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Indonesia

Constraints on Enforcement of Environmental Law Against Corporate Defendants

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Development is a continuous, gradual and planned process which is oriented to better developments and changes and covers the physical and spiritual in all aspects of life.[1] Development implementation continually adjusts, in line with the population and people's needs. There is, however, a correlation between the size of the human population and the degradation of environmental quality. In light of these two factors (increasing population and their environmental impact), human-caused environmental quality degradation also arises due to the use of natural resources.[2]

Potential risks of contamination and damage increase as development places demands on natural resources. As these pressures increase, they disturb and ruin the structure of ecosystems and their fundamental functions. Awareness and concern about environmental contamination and damage issues emerged in the early 1970s, when serious attempts were made to resolve these problems.[3]

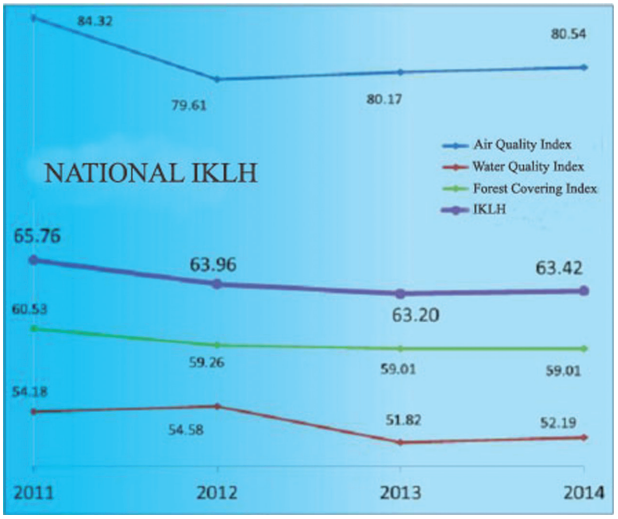
Environmental issues entered the world's political agenda in about 1980, when the optimal developmental paradigm came to be known as "sustainable development". Initially, this term appeared in the *World Conservation Strategy* of the International Union for Conservation of Nature (1980); and was later taken up by Lester R. Brown in his book *Building a Sustainable Society* (1981). The term then became famous when the World Commission on Environment and Development released their report *Our Common Future* in 1987. The sustainable development paradigm was generally adopted on a global basis when it was taken up by the UN Conference on the Environment and Development in Rio de Janeiro (1992), setting a new stage in developmental strategy in which the ecological perspective was an important dimension.[4]

For these purposes, the "environment" is comprised of humans, animals, plants and other resources. It is the system of life. All biological entities interact with the environment in order to fulfil their needs. Therefore, every human must notice the aspects of his or her life that affect environmental management, safety and sustainability, to preserve ecological harmony and balance. Environmental protection is essential for the preservation of life and should be continuous, encompassing every activity.[5]

Until now, however, the political agenda of sustainable development has not performed as well as expected. Serious issues such as river and air pollution, forest fires, timber poaching, coral reef destruction, marine pollution, and illicit trade in wild animals continue to perplex most countries. In addition to more general ecosystemic harm, such problems cause diseases to flourish, and bring about a further decline in the quality of human life. According to Sony Keraf, the failure of the expected paradigm for implementation of the right sustainable development was caused by general lack of awareness and comprehension of the issues, leading to a return to the prior "developmentalism" paradigm.[6]

Recently, the Indonesian Ministry of Environment and Forestry (IMEF) released data regarding environmental quality, including water and air quality and forest cover, showing a decline in the period 2011–2014. The data can be seen in Figure 1.

Figure 1. Next steps under the APA in the lead-up to COP-23



Source: Dida Gardera, dkk, *Indeks Kualitas Lingkungan Hidup Indonesia Tahun 2014*, Kementrian Lingkungan Hidup, Jakarta, 2015, p. 20.

Based on Figure 1, it is clear that Indonesia's environmental quality decreased nationally from 65.76 in 2011 to 63.96 in 2012 and 63.42 in 2014. Air and water quality, as well as forest cover, all showed a reduction. Even considering the margin for error, the environment quality index showed degradation between

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2011 and 2014. At this time, IMEF has also noted a serious degradation of Indonesian natural resources:

- The rate of forest destruction reached 1.8 million hectares per year. This uncontrolled exploitation of forest resources has caused the extinction of many tropical species.
- About 70 percent of coral reefs suffered serious damage from the effects of sedimentation, erosion, coral reef taking, fishing using bombs and cyanide, and marine pollution by industrial waste.
- About 64 percent of total mangrove forest, an area of 3 million hectares, suffered serious damage due to illegal logging for fuel wood and conversion into aquaculture areas.
- Aquaculture activity on a massive scale changed the landscape, not only destroying soil, but also removing the vegetation.
- Former mining lands became arid and acid – an effect caused by tailings and other mineral waste from mining activities.[7]

As the world population grows, environmental issues have become local, national and international matters of concern, in response to the rapid degradation of environmental quality. They are, in essence, indicators of incurable chronic diseases. In Indonesia, damage has been caused by the major development paradigm, which emphasises economic development and overlooks environmental factors. The demand for development impacts the environment, necessitating efforts to preserve environmental sustainability. The solution is to ensure a practical type of development that focuses on improving (or not damaging) environmental quality.

According to Indonesian Law No. 32/2009 (Environment protection and management), everyone has the same right to a healthy environment, but everyone must also bear two obligations:

- to maintain the environmental function and sustainability; and
- to prevent and resolve environmental pollution and destruction.

The environmental polluter/destroyer is responsible for the environmental pollution and destruction caused, and subject to legal sanction.

Environmental issues are thus inseparable from corporate attempts to exploit natural resources. Corporate enterprises that exploit natural resources for profit are on the rise in Indonesia. Their rapid development is a function of accommodating governmental regulations, which increase entrepreneurial convenience and provide other facilities. Unfortunately, in seeking to encourage entrepreneurship, government often does not attempt to enforce the obligation to preserve environmental sustainability. Corporate business activity frequently has negative consequences related to environment, leading to criminal offences, whether intentional or unintentional.

In discussing corporate crime, law experts usually focus on "legal entity" (the Dutch term "*rechtspersoon"* or the English "legal person" or "legal body") – which asks who is liable when a corporate activity constitutes a criminal act. Normally, the entity is considered to be a legal entity, rather than the individuals ("*natuurlijk persoon"* or "natural persons") behind it.[8] This means that the corporate has a legal identity separate from the identities of its shareholders, directors or related corporations. It can engage in trade, enter into an agreement or contract and sue or be sued in court. The shareholders enjoy profits but have limited responsibility. Corporate activities and existence will not change even if one or more of the individuals behind the corporation should change.

Consequently, law enforcement relating to a criminal act by the corporation may be impacted by this corporate protection. The instruments of law enforcement used in resolving environmental disputes include both litigation and non-litigation measures. In the former the judge takes on the task of enforcing environmental law; in the latter, it may be the police.

Environmental law enforcement can use civil law instruments or administrative law instruments or both. According to van de Bunt, as quoted by M. Hadin Mujhad, there are three kinds of criteria involved in this choice:[9]

1. Normative criteria based on the opinion that civil law can be applied only to violations of high ethical negative value – those that are socially most reprehensible (*e.g.*, serious crime, serious environmental damage and recidivism).
2. Pragmatic instrumental criteria, for instance, the decision to apply civil law. If the objective is recovery from or rehabilitation of damage, then the civil law instrument must be applied. In contrast, administrative instruments can be applied in situations in which the police or prosecutor may not have sufficient evidence for a civil case.
3. Opportunistic criteria can be applied, so that if the administrative instrument does not work well then the civil law must apply. For instance, an administrative demand may have no impact where the defendant is bankrupt. In that case, the civil law enforcement instrument will be more effective.

Meanwhile, alternative dispute resolution (*e.g.*, arbitration, mediation *etc*.) is often used in connection with non-litigation enforcement.[10]

Theoretical Framework

This study used empirical legal research to examine how criminal law is applied in the community. In this context, the authors analysed law enforcement in the context of environmental crimes committed by corporations in the jurisdiction of Sidoarjo, as well as the obstacles to such enforcement. An empirical study is a descriptive study – that is a study that considers law as a reality, including social reality, cultural reality, *etc*. In other words, it examines law in action, necessarily considering the law-related aspects of the fields of sociology, anthropology, and psychology.[11]

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Approach to the Problem

This research combines the legal/social approach (including, for example, interviews with relevant individuals), the case approach and the legislative approach. The latter examined a variety of legal rules that are the focus as well as the central theme of research.[12] It considers the rule of law related to environmental crime that applies in Indonesia.

This type of study looks at law through a combination of normative (legal and juridical) analyses and non-legal scientific approaches. It is, by nature, prescriptive, in that it provides solutions to legal problems by combining normative analyses and non-legal approaches or social aspects. This approach examines legal science by including social factors within the limits of legal writing. It prioritises the discussion of legal norms, and then examines them comprehensively from a perspective of non-legal science or factors outside the law, such as historical, economic, social, political, cultural, *etc*.

The legal/social approach is an umbrella concept, which covers all approaches to law, legal processes, and the legal system. Socio-legal research does not originate in the dichotomous opposition of legal researchers, between normative or doctrinal juridical research or empirical juridical research. Socio-legal research does not break away from normative or doctrinal juridical studies; instead it examines thoroughly the normative legal doctrine, which it then "dismantles" through the study of non-legal aspects.

The starting point of all the theorising of law basically pivots on one thing, namely human relations and law. Where a theory is founded on regulatory factors, it can also be thought of as being based on human factors, however – as it opens and touches the mosaic of humanity. Law-focused legal theories gave birth to legalism or analytical jurisprudence, while the human focus has produced, among others, theories about sociological jurisprudence, legal criticism, responsive law and progressive law.[13]

To all of the above, the authors have grafted the case approach as well. Hence, this article will present and provide legal analysis of court decisions, particularly Indonesian court rulings related to law enforcement regarding environmental crimes.

Law Enforcement

Law enforcement is an attempt to resolve crime rationally, efficiently and in a manner that is seen as a fulfilment of legal justice. In order to reduce crime, the officers and criminal law can be integrated. If officers are needed to resolve crime, then law makers must enable legislative approaches that encourage enforcement and promote civil law results suitable in the present and future.[14]

It is also the modern method by which governments give the people a combination of legal certainty, order and security. This depends on all components of the legal system maintaining harmony, balance and civil morality based on the actual values of a civilised society. As such, law enforcement approaches can be divided among three conceptual frameworks:

1. *Total enforcement*: This concept demands that all values behind the legal norm be enforced, without exception.
2. *Full enforcement*: This concept realises that total enforcement must be restricted by procedural law *etc*., for the protection of the rights and interest of the governed.
3. *Actual enforcement*: This concept reflects the real-life situation – administrative and prosecutorial discretion affect law enforcement because they respond to the limitations – deficiencies in infrastructure, human resources and regulations – as well as the consequences of the fact that the general public often does not participate in or support enforcement activities.[15]

Pursuant to Article 1(3) of Indonesia's 1945 Constitution, every person who commits a crime must be legally accountable for his actions. This correlates with the legal principle that there can be no criminal conviction, unless there is a regulatory provision (law, regulation, *etc.*) that says that the act they are accused of committing is a crime. One who violates a regulatory prohibition which declares that act to be a crime must be subject to sanction or penalty. There must necessarily be a close relation between the criminal threat addressed and the person who caused the incident.[16]

Law enforcement is thus inseparable from the elements of the legal/regulatory systems. According to Lawrence Friedman, as quoted by Mardjono Reksodiputo, those elements are the legal structure, the legal substance, and the legal culture:[17]

1. Legal structure includes executive, legislative and judicative institutions and related institutions such as prosecutors, police, courts, judicial commission, (in Indonesia) the corruption eradication commission (known as KPK), and others.
2. Legal substance is the content of norms, regulations and constitutions.
3. Legal culture includes points of view; customs and social behaviour; values; thinking and expectations regarding the legal system. In other words, legal culture is a climate of social thought about how the law is enforced, violated or applied.

Legal substance depends on the particular subjects. It may need to reflect social, economic and political development including unpredictable developments at the global level. Proper political behaviour in developing legal substance would be to start from the developmental principles contained in the 1945 Constitution, as the primary parameters in arranging regulations, national institutions, equity, democratic relations between central and local government and human rights. These parameters must be reflected in all draft bills.

Meanwhile, legal culture explains the variety of ideas regarding law in various societies and its position in the social order. These ideas, in turn, explain legal practices, civilians' behaviour with regard to legal requirements,

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and the authorities' willingness and unwillingness to submit a case – in other words, they explain broader ranges of thought and behaviour beyond practice and particular discourse related to legal institution. Thus, legal cultural variety may explain much about situations in which legal institutions that seem equal may function very differently in different places.

The cultural aspect complements the legal system in producing the "actual enforcement" framework mentioned above. It relates the legal system to the values and the behavioural patterns of society, as well as other non-technical factors. Legal authority merely complements the presence of these factors, smoothing the path so that the relationship between people's attitudes/behaviour and the law can become positive. Legal authority arises not only from rational thinking, but also from spiritual elements – belief. It is, in essence, a society's psychological factors regarding acceptance of and respect for the law.[18] According to Friedman, it embodies both positive and negative behaviour and values related to the law and its institutions. If the society has positive values, the law will be accepted well; if negative, society will oppose and avoid the law. Legal culture is, in essence, matters outside the law that determine its effectiveness.[19] Law enforcement can run well if all elements within the legal system such as legal structure, substance and culture support and complement each other.[20]

Environmental Crime

This study is concerned only with the enforcement of environmental crime, which generally consists of a regulation/rule/law that imposes a limit or prohibition on certain activities by some or all legal persons. The violator faces the threat of criminal sanction, such as imprisonment and/or fines. Environmental criminal law is intended to protect the environment as a whole, including plants, animals, land and air, as well as humans. Therefore, environmental crime is not only criminal regulation (in Law No. 32/2009), but also criminal regulations formulated into other legislation as long as the regulation aims are to preserve the environment overall or some of its elements.[21]

Law No. 32/2009 addresses criminal penalties in Articles 97–120. It clearly establishes that the specified environmental violations are crimes ("*rechtdelicten"*, *i.e.,* actions indicated as "*onrecht*" – actions contrary to the law).[22] In basic criminological theory, criminal acts include the following types:[23]

1. A material offence: an action that is deemed to have occurred, by virtue of the banned result and it is threatened with penalty by law. In this case, the result arises from the consequences of the action.
2. A formal offence: an offence based on commission of an action forbidden by law.
3. An "offence of commission": a specific act in violation of the law.
4. An "offence of omission": an offence derived from failure to fulfil a legal obligation.
5. A Complaint: an offence that is charged on the bases of a complaint by an injured person.

Within this typology, deliberate crimes and accidental crimes are included together.

In Indonesian law, material and formal environmental offences under Law No. 32/2009 are formulated in Article 98, as follows:

(1) Every person who deliberately commits an act that results in exceeding the ambient air, water, or sea-water quality standard, or standard criteria for environmental damage, shall be punished by a minimum of three years and maximum of ten years imprisonment and fined at least 3 billion Indonesian Rupiahs (IDR) and not more than IDR 10 billion.

(2) If the action mentioned in paragraph (1) results in injuries and/or human health hazards, the convicted person is to be punished with a minimum of four years and maximum of 12 years imprisonment and fined at least IDR 4 billion and maximum IDR 12 billion.

(3) If the action mentioned in paragraph (1) results in serious injury or death of a human being, the convicted person must be sentenced to prison for a minimum of five and maximum of 15 years, and must pay a fine of not less than IDR 5 billion nor more than IDR 15 billion.

These provisions demonstrate the categories of severity of environmental criminal actions: causing environmentally harmful conditions, causing injury/health hazards; and causing serious injury or death.

If the crime involved is a material offence committed accidentally, then it is regulated in Article 99 of Law No. 32/2009, as follows:

(1) Every person who accidentally commits an act that results in exceeding the ambient air, water, sea-water quality standard, or standard criteria for environmental damage, is punished by minimum of one year and maximum of three years' imprisonment and a fine of at least IDR 1 billion, to a maximum of IDR 3 billion.

(2) If the actions mentioned in paragraph (1) cause injury or damage to human's health, the sentencing minimum will be two years imprisonment and the fine maximum will be IDR 6 billion.

(3) If the action mentioned in paragraph (1) causes serious injury or death, the sentence will increase to a minimum three years and maximum nine years imprisonment and a fine of at least IDR 3 billion to a maximum of IDR 9 billion.

Article 112 in Law No. 32/2009 addresses other material offence situations, as applied to authorities competent to control their impact on the environment. It is formulated as follows:

Every authorized official who intentionally does not supervise the compliance of the person in charge of the business and/or activity in a manner that violates environmental legislation and/or permits as intended in Article 71 and Article 72, where that activity results in pollution and/or environmental damage leading to the loss of human life, shall be criminally liable for a

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maximum of 1 (one) year imprisonment or a maximum fine of IDR 500 million.

Law No. 32/2009 specifies 16 particular offences (Articles 100–115), listing 19 types of actions that can be subject to specific sanctions, if done without a permit:[24]

1. Deliberate actions that exceed ambient environmental quality standards;
2. Imprudence that results in harm to ambient environmental quality;
3. Violation of waste-water discharge, air emission or disturbance standards;
4. Releasing or spreading a product of genetic engineering into the environment;
5. Waste management involving "B3 waste"[25] without all necessary permits;
6. Producing B3 waste, without managing it;
7. Dumping waste or other substances in the environment without permission;
8. Importing waste into Indonesia;
9. Importing B3 waste into Indonesia;
10. Importing legislatively banned B3 waste into Indonesia's territory;
11. Burning to clear land;
12. Conducting business and/or permit-requiring activities without an environmental permit;
13. Preparing an environmental impact analysis (EIA) without having received an EIA compiler competency certificate;
14. Issuing an environmental permit without an EIA (known as an "Environmental Management Effort-Environmental Monitoring Effort");
15. Issuing a business and/or activity permit when no environmental permit had been granted;
16. Authorised officials responsible for compliance with environmental laws and permits who intentionally do not oversee business persons under their supervision;
17. Providing false, misleading information in relation to the supervision of compliance and/or enforcement of environmental law;
18. Attempts to use coercion against government officials regulating businesses and/or activities;
19. Intentionally preventing, obstructing, or frustrating the members of the Indonesian Association of Civil Servants in the performance of their duties.

Corporations as Criminal Defendants

"Corporation"

The word "corporation" means "to combine in one body" – that is, to form a group into a single "legal person" which is responsible for all actions of the group.[26] As Satjipto Rahardjo explained, the corporate legal entity includes a *corpus* (its overall structure) and an *animus* (the elements of its "legal personality"), so that both the legal entity's creation and eventually its death of are determined by law.[27] Utrecht describes a corporation as a combination of people who, in legal relations, act together as a separate entity. The corporation has members, but has its own rights and obligation separate from those of each member.[28] Corporations are a group of people who are given rights and legal personality for specified purposes.[29]

The existence of corporations cannot be avoided. They are a type of business entity that is needed in the course of development and in the improvement of the economy in Indonesia. The existence of the corporation will also provide economic added value to local government as well as to central government.

"Corporate Crime"

According to Susanto, "corporate crime" is corporate actions that can be subject to criminal, civil and administrative sanctions. It may take the form of acts of illegal abuses of power, and may be based on a range of actions such as the manufacture of industrial products that endanger health and life; fraud against consumers; violations of labour regulations; misleading advertisements; environmental pollution; and tax manipulation.[30] This type of crime is usually carried out intentionally, and the individuals taking the action are often aware of the law and find ways to violate it secretly. It is not easy to prove such crimes, for several reasons:[31]

1. Low visibility: Corporate crime is difficult to see because it is usually covered up by routine work.
2. Complexity: The crime often involves lies, fraud and theft and is often related to situations that are natural, technological, financial, legal and organised, and that touch or utilise the actions of many people. It may often continue for years.
3. Diffusion of responsibility: Identification of the primary criminal actor is often difficult, due to the complexity of the organisation.
4. Diffuse harm: The victims of crimes such as pollution, consumer fraud and others may run into the dozens, hundreds or thousands.
5. Difficulty of detection/prosecution: There are many obstacles and imbalances, one of which arises where officers do not professionally enforce the law.
6. Legal ambiguity: Ambiguous laws often raise doubts in law enforcement.
7. Leniency: Sanctions against corporations that are criminals may be mild, given that most sanctions are oriented towards the punishment of natural human actors.
8. Ambiguous criminal status: Several legal factors of criminal law (including the "mental state" elements) become ambiguous, when they are applied to corporations that are accused of crime.

Suprapto argued that a corporation can be held criminally responsible based on the criminal intentions or omissions of the people who are its members.[32] Mistakes are not individual, but collective, because the corporation receives benefits. Van Bemmelen and Remmelink argued that a corporation could be held to have committed errors, where it is attributed to have undertaken the management activities of members of its directors. Based upon these arguments, the principle of no crime without error still applies, even where one is seeking to hold corporations liable in criminal law.[33]

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Discussion and Analysis

Constraints on Environmental Criminal Law Enforcement against Corporations in Sidoarjo

Based on interviews with certain investigators of criminal offences in the Sidoarjo Police,[34] the author identified several obstacles that resulted in the ineffectiveness of enforcing environmental criminal law against corporations in the Sidoarjo jurisdiction. The government has issued several laws and regulations related to law enforcement, but implementation in the field still encountered several obstacles, as discussed below.

Legal Capabilities

Regulations related to law enforcement against corporations accused of non-environmental crimes include Law No. 32/2009 as well as various implementing regulations and other supporting regulations, such as PP No. 101 of 2014. The regulated legal facilities include administrative legal facilities, civil legal facilities, and means of civil law. The three facilities can be used in accordance with existing conditions.

In administrative legal facilities, aspects of administrative supervision need to be carried out strictly so that any violations committed by the corporation can be immediately known and acted upon. This administrative legal facility is a preventive measure – with the objective that no further violation of rules occur to transform the situation into one of civil or criminal violation. In practice, the monitoring activities carried out in the Sidoarjo jurisdiction are still weak, due to a lack of human resources – persons whose duty is to supervise companies' compliance with environmental regulations in the Sidoarjo jurisdiction.

Law Enforcement Officials

The number and competence of law enforcement officials are two of the primary elements that determine the effectiveness of law enforcement against corporations that commit environmental crimes. Law enforcement officials related to enforcement of environmental law include: (1) licensing authorities, (2) police, (3) prosecutors, (4) judges and (5) lawyers/legal consultants. Many cases of corporate crime in the Sidoarjo jurisdiction are constrained because the number of professional law enforcement officers who are able to handle environmental cases is still very limited.

In addition, there are many broad and complex aspects of environmental problems across a broad variety of disciplines. It is quite difficult to ensure that law enforcement officials master the various kinds of knowledge related to the environment. Their limited knowledge and understanding of environmental aspects is a very dominant factor behind the differences in handling environmental cases.

Related to this, according to one interviewee – Bambang Edi Santoso[35] – there are several features of concern. The first of these is the Indonesian legal principle that penal punishment should be the last option (although administration and sanction will not eliminate the possibility that a criminal sanction will be ordered). Other obstacles in handling environmental cases include the following:

1. Investigators are less observant and less careful in conducting investigations of environmental crimes;
2. Investigators do not understand the norms that apply to environmental cases;
3. Investigators are less capable of reconstructing an event; they need to understand and apply the elements and evidence of the allegation so that they handle the case appropriately;
4. In cases related to B3 wastes where the waste codification is clear, for purposes of the relevant legislative instrument (*e.g.,* PP 101/2014 (concerning Collection of Hazardous and Toxic Waste (B3 Waste)), the Prosecutor may still hesitate, particularly if a lab test is necessary for verification.

Facilities

The absence or limitation of supporting facilities (such as laboratory capacity, as mentioned above) will greatly influence the success of environmental law enforcement. The handling of environmental cases will often involve a variety of sophisticated technologies, such as pollution detection devices and laboratory equipment, which require not only the equipment, but expert staff and other substantial funding.[36]

Licensing

The central and regional governments have imposed permit requirements as a way to discharge their duties while providing encouragement and convenience for the emergence of new industries and the development of existing industries. Thus, for example, the Sidoarjo Regency Government licenses both new and existing businesses.

Although providing many benefits throughout the country, corporations often pose a threat to environmental conditions when they do not operate according to their permits and/or existing regulations, related to environmentally sensitive activities such as the management of solid waste, liquid waste and B3 waste. Strict oversight of each corporation is needed. Permits create the opportunity for such oversight, but because the supervisory human resources are limited, there are many violations of environmental regulations by permit-holding corporations.

Environmental Impact Analysis

The EIA is one of the administrative requirements that must be fulfilled by a corporation when conducting business activities, particularly those that seek permission to undertake activities related to the environment. In practice, however, the EIA process currently is more directed at fulfilling administrative requirements than at achieving substantive protection. The rapid demand for EIAs is part of a chain of obligations in licensing a business or getting a credit agreement or investment permit. The goals of transparency of the EIA process, and the mechanism for community disclosure of EIA

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documents has not gone as expected – even the people who are most affected do not know for certain about the proposed activity.

Beyond that, after the corporation has completed the EIA process and obtained its business licence or activity permit, it often does not pay attention to environmental conditions during the production process, so that the EIA-related requirements are not fulfilled. In these conditions, of course law enforcement officials need to make active efforts, namely to supervise all existing company activities and enforce the law when the rules are violated. Here also limitations related to staffing and capacity have become a problem in EIA enforcement in Sidoarjo.[37]

Lack of Community Participation

As noted above, society is an important component in the enforcement of environmental law. The community interacts with the environment every day, so they know the environmental conditions. Law enforcement against corporations may often rely on input or information from the public about violations of environmental regulations.

At present, however, not all people know the environmental laws that bind corporate activities, so that the community does not know when there has been a violation. Even where some people know about such a violation, the low level of public legal awareness may constrain them from reporting it to the authorities.

Various efforts are needed to overcome some of the obstacles encountered in law enforcement in the Sidoarjo jurisdiction as mentioned above. The following sections discuss some such efforts.

Increasing the Number of Law Enforcement Officials

As the Sidoarjo industrial area continues to develop, the number of law enforcement personnel in the Sidoarjo jurisdiction is still felt to be lacking. Many new companies and corporations have emerged in this area, but this emergence has not been accompanied by the addition of law enforcement personnel, especially in the supervision section. Law enforcement officers in the supervision section are the spearhead of environmental law enforcement. Supervision efforts are preventive legal measures so that environmental violations do not occur. Preventive efforts should be encouraged so that violations do not occur; because when violations occur, repressive efforts are needed which will certainly take longer, require the involvement of more law enforcement officials, and increase enforcement costs.

Increasing Post-Permit Supervision

Companies or corporations generally apply for many types of permits (business establishment permits, business development permits, and production permits). At the time of filing a permit, the company will usually complete all the requirements in order to qualify and get permission. After the permit is issued, however, many corporations do not pay attention to them, especially those provisions related to the environment. Supervision activities need to be improved. More frequent visits to corporate locations are needed so direct monitoring activities can be carried out to ensure that there are no violations of applicable environmental regulations.

Improving the Function of the EIA

In Indonesia, the EIA also functions as a permit, which must be fulfilled by corporations whose activities have an impact on the environment. Obtained by corporations before they start their business, the EIA contains statements that the company must continue to follow. Therefore, officials related to the EIA must routinely conduct a review so that the EIA rules remain complied with by the company.

Environmental Law Training for Law Enforcement Officials

The scope of environmental law enforcement is quite extensive, so that environmental law enforcement officers must also have extensive knowledge and adequate skills. Therefore, it is necessary to conduct training so that every law-enforcement officer has sufficient knowledge and skills to carry out his role in the field of environmental law enforcement.

Conclusion

In summary, there are some obstacles to the enforcement of environmental criminal laws against corporations that violate those laws. Some of these are fiscal and physical (facilities, technology, funding and legislation), but it is also clear that there are not enough law enforcement officials who have the capacity to undertake such enforcement. Other factors that need to be addressed relate to the licensing of corporations and their neglect of their responsibilities to preserve the environment. Moreover, the EIA process, as carried out by corporations, has not met its intended result. The lack of community participations in enforcing environmental law is the last constraint that emerges with regard to environmental crime.

Various efforts are needed to overcome some of the obstacles encountered in law enforcement in the Sidoarjo jurisdiction as mentioned above, including increasing the number of law enforcement officials; increasing post-permit supervision; improving the function of EIA as a tool for enforcing environmental law; and providing training to law enforcement officials which concentrates on environmental law.

Notes

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7 *Supra*, note 5.

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Indonesia

Environmental Law Policy as an Approach to Achieve Sustainable Development and Prosperity in an Era of Regional Autonomy

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Environmental problems, especially their legal and policy aspects, began to attract serious attention in almost all countries, following the 1972 United Nations Conference on the Human Environment (Stockholm, Sweden). Both globally and nationally, the negative impacts of development activities have been recognised as one cause underlying a range of environmental problems.

From the meeting in Stockholm to the 1992 UN Conference on Environment and Development (Rio de Janeiro), a policy of sustainable development began to evolve and was eventually globally agreed. Work in these meetings referred to and was inspired by the 1987 report of the World Commission on Environment and Development (WCED), which used the term "sustainable development" in the now common environmental context, to mean "development that meets the needs of the present without compromising the ability of future generations to meet their own needs".[1]

Indonesian law and policy reflect this concept in, for example, Article 33(3) and (4) of the country's 1945 Constitution (usually referred to as "UUD 1945"): "The land and the water and the natural resources contained therein are controlled by the State and shall be used for the greatest benefit of the people". Thus, national environmental law promotes two constitutional objectives – ecological sustainability and public welfare.

The politics of environmental law, as expressed in these clauses, are rather clearly not concrete, regarding the meaning and scope of the State's authority and control in this field. The essence of that job – to provide people with the greatest prosperity – ironically limits rather than extending control over these responsibilities. Article 33(3) does not clarify the practical parameters of included concepts such as sustainability and the protection of the carrying capacity of the earth in general, particularly its water and other natural resources.[2] This lack of specificity is proper, in light of the fact that the clause juxtaposes two goals – State control over natural resources and the people's welfare. They are expressed in terms of one another. It is clear, therefore, that the land, water and other natural resources must be "secured" from any possibility that they will be controlled or monopolised by individuals or civil legal entities (especially by foreign parties).

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