OPTIMALIZATION LAW ENFORCEMENT OF ENVIRONMENTAL CRIME IN ORDER TO REALIZATION OF SUSTAINABLE DEVELOPMENT

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ABSTRACT

This research was aimed at finding out factors that cause the enforcement of environmental criminal law not optimal and getting a form of effort that should be done so that the enforcement of environmental criminal law can be optimal in order to realize sustainable development. This research was empirical legal research, in which the author looked closely at what was happening in the society then conducted an analysis based on law enforcement theory of Laurence M. Friedman including legal substance, legal structure, and legal culture. The research found that factors that caused the enforcement of environmental criminal law not optimal were environmental laws were still determining the principle of 'ultimum remedium', the provisions of Environmental Protection and Management Law of 2009 (UUPPLH of 2009) were still not firm (ambiguous), there was disharmony between the UUPPLH of 2009 and government regulations, the process of enforcement of environmental criminal law was long enough, limited number of accredited environmental laboratories, weak human resources (HR) in enforcing environmental criminal law.

Key words: Optimization, Environmental, Sustainable Development.

INTRODUCTION

In order to realize Indonesia as a home for people of various ethnicities and circles, it is necessary to have laws that can accommodate various interests and maintain diversity. Law according to Brian Tamanaha is actually like a knife. Law is an order of human action. "Order" is a system of rules. Indonesian law has a main mission: to make Indonesia a "home for all its (plural) inhabitants to live peacefully in it, so that the environmental law system in the Indonesian state absolutely has the ideology of Pancasila and the 1945 Constitution becomes its legal basis.(C. Gueymard, 1989)

Indonesia is a constitutional state, as stipulated in Article 1 paragraph (3) of the 1945 Constitution, "The State of Indonesia is a State of Law." Meanwhile, human rights to a good and healthy environment are constitutionally contained in Article 28H paragraph (1) which reads "everyone lives physically and mentally prosperous, has a place to live and has a good and healthy living environment and receives health services" and Article 33 paragraph (3) The 1945 Constitution which reads "The land, water and natural resources contained therein shall be controlled by the state and used for the greatest prosperity of the people."(Karjoko, 2017)

The provisions for obtaining a good and healthy environment are regulated in Law of the Republic of Indonesia Number 32 of 2009 concerning Environmental Protection and Management, abbreviated as UUPPLH, which was promulgated on October 3, 2009 through the State Gazette of the Republic of Indonesia of 1009 Number 140 which instructed one of the the purpose of environmental management as mentioned above is that development that is carried out must pay attention to the environment or is called sustainable development, the definition of which is contained in Article 1 number 3 of Law Number 32 Year 2009 which stipulates that "sustainable development is a conscious and planned effort, which integrates environmental, social and economic aspects into a development strategy to ensure environmental integrity as well as safety, capability, welfare and quality of life for present and future generations.(Utomo & Karjoko, 2018)

In the explanation of the 2009 UUPPLH stipulates that the enforcement of environmental criminal law still observes the principle of ultimum remedium which requires the application of criminal law enforcement as a last resort after the implementation of administrative law enforcement is deemed unsuccessful. The application of the ultimum remedium principle only applies to certain formal crimes, namely punishment for violations of wastewater quality standards, emissions and disturbances. In a contrario manner, other formal crimes are based on premum remedium.(Nugroho, Ayu Ketut, & Karjoko, 2018)

Environmental law has 3 (three) law enforcement, namely administrative law, civil law and criminal law. Criminal law with its specific sanctions in the form of crime is a means of social control / social control. In this case the use of criminal sanctions is to provide coercion and threats. Apart from this method, social control can be exercised in a non-violent way. The methods of coercion and threats contained in the criminal law are applied to the community to maintain order and order, bearing in mind that of course there are members of the community who do not comply with the prevailing rules or commit deviant acts. Therefore, environmental criminal law must be enforced. Environmental criminal law enforcement aims to enforce criminal law regulations in the environmental sector closely related to the integrated criminal justice system which demands the ability of law enforcement officials and the compliance of citizens with applicable regulations, in resolving environmental cases.(Candrasari & Karjoko, 2018)

It cannot be denied that various environmental cases currently occurring, both at the global and national levels, are mostly based on human behavior. The Chernobyl nuclear reactor tragedy in the former Soviet Union, for example the uncontrolled nuclear physics reaction in the reactor, caused a radiation impact not only on the surrounding environment, but across the borders of almost all European countries. The world knows him as the "Tragedy of Common". Another example is the case of forest burning in Kalimantan, a case of environmental pollution committed by PT. Indorayon Utama in North Sumatra and PT. Freeport Indonesia in Irian Jaya, which was actually caused by the company's behavior that is not responsible and does not care about the environment. Also, cases of illegal logging, illegal import of waste from abroad and cases of illegal wildlife trade. Such cases do not only concern

individuals, but also government bureaucracies. Likewise, the garbage case in DKI Jakarta, several years ago, was related to the problem of human moral behavior.(Sari & Karjoko, 2018)

Human immoral behavior plays a major role in environmental damage. Environmental destruction is carried out due to lack of attention to the ecosystem, which is often caused by industrial wastes that cause environmental pollution either directly or indirectly, which will gradually result in environmental destruction. Environmental damage itself can occur not only due to pollution but also due to the cultivation of resources without paying attention to their capabilities and development. Industrial wastes that are disposed of into rivers or put into wells without / without paying attention to manufacturing techniques in accordance with specified requirements will affect the quality of the water, air and soil environment. The impact that can be felt from this pollution can even be direct, but the damage will be known after going through a process of time or through laboratory analysis based on a sample from a place where contamination is suspected so that it will get an overview and comparison with normal conditions (pollution threshold).(Bird & Hulstrom, 1981)

RESEARCH METHOD

The type of research used in this paper is empirical legal research, namely observing carefully what is happening in society which then the authors of the analysis based on law enforcement theory (Laurence M. Friedman, namely 3 (three) in the form of legal substance, legal structure and legal culture). Empirical legal research is carried out with the aim of knowing the extent to which law runs in society. The type of data used consists of primary data, which is in the form of data obtained directly from research, including the results of directive interviews from several respondents of environmental criminal law enforcement in Tegal Regency, Riau Islands Province, and Central Government and secondary data. , namely in the form of data obtained from literature, which includes three legal materials, namely primary, secondary, and tertiary legal materials.(Akhmaddhian, Hartiwiningsih, & Handayani, 2017)

RESULTS AND DISCUSSION

Law Number 32 of 2009 concerning Environmental Management and Protection (UUPLH) is an environmental law as an ideal element of the legal system that plays an important role in environmental law enforcement. The merits of the substance of the regulations are one of the important aspects in supporting the effectiveness of environmental law enforcement. Many environmental cases that occur and the failure of law enforcement is partly due to the weak substance of environmental laws and regulations. These weaknesses can be in the form of regulations that are no longer suitable with changing circumstances, the nature of partial and sectoral regulations, formulation of regulations that have multiple interpretations, overlapping, contradicting one another and so on.(Handayani, 2015)

In principle, criminal law adheres to the ultimum remedium principle, but in certain cases it switches to using the premum remedium principle such as terrorism, drugs and corruption. This is done because the consequences of the crime have a very profound impact. So that the proper handling of criminal law enforcement is the main effort As in the practice of the integrated criminal justice system in Indonesia, the majority of criminal law uses the principle of premum remedium in cases of special crimes or cases of general crimes, such as murder cases, cases of obscenity and so on, which the settlement will not be completed other than using criminal law enforcement. The same thing, in the case of pollution and / or massive environmental destruction, the principle of premum remedium is also applied. As stipulated in UUPPLH 2009, the principle of ultimum remedium is applied in certain formal acts, namely only in cases of violations of certain quality standards. As determined in the 6th general explanation of UUPPLH 2009.(Ketut Rachmi Handayani, 2013)

This provision explicitly shows that environmental law regulations still apply the principle of ultimum remedium but only applies to certain formal crimes, namely penalties for violating quality standards. The criminal provisions in the 2009 UUPPLH which consist of 13 Articles, namely Article 97 to Article 120, only one article is a violation of quality standards, namely Article 100.From the above provisions, it shows that the ultimum remedium principle is only applied to Article 100 so that other articles are implicitly using the principle of premum remedium, but in practice that occurs in the field, that many cases that are not categories of violations of the wastewater quality standard, emission quality standard, or disturbance quality standard are not resolved by using criminal law enforcement. Therefore, the provisions of the principle of ultimum remedium in the 2009 UUPPLH should not be stated explicitly, because this provision is often misused by environmental criminal law enforcers for the reason that criminal law enforcement will be applied when it has been resolved by administrative law enforcement that is not successful.(Handayani, 2012)

Environmental criminal law enforcers are passive or waiting to see if law enforcement other than criminal is successful or not, if successful then there is no need for criminal law enforcement, but if it doesn't work then the opposite is true. The provisions of the 6th general explanation of UUPPLH 2009 are separate reasons that cause environmental criminal law enforcement is not optimal, have not functioned in resolving cases of environmental pollution and / or destruction, so there needs to be a revision of the explanation, the environmental law does not have to be explicit / express states the principle of ultimum remedium, so as not to interfere with the functioning of criminal law instruments in the environmental criminal justice system. Victims of environmental pollution / destruction of course need costs for recovery / restore to normal, healed illness, damaged repaired and some of it. Richard Posner in his article entitled: Values and Concequences: An Introduction to Economic Analysis of Law, reveals that the use of economic principles in law can encourage and influence legal reform in various fields. This is due to a number of advantages of the economic function of law.(Ayu & Rach, 2013)

Therefore, the provision of compensation / restitution must be determined in the criminal justice system, as a basis for demanding restitution or certain actions from the producers of pollution and / or environmental destruction that result in victim losses. According to Separovic, a victim is someone who suffers either physically or morally as a result of deliberate or unintentional cruelty. Meanwhile, according to Iswanto, restitution is compensation in the form of material and moriel suffered by a crime victim who is paid for the responsibility of the crime maker. This definition is in line with Karmen… restitution refers to

the responsibility that offenders bear to their victims. It is meant that there is a balance between the maker and the victim in which compensation and / or certain actions can restore the original condition due to the actions taken by the maker.(Nugroho et al., 2018)

The formulation of sanctions for environmental crimes only includes the types of sanctions, namely imprisonment and fines as well as additional penalties and the above actions. The types of additional sanctions in the form of compensation (restitution) which are vital in cases of environmental pollution and / or destruction have not been included. Whereas additional punishment in the form of compensation can be aimed at compensating the social costs suffered by the victim (human) due to pollution and / or environmental damage by the perpetrator. The additional criminal statements and actions that are applied only to business entities should be corrected, considering that the legal subject of perpetrators of environmental pollution and / or destruction is everyone (individuals and business entities). This provision can be seen in the formulation of the provisions of Article 98 to Article 115 of UUPPLH 2009 which is the first element in an environmental crime, namely "every person". The element of "every person", namely the legal subject who is suspected or charged with committing a criminal act depends on the proof of the main offense because the element of "every person" is an element of offense that cannot stand alone and can only be proven if the core element of the alleged offense has been proven. this is in line with the Supreme Court Decision No. 951 K / Pid / 1982 dated 10 August 1983 in the case of Yojiro Kitajima, which among other things emphasized that the element "whoever" or in casu "everyone" is only a personal pronoun, where this element only has meaning if it is associated with the elements. other criminal. Therefore, it must be proven together with other elements in the accused action.(Handayani, Seregig, Prasetyo, & Gunardi, 2017)

Thus, the types of sanctions, namely additional penalties and actions, do not only apply to business entities but also apply to individuals who are legally and convincingly proven guilty of committing environmental crimes in the form of pollution and / or destruction. It is time that restitution is included in the enforcement of environmental criminal law. Where restitution is part of a policy in an effort to reduce suffering for victims (humans). In victimology, it has the goal of making policies to reduce suffering for victims, Mendelson said as the most important goal, because it will empower people and ensure life. In the case of environmental pollution, of course there are those who feel aggrieved (victims). Therefore, the best efforts are made to resolve it properly by using compensation measures. Negel emphasized that the calculation, weighing, determination and comparison of victims as well as the collection of determinants, factors, associations and victimological correlations are important but the most important thing in criminal politics is to solve the root of the problem, namely the resolution of conflict situations between criminals and victims. (Ayu & Rach, 2013)

As it is known that the provisions of criminal sanctions in Article 97 to Article 120 of UUPPLH 2009 do not regulate compensation (restitution), but only determine imprisonment, fines and actions. This is what encourages people who are victims of environmental pollution and / or destruction to prefer to enforce civil law through claims for compensation rather than settlement using the means of criminal sanctions. Therefore, it is time for the environmental law to determine restitution as a material provision in the enforcement of environmental criminal law. Given that cases of environmental pollution and / or destruction have a massive impact on ecosystems, it can damage health and even lose human lives.(Subekti, Sulistiyono, & Handayani, 2017)

Forest fires are one of the environmental problems that often occur which on a large scale are one of the causes of forest degradation and are proven to cause damage and loss in both economic, ecological and social aspects. The cause of the large number of forest fires in Indonesia stems from the weakness of laws and enforcement of existing regulations and the inadequate system or institutional mechanisms that deal with forest fires. One of them, there are two confusing provisions on the one hand that clearing land by burning is prohibited, but on the other hand it is permissible as long as it is in accordance with local wisdom to clear land by burning. This provision is determined in Article 69 paragraph (1) letter h UUPPLH 2009. This provision can be distorted, in the sense that land clearing by burning is allowed depending on the culture and customs of the community, this provision is determined in Article 69 paragraph (2) UUPPLH 2009. Provisions This states that it provides an exception to land clearing by burning a maximum of 2 ha. As stated in the elucidation of article 69 paragraph 2 of the 2009 UUPPLH.(Akhmaddhian et al., 2017)

This provision can lead to land fires including wild forest fires. If per family head is allowed to clear a maximum of 2 ha of land, then if there are 100 heads of households, 2000 ha of land will be burned and so on, this must be anticipated so that the burning of the land does not cause pollution and / or environmental damage. On the one hand, by clearing the land, the burning method will benefit the perpetrator, namely it can reduce / save the cost of clearing land from the remains of land clearing, reduce costs and accelerate the eradication of pests such as rats, pigs, beetles and others that are hiding in in a pile of lanes, increase and accelerate the increase in soil pH from burnt ash, making it suitable for planting oil palm, saving costs for liming and fertilizing in order to increase soil PH and accelerate land clearing activities so that the process of planting oil palm seedlings can be carried out quickly and simultaneously. However, it is also detrimental because it causes extraordinary and massive pollution and / or environmental destruction.(Ketut Rachmi Handayani, 2013)

With the provisions of Article 69 paragraph (2) UUPPLH 2009, it becomes a separate obstacle to the application of the criminal provisions against the perpetrators who burnt the land as regulated in Article 69 paragraph (1) letter h, as the criminal provisions in Article 108 UUPPLH 2009. it is fair enough, namely using the minimum and maximum criminal provisions, but this rule will be less effective due to the existence of a provision which states that it is permissible to open land by burning with the provision of paying close attention to local wisdom in each area. Therefore, the provisions of two paragraphs in one article that confuse environmental criminal law enforcement are revised into articles with legal principles, namely that it must be written (lex scripta), must be clear (lex stricta), and not have multiple interpretations (lex certa), so as not to confuse the enforcers. law in carrying out its duties and authorities.(Akhmaddhian et al., 2017)

However, that local wisdom is regulated in Article 18 B paragraph 2 of the 1945 Constitution that "The State recognizes and respects indigenous peoples and their traditional rights as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are regulated in Constitution". Based on the provisions of the constitution, Article 69 paragraph 1 letter h and Article 108 of the 2009 UUPPLH should be removed, so that the provisions relating to land burning have only one provision, namely Article 69 paragraph 2 by adding provisions for penalties for violating the article. So that there are no two contradictory rules in one article of legislation, through a judicial review to the Constitutional Court of the Republic of Indonesia.(Akhmaddhian et al., 2017)

Synchronization or harmonization of laws and regulations is a must. Therefore, an academic paper is needed which becomes the basis for the design and formulation of norms for a draft law. One of the important aspects that must be carried out is the evaluation and analysis of statutory regulations related to the material of the draft law which will be formed in harmony with the statutory order. Legislations must be made based on Article 19 of Law Number 12 Year 2011 concerning the Formation of Legislation which states that the national legislation program (prolegnas) contains a law formation program with the title of the draft law, regulated material, and its relevance. with other laws and regulations. However, legislative products often find inconsistencies between one statutory regulation and other laws such as UUPPLH 2009 and Government Regulation of the Republic of Indonesia Number 4 of 2001 concerning Control of Environmental Damage and or Pollution Associated with Forest and or Land Fires.(Ohmura et al., 1998)

This provision is stipulated in Article 69 paragraph (1) letter h UUPPLH 2009. This provision contradicts the provisions which state that land clearing by burning is permitted, depending on the culture and customs of the community, this provision is specified in Article 69 paragraph (2) UUPPLH 2009 The community is allowed to clear the land by burning a maximum of 2 ha. This provision is inconsistent with Government Regulation of the Republic of Indonesia Number 4 of 2001 concerning Control of Environmental Damage and / or Pollution Associated with Forest and / or Land Fires, which explicitly prohibits conducting land burning activities.(C. A. Gueymard & Ruiz-Arias, 2015)

The philosophical reason for the prohibition of carrying out land burning activities is that forest and / or land fires in Indonesia occur every year even though their frequency, intensity and area are different. The biggest fires occurred in 1997/1998 in 25 (twenty-five) provinces, which for the first time was declared a national disaster. The impact of the occurrence of forest and / or land fires that occur every year has caused losses, both ecological, economic, social and cultural losses which are difficult to quantify. The impact of smoke causes health problems such as acute respiratory infections (ISPA), bronchial asthma, bronchitis, pneumonia (pneumonia), eye and skin irritation. This is due to the high level of dust in the air that has exceeded the threshold. The impact of smoke from forest and / or land fires has disrupted visibility and thus affected flight schedules. As a result in some cities the visibility was less than one kilometer, which resulted in the closure of several airports.(Akhmaddhian et al., 2017)

Apart from that the impact of smoke disrupts people's activities. In fact, the smoke from the fires also affected neighboring countries in Southeast Asia, namely Malaysia, Singapore and Brunei Darussalam. Therefore, it is necessary to determine various control policy measures. In the event of forest and / or land fires, there are several factors that cause it. This factor is uncontrolled land preparation by burning, including due to community habits in clearing land, accidental fires, deliberate fires (arson), and fires due to natural causes. Fires due to natural causes occur in areas containing coal or other flammable materials. Although some of the factors mentioned above can have an influence on the occurrence of fires, the most dominant factor causing fires is due to human actions. The disharmony of the two laws and regulations by itself cannot be used, considering the principle of lex superior derogat legi inferior, which means that higher regulations override the low (hierarchy principle). Therefore, in order for the provisions of Article 11 Government Regulation Number 4 Year 2001 to be applied effectively, it must be revised in accordance with the intent of Article 69 paragraph (2) UUPPLH 2009, through a judicial review to the Supreme Court of the Republic of Indonesia.(Akhmaddhian et al., 2017)

CONCLUSION

Although the provisions on environmental crimes have been regulated by Article 97 to Article 120 of Law Number 32 of 2009 concerning Environmental Protection and Management, the enforcement of criminal law has not been optimal. The factors that cause environmental criminal law enforcement to be not optimal, namely, the formulation stage (the stage where the regulation is made, formulated, stipulated by the legislative body), the institution created by the legal system with various functions in order to support the operation of the system and empirical enforcement. where the legitimacy aspect of the rule of law is placed in the context of legal culture as a social process.

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