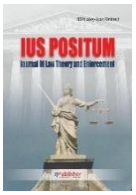

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Environmental Civil Law Enforcement

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ABSTRACT

Environmental pollution is a complex problem with both short-term and long-term risks. Regulations that regulate natural resource utilisation activities serve as preventive and repressive steps for environmental issues. Environmental law is a form of government concern for complex environmental problems, through law enforcement that can be pursued through administrative, criminal, and civil law. Therefore, this research aims to find out and understand environmental law enforcement efforts through legal aspects. This research type is normative legal research. In normative legal research using statutory, conceptual, historical, and comparative approaches. In supporting this research, 2 sources of legal materials are used, such as (1) primary legal sources, which consist of parliamentary legislation, subordinate legislation, judicial decisions and reported tribunals; (2) secondary legal sources, such as all legal literature that is not a formal memorandum of law (encyclopaedias, case summaries, textbooks, journals, dictionaries, indexes and bibliographies). This research indicates that in the enforcement of civil environmental law, there are litigation and non litigation. In addition, the settlement of disputes can be conducted through condemnatory verdicts, declaration verdicts, and constitutief verdicts. In civil law, legal sanctions can be an obligation to fulfil achievements (obligations) associated with the requirements of obligations according to Article 1365 BW (Civil Code).

Keywords: *Civil Code, Environment, Issue*

INTRODUCTION

Humans and the environment are basically interrelated, humans need the environment to live and the environment needs humans to maintain its sustainability in order to keep them well managed.[1] Nowadays, environmental problems are becoming more prevalent and have an impact on the sustainability of all human beings. Environmental problems today are more complex and have human intervention, such as waste problems; flooding; logging and burning forests; and so on. The potential risk of contamination and environmental destruction is increasing due to human negligence in preserving the environment to keep it alive. The more the industrial world develops, the higher the need for human awareness of the environment. The quality of the environment around industrial areas depends on the behaviour of industry entrepreneurs in managing their industrial waste. If not managed properly, it will cause contamination and environmental destruction, such as soil pollution, water pollution, and air pollution. In handling these problems, it is required to guarantee the functional reliability of environmental law. Functional environmental law contains aspects of administrative law, civil law, and criminal law.

Environmental law is a set of regulations governing the protection and management of the environment.[2] The problem of contamination and environmental destruction had occurred in 1970. Therefore, the government issued Law No. 23/1997 on environmental management which was amended into Law No. 32/2009 on environmental protection and management. The regulation was made in order to overcome various environmental issues that occur in Indonesia.[3] It regulates sustainable development. According to Law No. 32/2009 Article 1 Paragraph 3 defines that sustainable development is a deliberate and planned effort that integrates environmental, social, and economic considerations into a development strategy to ensure the integrity of the environment; and the safety, ability, welfare, and the quality of life for present and future generations.[4] Environmental management can be regulated in a written and unwritten regulation which regulates the relationship between humans and humans; and the relationship between humans and their environment.

Modern environmental legislation contains provisions and standards that control human behaviour in protecting the environment from damage, pollution and degradation, to ensure its sustainability and lifespan for sustainable use in the present and future for the next generation. On the other hand, classical

[1] Ismu Gunadi Widodo et al., "Constraints on Enforcement of Environmental Law Against Corporate Defendants," *Environmental Policy and Law* 49, no. 1 (2019): 76–83.
[2] Takdir Rahmadi, *Hukum Lingkungan Di Indonesia* (Jakarta: PT Raja Grafindo Persada, 2014).
[3] Dani Amran Hakim, "Politik Hukum Lingkungan Hidup Di Indonesia Berdasarkan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Fiat Justisia: Jurnal Ilmu Hukum* 9, no. 2 (2016).
[4] Menteri Hukum dan Hak Asasi Manusia, *Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup* (Jakarta, 2009).

environmental law provides regulations and standards whose aim is to ensure the utilisation and exploitation of environmental resources with various human minds and intelligence to obtain optimal and maximum results in the shortest possible time.[5] Based on the civil law perspective, the settlement of environmental disputes can be achieved through non litigation and litigation.[6] This research aims to find out and understand environmental law enforcement efforts through legal aspects.

LITERATURE REVIEW

Environmental Civil Law Enforcement

Environmental law has more complex and diverse case resolution options inherently. In the simplest terms, environmental law is defined as the law that regulates the regulation of the environment which includes all objects and conditions, especially humans and their activities. Law enforcement is a process in achieving the function of legal norms that apply as legal guidelines for behaviour based on the law in the life of this country. Some legal rules used as a requirement for law enforcement in Indonesia consist of laws or statutes that fulfil philosophical, sociological, and juridical elements. In addition, law enforcement officers who are tasked with enforcing the law, society, and supporting facilities and infrastructure.[7] The four legal rules must be available when making law enforcement efforts and will not be able to occur if one of these rules does not exist. Environmental law enforcement in Indonesia can be conducted in a preventive and repressive manner. Preventive law enforcement is an active supervision conducted on compliance with regulations without direct incident concerning concrete incidents. Meanwhile, repressive law enforcement is conducted in the context of acts that violate regulations and aims to directly end prohibited acts.[8] Administrative law, civil law, criminal law, tax law, and international law can be applied to address environmental offences.

This research examines environmental management based on aspects of civil law. In environmental law enforcement when examined from the civil aspect, it includes the government and/or the community, such as compensation, absolute responsibility, filing a lawsuit, the right of the community and environmental organisations to file a lawsuit. Due to the occurrence of environmental pollution and destruction, there will be victims of pollution and destruction, which means the injured parties can be individuals, communities or the state. In the Law on Environmental Protection and Management (UUPPLH) the process of

[5] Luqman Hakim, "Penegakan Hukum Lingkungan Hidup Melalui Gugatan Perbuatan Melawan Hukum," *Jurnal Hukum Lex Generalis* 2, no. 12 (2021): 1264–1275.
[6] Indah Sari, "Sengketa Lingkungan Hidup Dalam Perspektif Hukum Perdata Lingkungan," *Jurnal Ilmiah Hukum Dirgantara* 7, no. 1 (2016): 14–35.
[7] Prasetijo Rijadi dan Sri Priyati, *Pengantar Hukum Lingkungan Hidup* (Sidoarjo: Al Maktabah, 2020).
[8] Prim Haryadi, "Pengembangan Hukum Lingkungan Hidup Melalui Penegakan Hukum Perdata Di Indonesia," *Jurnal Konstitusi* 14, no. 1 (2017): 124–149.

environmental law enforcement through civil procedures is regulated in Chapter XIII Article 84-93. The civil aspects listed in these articles contain the settlement of environmental disputes that can be pursued through court (litigation) or out-of-court (non-litigation) based on the voluntary choice of the parties to the dispute. These provisions are intended to protect the civil rights of the parties to the dispute.[9]

According to Article 85, non litigation dispute settlement is deemed to be an agreement on compensation, reparation for pollution or destruction, certain actions to avoid or repeat pollution or destruction, and prevention of negative impacts on the environment. Regarding non litigation dispute resolution, the services of a non-neutral third party can be utilised to settle environmental disputes. Dispute resolution in this way is known as Alternative Dispute Resolution (ADR). ADR is arbitration, mediation, negotiation that is currently used by many industrial companies to resolve environmental disputes in Indonesia, especially in cooperation agreements between investors and communities in cases of environmental pollution. According to Article 86, the government and/or the community can establish a forum to provide free and impartial environmental dispute resolution services.

The settlement of environmental disputes is regulated in Articles 87-92 of the UUPPLH. Article 87 Paragraph (1) states that every entrepreneur and/or business actor who unlawfully commits acts of pollution and/or destruction that cause damage to other people or environment is obliged to pay compensation and/or take certain actions. According to the provisions of Article 87 Paragraph (1), to file an environmental claim to obtain compensation, there are conditions that must be fulfilled by every person responsible for the business/activity, such following below:

1. Committing unlawful acts, such as environmental pollution or destruction;
2. Inflicting damage on the other person or environment;
3. The responsible person of the activity pays compensation and/or takes certain actions.

RESEARCH METHODOLOGY

This research type is normative legal research. Normative legal research is legal research that examines the literature of positive legal provisions as a source of legal material.[10] In normative legal research using statutory, conceptual, historical, and comparative approaches. Through a statutory and conceptual approach, an assessment of the overall applicable legal provisions is useful for

[9] Komang Trie Krisnsari and I Ketut Mertha, "Penerapan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup Dalam Upaya Penegakan Hukum Lingkungan Di Indonesia," *Jurnal Unud Bali* 1, no. 3 (2013).
[10] Dr. Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum : Normatif Dan Empiris* (Jakarta: Prenadamedia Group, 2016).

reflecting and arguing basic legal concepts.[11] Meanwhile, the comparative law approach is intended to obtain comparative sources that support the research topic. In supporting this research, 2 sources of legal materials are used, such as (1) primary legal sources, which consist of parliamentary legislation, subordinate legislation, judicial decisions and reported tribunals; (2) secondary legal sources, such as all legal literature that is not a formal memorandum of law (encyclopaedias, case summaries, textbooks, journals, dictionaries, indexes and bibliographies). Relevant legal materials were collected using a card system technique. The card system in this research has 3 card studies, such as citation card, review card, and analysis card. After the legal material is collected, then processing the legal material through several steps which include the following:

1. Editing, the researcher reviews the completeness of legal materials obtained so that if incomplete legal materials are found, the researcher can complete the deficiency and convey it into a simpler sentence.
2. Systematisation, which means that the researcher selects legal materials; then classifies them by classifying legal materials; and compiles the research data systematically and logically, so that there is a correlation between one legal material and another legal material.
3. Description, which means that the researcher describes the results of the research based on the legal material obtained and then analyses it again.

RESULT AND DISCUSSION

Environmental disputes are regulated under the 1997 Environment Act and the 2009 Environmental Protection and Management Act. Environmental disputes in Law No. 32/2009 on Environmental Protection and Management are described as disputes between two or more parties that occur because of activities that have an impact on the environment. This policy is also supported in Law No. 23/1997 on Environmental Management.[12] Environmental disputes are conflicts of interest in the utilisation of natural resources between two or more parties due to pollution or destruction of the environment, government policy plans in the fields of land utilisation and distribution, utilisation of forest products and logging, power plant construction plans, reservoir construction plans, and high voltage air line construction plans. Based on this definition, it can be known that environmental disputes can occur between community members and companies and government officials. The environmental dispute that occurs between members of the public and the company is a type of environmental dispute with a civil nature. While the type of case between members of the public and companies and government officials is a type of administrative case.

[11] Mark John Bennett, *Legal Positivism and the Rule of Law: The Hartian Response to Fuller's Challenge* (Toronto: University of Toronto, 2013).
[12] Prim Haryadi, *Penyelesaian Sengketa Lingkungan Melalui Gugatan Perdata* (Jakarta Timur: Sinar Grafika, 2022).

Therefore, in civil proceedings, the provisions of Articles 1365 and 1865 of the Civil Code can be used in compensation agreements. According to Article 1365, every unlawful act which causes damage to another person shall oblige the person who suffers the damage through his or her fault to compensate for the damage.[13] The disputants over environmental destruction are free to seek settlement by litigation and non-litigation ways. Court action can only be initiated if one of the disputants has declared that the chosen non-litigation settlement has failed.[14]

Settlement of environmental disputes by non-litigation way aims to achieve an agreement consisting of the amount of compensation, corrective actions due to environmental destruction, special actions to reduce environmental pollution, special actions for environmental conditions that cannot be repaired, and prevent negative actions that might damage the environment.[15] Settlement by non-litigation way is regulated in Law No. 32/2009 Article 85 Paragraph 3, in non-litigation settlement can use the services of mediators and/or arbitrators. This article also describes several alternative ways of resolving environmental disputes, such following below:

1. Negotiation, which means a negotiation process in which an agreement between one party and another is negotiated and then that agreement is considered.[16]
2. Mediation, which means a process in which the parties seek the assistance of one or more persons who systematically assist them in resolving their dispute to their satisfaction. This third party has decision-making authority. The mediator's role is to assist the conflicting parties voluntarily to achieve an agreement that is acceptable to each disputant.[17]
3. Arbitration, which means the settlement of a civil dispute outside the public courts based on an arbitration agreement prepared in writing by the disputants.[18]

Litigation dispute resolution is a standard procedure. Litigation dispute resolution may also be used by parties who choose non-litigation dispute resolution, but under the condition that the non-litigation dispute resolution fails to resolve the dispute.[19] Litigation dispute resolution is regulated in Article 1365 of the Civil Code. Article 1365 of the Civil Code stipulates four requirements that must be

[13] Andi Taufan et al., *Hukum Lingkungan* (Bandung: CV Widina Media Utama, 2021).
[14] Hadin Muhjad, *Hukum Lingkungan : Sebuah Pengantar Untuk Konteks Indonesia*, 1st ed. (Yogyakarta: Genta Publishing, 2015).
[15] Ibid.
[16] Nina Herlina, "Permasalahan Lingkungan Hidup Dan Penegakan Hukum Lingkungan Di Indonesia," *Jurnal Ilmiah Galuh Justisi* 3, no. 2 (2015).
[17] Hakim, "Penegakan Hukum Lingkungan Hidup Melalui Gugatan Perbuatan Melawan Hukum."
[18] Frans Hendra Winarta, *Hukum Penyelesaian Sengketa : Arbitrase Nasional Indonesia Dan Internasional*, 2nd ed. (Jakarta: Sinar Grafika, 2016).
[19] Mulyono Jamal et al., "Analysis of Alternative Dispute Resolution in Non-Litigation Dispute Resolution on Islamic Mortgage: At the Ombudsman Institution Yogyakarta," *Tsaqafah: Jurnal Peradaban Islam* 17, no. 1 (2021): 207–228.

fulfilled in a lawsuit based on unlawful acts. The following is an explanation of the four elements:

1. Unlawful acts are based on written rules and legal principles that apply in society, such as the principle of appropriateness or compliance.
2. There is willful misconduct or negligence, i.e. the perpetrator violates an applicable legal obligation.
3. There is a significant damage both in material (loss that can be measured in real terms) and immaterial (loss of benefits or profits that can be obtained in the future).
4. There is a causal correlation between the unlawful act and the damage.[20]

The criterion used in this environmental dispute is the first criterion that violates the rights of others. Violating the rights of others is regulated in Article 65 Paragraph (1) of the Environmental Protection and Management Law. The procedures in resolving environmental disputes are not simple and not easy. Scientific procedures are needed to prove that an activity has destroyed the environment. Disputes between the adverse and damaged parties cannot be resolved by simply paying compensation, but the adverse party is obliged to take certain legal actions to restore the environment that has been damaged or polluted. This obligation is regulated in Article 87 of the Environmental Protection and Management Law as described below:

1. Installation or improvement of waste management units so that the effluent complies with the prescribed environmental quality standards.
2. Restoring environmental functions.
3. Eliminating or destroying the cause of environmental pollution and/or destruction.

In response to this environmental dispute, the decision that can be imposed by the judge is based on civil law, such following below:

1. A condemnatoir verdict is a verdict that punishes the defeated party to fulfill its obligations.
2. A declaratory verdict is a verdict that declares a situation as a valid situation based on the law. This verdict only explains and confirms a legal situation.
3. A constitutief verdict is a verdict that can eliminate a legal situation or create a new legal situation.[21]

[20] Hakim, "Politik Hukum Lingkungan Hidup Di Indonesia Berdasarkan Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup."
[21] Syawaludin and Arif Wibowo, "Analisis Problematika Yang Terjadi Pada Putusan Mahkamah Konstitusi Yang Bersifat Final Dan Mengikat," *JPM: jurnal Penelitian Multidisiplin* 1, no. 2 (2022): 103–109.

Legal sanctions in civil law, such as must be to fulfill obligations; and Disappearance of a legal situation, followed by the creation of a new legal situation.[22] Besides compensating and restoring the environment, the harmful party is charged with strict liability. Strict liability is stipulated in Article 88 of the Environmental Protection and Management Law No. 32/2009. The principle of strict liability is one type of civil liability. Civil liability related to environmental law enforcement is used as a civil law tool to claim compensation and the cost of cleaning up the damaged or polluted environment. Civil liability consists of two types, such as (1) fiduciary liability, liability that requires proof of fault that caused the damages; and (2) strict liability, liability without the need for proof of fault where compensation and responsibility are taken immediately after the crime is committed.[23] Based on the doctrine of liability on fault, the enforcement of environmental law through the courts will encounter several problems. These are due to the important requirements that must be fulfilled in the element of negligence or fault. Therefore, if the defendant (polluter) manages to demonstrate his prudence even though he has caused harm, then he can be free from liability.[24] In response to this problem, the principle of strict liability was established in Article 88 of the Environmental Protection and Management Law No. 32/2009. According to strict liability, a person must be liable whenever a loss occurred. It means that first, the victims are released from the responsibility to prove the causal relationship between their damages and the individual actions of the defendant. Second, the polluter will be concerned with both the level of care, and the degree of activity.

In addition to the burden of proof issues mentioned above, the application of the principle of strict liability also cannot be maximized because the provisions in Article 88 of the Environmental Protection and Management Law No. 32/2009 itself has also limited the use of strict liability in certain cases, that is, only for environmental pollution containing hazardous and toxic waste. Even though the least environmental pollution and destruction will definitely have an impact on reducing the quality of the environment as a support for human life, which will also affect the sustainability of human life itself. For instance, logging a few trees in the forest without permission, the logging activity does not produce B3 waste, however, if it is allowed to continue, there will be floods, landslides that will have a direct impact on humans and can even cause the death of many people.[25]

In resolving environmental problems that occur in Indonesia, it is necessary to ensure legal certainty in law enforcement. Environmental law enforcement is an

[22] M. Sholehuddin and Dr. Jonaedi Efendi, "Criminal Policy in Law Enforcement Related to Malpublic Administration," *IUS POSITUM (Journal of Law Theory and Law Enforcement)* 1, no. 1 (2022).
[23] Selamet Suhartono, "Dinamika Penyelesaian Sengketa Lingkungan Hidup Di Indonesia," *Widya Yuridika: Jurnal Hukum* 1, no. 2 (2018).
[24] Herlina, "Permasalahan Lingkungan Hidup Dan Penegakan Hukum Lingkungan Di Indonesia."
[25] Ade Risha Riswanti, "Tanngung Jawab Mutlak (Strict Liability) Dalam Penegakan Hukum Perdata Lingkungan Di Indonesia," *Journal Unud* (2013): 1–5.

effort to achieve compliance with the rules and requirements in the provisions of the law that apply generally and individually, through supervision and application of administrative, civil, and criminal law. Government policy arrangements in enforcing environmental law are actualized by the enactment of environmental regulations for the first time, such as Law No. 4/1982 concerning the main provisions of environmental management which was later replaced by Law No. 23/1997 concerning environmental management, and the last one was replaced by Law No. 32/2009 concerning environmental protection and management. In the aspect of civil law, there are still many obstacles that prevent the settlement of environmental disputes, such as the unavailability of special institutions at the regional level that have a special mandate to receive and handle public complaints; the unavailability of complaint procedures; constrained access to conduct research to claim compensation; the unavailability of out-of-court dispute resolution service providers; and the limited access of victims and interest groups to court institutions. Environmental disputes can be resolved by conducting a reverse proof mechanism. Reverse proof provides concessions for those affected, especially those who suffer huge damages due to environmental pollution.

CONCLUSION AND SUGGESTION

Conclusion

The environmental dispute that occurs between members of the public and the company is a type of environmental dispute with a civil nature. The disputants over environmental destruction are free to seek settlement by litigation and non-litigation ways. Court action can only be initiated if one of the disputants has declared that the chosen non-litigation settlement has failed. Settlement by non-litigation way is regulated in Law No. 32/2009 Article 85 Paragraph 3, in non-litigation settlement can use the services of mediators and/or arbitrators. Litigation dispute resolution is regulated in Article 1365 of the Civil Code. Article 1365 of the Civil Code stipulates four requirements that must be fulfilled in a lawsuit based on unlawful acts. Regarding non litigation dispute resolution, the services of a non-neutral third party can be utilised to settle environmental disputes. Dispute resolution in this way is known as Alternative Dispute Resolution (ADR). ADR is arbitration, mediation, negotiation that is currently used by many industrial companies to resolve environmental disputes in Indonesia, especially in cooperation agreements between investors and communities in cases of environmental pollution. According to Article 86, the government and/or the community can establish a forum to provide free and impartial environmental dispute resolution services. In response to this environmental dispute, the decision that can be imposed by the judge is based on civil law, such as condemnatoir verdict, declaratory verdict, and constitutief verdict. In the aspect of civil law, there are still many obstacles that prevent the settlement of environmental disputes, such

as the unavailability of special institutions at the regional level that have a special mandate to receive and handle public complaints; the unavailability of complaint procedures; constrained access to conduct research to claim compensation; the unavailability of out-of-court dispute resolution service providers; and the limited access of victims and interest groups to court institutions. Environmental disputes can be resolved by conducting a reverse proof mechanism. Reverse proof provides concessions for those affected, especially those who suffer huge damages due to environmental pollution.

Suggestion

There are several suggestion provided by researchers, such as (1) for the legislators (Parliament and President), with regard to the principle of legal certainty, it is suggested that in UUPPLH 2009, in Article 88 regarding strict liability, further explanation is provided regarding the limits of the implementation of this principle as it existed in the previous UUPPLH 1997, UUPPLH 2009 must also provide certainty regarding the maximum limit of compensation that must be paid by the polluter to the victim who has been damaged; (2) there is regular supervision and research by environmental supervisory officials on environmental dispute resolution, especially in fulfilling the right to sue of people who are not experts in law. Adequate institutions can help with such routine supervision, such as having their own environmental laboratories and taking decisive measures deemed necessary against companies that pollute the environment so that there are facts and regular updates that will also help the community and the environment. The local government and Environmental Agency have more power in monitoring as well as preventing environmental pollution and also to avoid or reduce the risk of waste pollution and destruction of the surrounding environment. Therefore, the corporation should establish a good cooperative relationship with third parties or agencies, as well as the local community to supervise and check the surrounding environment regularly and correct as soon as possible if there is a mistake or pollution is detected, especially those that come from community complaints.

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