industrialization, consumer lifestyles, weak law enforcement, and lack of optimal human resource capacity (Machmud, Syahrul, 2007). The industrial development process carried out by companies or legal entities not only has a positive impact, but can also cause negative impacts such as pollution or damage to the environment (Soedjono, 1983). Indonesia, as an archipelagic country with abundant natural resources, faces complex environmental challenges. Forest fires are one of the biggest threats, especially in the regions of Sumatra, Kalimantan, and Papua. Illegal logging activities, conversion of forests to oil palm plantations, and land clearing by burning cause the loss of millions of hectares of forest every year. Data shows that in the period 2001-2020, Indonesia lost more than 27 million hectares of primary forest (Qadriah, 2024).

This article takes one example of an environmental crime case, namely the forest fire case in West Kalimantan. In this case, quoting from Tempo, the main points of the case are as follows.

In the period from January 1 to August 30, 2024, forest and land fires (karhutla) in West Kalimantan Province have burned around 13,057.7 hectares of land spread across 13 districts/cities. The fires occurred in various types of land, including peatlands, mineral soils, forests, and non-forests. According to the West Kalimantan BPBD, most of the land that was burned was idle land that was used by the community for farming but was poorly supervised. This fire is considered to have the potential to worsen environmental quality and trigger haze. The West Kalimantan BPBD encourages local governments to strengthen disaster mitigation and intensify patrols in vulnerable areas. In addition, land owners are asked to be more responsible for monitoring and preventing fires in their respective areas because the impact is not only on the environment but also on local residents (Tempo, 2024).

The victims are the ones most affected by pollution or environmental damage. They experience losses both materially and immaterially, and can even suffer lifelong disabilities. The families of the victims also suffer. Therefore, it is important for victims to receive adequate protection (Juita, 2012). From the explanation of the case, the impacts can be seen both on the environment and on the surrounding residents.

1) Impact on the Environment:

a. Ecosystem Damage

a) Fires destroy the natural habitats of flora and fauna.

b) Plant and animal species may become locally extinct, especially those living in peatlands and tropical forests.

b. Peatland Destruction

a) Burning peatlands not only lose vegetation, but also release large amounts of carbon into the atmosphere.

b) This land is difficult to restore and can turn into critical land.

c. Air Pollution and Greenhouse Gas Emissions

a) release thick smoke containing dangerous particles (PM2.5), carbon monoxide and carbon dioxide.

b) This accelerates climate change and worsens global warming.

d. Declining Soil Quality

Burned soil loses important nutrients, making the land infertile and difficult to replant.

e. Water pollution

Ash and fire residue can pollute rivers, lakes and groundwater sources.

2) Impact on Surrounding Residents:

a. Health problems

(a) Forest fire smoke causes ISPA (Acute Respiratory Tract Infection), especially in children, the elderly, and asthma sufferers.

(b) Can trigger chronic diseases such as bronchitis and lung disorders.

b. Disruption of Social and Economic Activities

a) Schools may be closed due to thick haze.

b) Transportation was disrupted due to low visibility.

c) Farmers and cultivators cannot cultivate their land safely.

c. Loss of Assets and Livelihood

a) Burned agricultural or plantation land causes economic losses for local communities.

b) Some residents could lose their homes if the fire spreads to settlements.

d. Migration and Social Conflict

a) If a disaster lasts a long time, there may be temporary population displacement and pressure on the recipient area.

b) The potential for conflict between residents is also increasing, especially regarding accusations of land burning.

Cases of forest and land fires such as in West Kalimantan not only cause long-term ecological damage, but also threaten the health, safety, and socio-economic welfare of local residents. Therefore, mitigation efforts and law enforcement against perpetrators of burning are very important to prevent wider impacts.

After looking at the previous explanation, forest and land fires (karhutla) are not merely environmental disasters, but are a form of violation of human rights, especially if they occur due to negligence or deliberate actions of certain parties. In the case of West Kalimantan, the impact of karhutla has caused various real human rights violations, including:

a) The right to a good and healthy environment (Article 28H paragraph (1) of the 1945 Republic of Indonesia Constitution)

b) The right to health (Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia; Article 9 of Law No. 39 of 1999 concerning Human Rights)

c) The right to adequate housing and life (Article 11 of the International Covenant on Economic, Social and Cultural Rights – which Indonesia has ratified through Law No. 11 of 2005)

Impacts such as acute respiratory infections, economic losses, displacement, and disruption of people's social lives are evidence that these fires threaten the fulfillment of people's human rights, especially vulnerable groups such as children, the elderly, and indigenous peoples. Criminal Responsibility in Forest and Land Fire Cases, forest and land fire perpetrators can be prosecuted through various legal instruments, depending on the motives and consequences:

e. Environmental Law

a) Law No. 32 of 2009 concerning Environmental Protection and Management (PPLH Law)

b) Article 98 paragraph (1): Any person whose actions cause environmental pollution and/or destruction resulting in losses to other people may be subject to a prison sentence of at least 3 years and a maximum of 10 years and a fine of IDR 3 billion–IDR 10 billion.

c) Article 99: Emphasizes criminal responsibility for air pollution that endangers human health.

f. KUHP (Criminal Code)

a) Article 188 of the Criminal Code: Punishes acts of arson that cause general danger to property and/or the lives of others.

b) Article 359 of the Criminal Code: If a fire causes death due to negligence.

g. Forestry Law and Plantation Law

Law No. 41 of 1999 concerning Forestry and Law No. 39 of 2014 concerning Plantations also have criminal provisions for perpetrators of forest and land burning for the purpose of land clearing.

Protection for victims does not fully meet their needs. The current Criminal Code does not provide adequate attention to victims. There are no provisions regarding criminal compensation in the Criminal Code, either as a primary or additional crime. The current Criminal Code does not provide adequate legal protection for victims in the corporate context. This is due to the absence of criminal sanctions that can be imposed on corporations as perpetrators of criminal acts. The Criminal Code only concerns individual

criminal liability, not corporate. Therefore, if an environmental crime is committed by a corporation, the Criminal Code cannot be used.

In many cases of forest and land fires, the perpetrators are corporations (palm oil companies, HTI, etc.) and of course corporations are subjects of criminal law, corporate criminal liability through Article 116 of Law No. 32 of 2009. Corporations can be held criminally responsible if the crime is committed on the orders or with the knowledge of the owner/management. Criminal penalties can not only be imposed on legal entities, but also on their managers personally. Given this, if the criminal sanctions contained in the UUPPLH and related laws currently in force do not provide adequate protection for victims, either in the form of restitution or compensation, then in the future it is necessary to consider an appropriate system to provide protection to victims (Widowaty, 2012). Although Law Number 32 of 2009 does not regulate concrete protection for victims in the articles governing the crime, by imposing high sanctions on the perpetrators is a form of indirect protection for victims or protection in abstracto. In the positive law currently in force, victim protection tends to be more abstract or indirect. However, regulations regarding concrete protection such as compensation, damages or restitution have not been clearly regulated.

The state has a constitutional and international legal responsibility to ensure the fulfillment of human rights, including preventing and overcoming ecological disasters such as forest and land fires. The state's failure to prevent forest and land fires and provide protection to affected citizens can be qualified as an omission that is contrary to the principle of due diligence in human rights.

Criminal law enforcement must be directed not only at repressive (action), but also preventive and restorative, including:

1. Civil lawsuit for compensation for economic and health losses of citizens
2. Environmental restoration (peatland restoration)
3. Provision of compensation and rehabilitation for affected residents
4. Establishment of regional regulations that protect citizens' rights to a healthy environment

The forest and land fires (karhutla) that occurred in West Kalimantan are not only an environmental issue, but also a serious violation of the human rights of the affected residents. The right to a healthy environment, the right to health, and the right to a decent place to live are integral parts of human rights guaranteed by the constitution and

international law. The policy of formulating criminal law to protect victims of TPLH in the future cannot be separated from the current legal formulation, because the preparation of future formulations still takes current conditions into account. The process of legal reform can be carried out by revising or rebuilding existing laws, or creating new laws as a whole. In this context, it is related to legal reform and legal development, especially in terms of reforming and developing the criminal law system. The policy of formulating criminal law in Indonesia to protect victims of environmental crimes in the future is to improve criminal sanctions and add compensation sanctions such as restitution and compensation as part of the main crime. This is important to provide better protection to victims, especially in cases of environmental crimes by corporations. The addition of restitution and compensation sanctions is also regulated in environmental law, including clear mechanisms and amounts of compensation. This concept must be regulated in implementing regulations to avoid uncertainty and harm to victims in implementation in the field.

4. Conclusion

Criminal law plays an important role as an instrument for protecting human rights, especially in ensuring accountability for perpetrators of environmental destruction that causes suffering to the community. By enforcing criminal penalties against individuals and corporations that carry out burning, the state can demonstrate its commitment to preventing impunity and upholding ecological and social justice. Firm, transparent, and just law enforcement is an absolute requirement in ensuring that citizens' rights are not sacrificed for short-term economic interests. Therefore, criminal law not only aims to provide a deterrent effect, but also functions as a tool for protecting and restoring the human rights of citizens who are victims of ecological disasters such as forest and land fires. Protection of human rights in the context of environmental damage must be the main orientation in enforcing environmental criminal law. The state needs to strengthen the legal and institutional framework to ensure that every violation of the environment that harms the community's right to life receives a fair and restorative criminal response. The relationship between criminal law and human rights is an urgent need in the era of the global climate crisis.

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