

Law Enforcement Against Act Criminal Environment with Progressive Law

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Abstract

Various effort enforcement law environment and forestry keep going done throughout 2022. However, commitment and consistency enforcement law environment this can threatened because a number provision in the criminal code or the new criminal code, however pollution and damage environment in Indonesia from year to year its accumulation always increases and tends no can under control, like damage and fire forest, flooded at times season rain, and drought at times season another drought factor natural can happen consequence exists deed criminal matters in the field necessary environment enforced in a way law. With thus, existence follow criminal environment fully depending on other laws. Condition sort of that reasonable, however remember how importance environment a healthy and good life, and his position as follow criminal economy as well as complexity protected interests above, both in nature anthropocentric nor ecocentric, then provision special (*specific crimes*) necessary be equipped with follow criminal environmental nature general and independent regardless from other laws are named *generic crime* or *core crimes*. This study use method normative juridical. This study discuss and study about how criminal law instruments in environment; is factor affecting environmental law enforcement; How environmental law enforcement with progressive law. Discussion result in this study show that Change law environment become Republic of Indonesia Law Number 32 of 2009 concerning Environment Already reflect enforcement good law, but still just there is obstacles that are not can be avoided in straighten up law. For that required enforcer law that has good mental and spiritual so as not to unsteady and affected nuances whatever in straighten up law. Factor damage natural environment that has been damaged by parties who do not responsible answer no only just common actions but is problem existing morality no controlled by supervision law. Whereas what is being done apparatus enforcer law with law progressive must accompanied just in frame operate mandate law progressive in enforcement law.

Keywords: Law enforcement, environment, progressive law

1. INTRODUCTION

Various effort enforcement law environment and forestry keep going done throughout 2022. However, commitment and consistency enforcement law environment This can threatened Because a number provision in the criminal code or the new criminal code, however Pollution and damage environment in Indonesia from year to year its accumulation always increases and tends no can under control, like damage and fire forest, flooded at times season rain, and drought at times season drought. Various disaster natural occurs in various area, like flood land and land landslides, occurred in Pacet (2002), Bohorok (2003), Jember (2005), Bajarnegara (2006) and the earthquake earth in Yogyakarta (2006). Likewise damage reef corals, water (river), soil and air pollution in various areas area already reached a very high level worrying. Everything that consequence from behavior man through various placing activities natural as the only commodity treated as object exploitation, disposal media, and activities industry without ignore that environment That existing material limitations and can experience damage. The pollution that gets attention so wide is pollution environment sea in the Gulf Buyat, North Sulawesi (2004). Pollution environment sea happen consequence disposal waste industry mining going on in the Gulf Buyat has give rise to suspected disease as “Minamata” disease, a type scariest disease ever happened in Japan consequence food consumed contaminated metal heavy form arsenic and mercury. As accused party responsible

answer is company mining gold PT. Newmont Minahasa Raya is suspected has do it disposal waste mines in the Gulf Buyat.

Followed now disaster he blurted out mud hot PT Lapindo Brantas, Porong, Sidoarjo which is already more three month not yet can overcome. handling steps taken with method make embankment proven no safe, because embankment several times broken-down cause flood mud in a number village. effort for overcome with method throw away mud to sea will give rise to problem new, that is will annoying biotic sea and worry will pollute waters sea and coastal areas as response to various disaster environment, people who are victims and care environment endeavor for do prosecution enforcement law environment done with truly in frame protect existing environment like that critical. Craving sort of this appears in various area as part from effort for demand his rights on environment healthy and good life. Because they know that damage environment as a result fast or slow will override man alone. Ministry of Environment Life and Forestry or the Ministry of Environment and forestry has handled 941 cases law from various complaint. From the amount of these, there were 518 cases has sentenced penalty administrative. From 2015-2021, 6,143 complaints were recorded has handled and 2,185 cases already sentenced penalty administrative. Lawsuit civil even has produce change make a loss recovery environment life amounting to IDR 20.7 trillion as reported by Kompas.id. According to Ton Dietz the efforts made society at first pure environment, that is those who fight for it problem environment by environment alone. Besides that there is interests that do not for protect environment that alone, but for the sake of survival growth economy and the accumulation of capital (capitalism) so that guaranteed supply material standard industry so that growth economy will keep going taking place. furthermore develop desire for do advocacy environment for do enforcement and renewal law environment. Advocacy carried out initiated by activists very favorable environment to interest people and environment for well-being public.

2. METHODOLOGY

Research design this is *review analysis* with see journals and articles with criteria inclusion in this study is publication design this study can categorized as as study doctrinal with use approach conceptual and approach legislation.

3. RESULTS AND DISCUSSION

Criminal Law Instruments Environment

Enforcement law environment in various case pollution and destruction environment through instrument law criminal environment assessed weak. This matter due to its complexity emerging aspects in the enforcement process law environment. In matter this problem main no caused by factors proof just, but more lots influenced other outside factors environment, that is factor political, social, and economic. Handling pollution becomes a complicated and necessary problem effort handling cross sectoral. In law environment submission demands through track criminal possible after approach solution through law state administration and law civil it turns out no can finish problem environment. Crime environment form pollution environment categorized as as follow criminal administrative (*administrative penal law*) or follow disturbing crime well-being society (*public welfare offices*). Act criminal the has arranged in constitution environment life as has arranged in republic of indonesia law number 32 of 2009 concerning Management Environment Life (next called constitution environment life). Remember problem environment already like that worrying, according to Hamzah provisions penalty criminal to pollution environment must changed from provisions of that nature *ultimate remidium*, which considers that violation law environment not yet is serious problem become *premium remidium* which makes penalty criminal as the preferred instrument in handle follow deed pollution or destruction environment. Choice fall under the law criminal if something damage no can repaired or restored, for example logging tree, murder to bird or protected animals. Repair or recovery damage including no can done in a way physique. Likewise lobby loeqman opinion the same and it seems his opinion no accommodated in constitution environment life because constitution the still make provision penalty criminal as ultimate remidium.

However according to start for moment now provision criminal made as instrument *premium remidium* still not yet need because other sanctions, such as administrative and civil still can utilized. That matter in accordance with principle court (*principle of restraint*), which is one condition criminalization, where penalty criminal should new utilized if penalty administrative and civil it turns out no correct or not effective for handle follow criminal environment. More carry on said that follow criminal environment categorized as as administrative penal law or public welfare offenses, which provides impression its light deed the. In this matter function law criminal nature support sanctions administrative for he obeyed norms law administration. With thus, existence follow criminal environment become fully depending on other laws. Condition sort of that reasonable, however remember how importance environment a healthy and good life, and his position as follow criminal economy as

well as complexity protected interests above, both in nature anthropocentric nor ecocentric, then provision special (*specific crimes*) necessary be equipped with follow criminal environmental nature general and independent regardless from other laws are named generic crime or core crime. In formulation follow criminal environment, preferably always remembered that loss and damage environment life not only nature real (*actual harm*), but also nature threat damage potential, okay to environment life nor health general. This matter caused by damage the often not instantly arise or not with it 's easy too quantified. In connection with that for relatively generic *crime* heavy, preferably of course formulated as follow criminal material, deep this matter as a result is element essential that must be proven. However so, for follow criminal nature special (*specific crimes*) that are attached to the law administrative and relative more light, then formulation nature formal without wait proof the consequences that occur can done. Attitude the mind becomes element in follow criminal the can covers deed on purpose (*dolus knowingly*), deliberately with possibility (*dolus eventualis, recklessness*) and forgetfulness (*culpa, negligence*). In formulate follow criminal environment, necessary considered exists two type elements, ie material elements and mental elements. Material elements include *first* : existence deed or follow deed something (*omission*) that causes happen follow criminal ; and *second* : action or no commit a violation or contradictory with standard existing environment in constitution environment life. mental elements include understanding that do or no do the done with deliberate, recklessness (*dolus eventualis* or *culpa gravis*) or negligence (*negligence*). This distribution normal known in system anglo saxon law, while there are many Indonesian laws influenced system continental law so differentiate categories about deliberate (*dolus*) and negligence (*culpa*) in its implementation.

Factor affecting Environmental Law Enforcement Failure of the Judicial Institution

In terms of instrument the law, though constitution environment, has include provision change such a loss large, and sanctions such a punishment heavy, however provision the it turns out in practice not yet protect polluters environment can snared with adequate punishment. This matter can seen in some trial data dispute environment life in court. The parties charged do deed pollution environment life can get away from snarl law. Case pollution river Baboons, Demak, pollution of the Pekalongan banger river and pollution in Karanganyar, inhabitant demanding society to court only obtain change huge loss small and punitive for light defendant. According to Hamrat Hamid in case the judge dispute environment, of course need considered, *first*, motive or reason defendant. *Second* , sincerity defendant in do prevention polluted or the damage environment life. *Third*, big small disaster or danger to soul or health man. *Fourth*, big and small attention, care and assistance company it to society around , esp public economy weak . *Fifth* , there is or not warning or reprimand from apparatus or agency competent government. Problem enforcement law environment related with empowerment enforcement law environment covers development system one roof (*one roof enforcement system*) and pattern *greening the bench* for make more justice qualified in the field environment. In matter system empowerment one roof, PPNS, police and prosecutors selected is at in one roof of the ministry of environment life, and institutions management environment live in the area. PPNS and police selected as investigator special work the same with prosecutor special environment For targeting case environment certain worthy ones brought to court. For that a certified judge is required law environment for handle case environment. Beside it can just appointed special judge from circles expert or expert environment. In problem environment life, revenge as known in law criminal only give a little bidder to experiencing society damage environment, that is with he was convicted perpetrator pollution or destroyer environment.

Even though there is punishment, damage environment already happens and doesn't will recover, or if amar decision court require perpetrator for repair damage, then the process will eat long time. Completion problem environment can done with pattern work the same with method form a kind of “community” countermeasures damage”, which in it collected element government and entrepreneurs for try look for road out. According to Emil Salim, this is a problem environment in framework development sustainable no free from market mechanisms that do not catch signal social and environmental. Therefore, it is necessary correct the drawback for balance development social and environmental with development economy. Intervention can carried out by the institution similar triangles, ie Government, Entrepreneurs , and civil society. Between the three strength there is connection “*checks and balances*” at the same level so that interest third strength the Can maintained the balance. Third order strength works balanced required norms , behavior and arrangements that contain a number of principle main , *first* , rules enabling law involvement and inclusion wide Possible member public role in development ; *second* , rules laws that allow markets to function should guide public level efficiency tall; *third*, rules developing law *good governance* (government, business and society) for correct market weakness; *fourth*,

rules law for manage mediation and conflict, and *fifth*, rules law develop transparency as device powerful push openness for prevent corruption, collusion and nepotism.

Intervention Interest

According to Stephen Trudgill, factors inhibitor final in in overcome problem environment is factor politics, after factor obstacle social, economic, technological, knowledge, and agreement. Factor agreement revolves around disagreement in problem truly there is and how much importance problem the for the parties, even when case the Already agreed as a must problem resolved, consensus about scope and methods achievement solution as well as purpose in the end it has to be achieved. When obstacles agreement already overcome, obstacle knowledge bring up question next, what? available Enough adequate evidence and knowledge about causes, processes of occurrence, and impacts problem that ? After obstacle knowledge resolved, question appear next is we own means for solve problem that ? Peak from all obstacle is inhibit social, economic, and political blocking solution problem environment. Third obstacle final this each other related and constitutive factors decider in finish problem environment. In Lots case happens often excessive emphasis to factor social, economic, and political, so truth knowledge scientific forced sacrificed. As a result, that's it clear interest environment defeated by interests social, economic and political results creation man completely. In this matter performance and policy government in handle problem the environment is largely determined by characteristics *pluralism* and *incrementalism*. Pluralism interpreted as something form taking policy taken public through bid bargain, compromise, and negotiate between group interest in public. Temporary in regime incrementalism policy public taken only based on a number of alternative nature limited. Influence political no free from return sacrifice (*trade-off*), bargaining and compromise between strength interest. No can undeniable in any country including Indonesia, which is dominated capitalism always there is more ideological bias favor development economy as more *mainstream* prioritize interest investment and neglect interest environment. This matter very clear seen in handling case solution pollution environment bay Buyat, North Sulawesi. In handling case pollution Bay Buyat, United States Ambassador , Ralph L Boyce asked the Indonesian government so that No withhold Director of PT Newmont Minahasa Raya, Richard B. Ness when visit President Megawati and National Police Chief. Da'i Baktiar with reason can bother climate investment in Indonesia.

Attitude ambassador great United States the assessed as form intervention interest politics and economics regarding the ongoing legal process run by the authorities enforcer Indonesian law. Not inevitably again, attitude United States ambassador the get reaction hard from a number of NGOs and mass organizations, incl Organization Muhammadiyah Religion. Chairman of LBH Health, Iskandar Sitorus accused that the United States has intervene in ongoing legal proceedings executed National Police with pretext will bother climate investment new to Indonesia. Temporary that chairman of Muhammadiyah Syafii Ma'arif at the time That state that National Police no need affected with pressure from America. National Police must stick to the facts laws and processes based on them provision existing laws for the nation own dignity. Because of that even though Indonesia is very dependent on the United States, because debt and investment problems, right means must condescending sovereignty and price self as nation in the eye overseas. Era of legal reform this make hope public return appears in the field development law environment, that is *First*, enforce law and harmony rule about management source Power nature and environment ; *secondly*, creating a firm intensive and disintensive system in management source Power nature and environment; *third*, repair coordination cross department in control management source Power nature and environment ; *fourth*, involve public local and movement public civil (*civil society*) in general systemic in effort management source Power nature and the environment, and *fifth*, taking action in a way firm and effective practices misappropriation supervision and control management source Power nature and the environment carried out by the apparatus bureaucracy. From this *platform*, it appears that what will done there is desire for put problem enforcement law environment as priority main. Beside that, there is desire for synergize between problem source power nature and environment through policy update law source Power nature and environment life. Beside that, there is desire strong For empowering public local and movement public civil (*civil society*) as One systemic unity in management source power nature and environment life.

In frame help government in the field environment live, Coalition non- governmental organizations try arrange six key agendas for overcome damage environment, esp related handling *illegal logging*. Key agenda the containing *First*, organize group task (task force) proactive *illegal logging* with report in a way direct to president. *Second*, shape court *ad hoc*, with prosecutor who has commitment and responsibility answer high and trusted judge. *Third*, punish the barons, companies and officials involved join in in destruction environment. *Fourth*, create regulations allow visual evidence as possible evidence used to court *ad hoc*. *Fifth*, update bilateral agreement with various related countries with effort For overcome *illegal logging*. *Sixth*, validate regulation

about diversion money from auction illegal wood for activity enforcement law environment. But at the moment government of Susilo Bambang Yudoyono-Yusuf Kalla powerful effort for do enforcement law environment and handling various case environment not yet showing encouraging results. Government assessed by the community activist environment only take care of problem political and busy emit policy economy without there is cleanliness in the environment. as a result problem environment, like case pollution Buyat, *illegal logging*, fire forests, pollution and destruction environment in a number area No can handled in a way finished. Policy the government does n't favor the environment result in its occurrence various incident or disaster disaster continuous nature happen in a way successively in various place in almost throughout Indonesia. That picture showing exists indication that it works institution trial and enforcement law environment in Indonesia still influenced interest politics, as said by Stanley Diamond, down enforcement The laws in various developing countries, including Indonesia, are very related with culture and conditions political something public. From opinion the can said that product law and its enforcement very influenced interest politics. Roberto M. Unger say that understanding law no can free from the context. The law works not in the room empty but work in reality that is not neutral from influence another, and the value behind it is subjective. The law is not something happened in a way natural, but constructed in a way social.

Therefore, use it the only law will be formal fail for overcome social problems. He try put forward his vision about order society and order future law through movement activity transformational work on base rights protected individuals law and awareness bureaucracy power for work with full not quite enough answer. Judicial institution in do enforcement law environment loaded with consideration interest politics and economics. The reason given base in drop decision no just consideration provision rule law as regulated in constitution environment but more lots based reasons for the decision to be made no bother climate investment or not happen closing the resulting company exists termination connection work (layoffs) for laborer. If happen termination connection work can result instability area and vulnerability social. Reason consideration the impressed made it up and on purpose put forward by companies and governments and proven can influence the sentencing panel of judges decision law for parties to a dispute in court so that cause his decision no fair. Even thus though, the panel of judges or institution convicting court decision feel no guilty, proven a number of study decisions made college high and institutional self-subsistent public through examination public sent to her or conveyed in the mass media or not responded in a way serious. This matter signifies that court more puts forward "corporate and institutional egos" with hiding behind that dogma court nature independent and self - sufficient from influence anywhere, so no Possible his decision affected by power party outside (*external*). Condition like that prove that institution court during this understood and put as great institution established and situated in culture authoritarian. Apparatus enforcer law more emphasize understanding and interpretation legal nature single with principle legality, esp in enforcement more laws oriented towards *formal justice*. Therefore, in Lots case solution dispute or enforcement law in court, decisions taken far from a growing sense of justice in public. Consequence from that act criminal environment life keep going happen because not yet give effect deterrent as reported by Kompas.id.

Law Enforcement Action Criminal Environment Life With Progressive Legal Approach

This during institution court as state enforcement agencies justice in do enforcement law environment assessed no give a sense of justice society, and justice environment. Various case solution dispute pollution proposed environment to court his decision very disappointing society, and far away from a sense of justice. Judicial institution in finish dispute environment during this Still formal law oriented. Analysis studies showing that in finish dispute the judge's environment is still not yet capable go out from approach *text books* who understands law limited nature rules black white, applied like book telephone. This matter can seen from the judge's lack of courage to go out from formulation provision law civil law that relies on Article 1365 of the Civil Code or Article 34 of the Law Environment Life in handle lawsuit public. Judge the same very no look at the balance other existing laws in principles laws that exist in society or principle law have position more high, like principle prevention in a way early, principle caution (*precautionary*), principle defense through "*due diligence*" and principles responsibility strict (*strict liability*) even though principles the very needed for answer problem law in things that don't accommodated in legislation. Beside that, neither did the judge see fact law revealed at trial so that judge's decision in finish dispute environment considered no reflects a sense of justice. Failure institution court in finish dispute environment Because apparatus enforcer law (judge) in understand and apply law new limited use logic formal legal regulations and procedures. In the article, "Indonesia Needs Justice Progressive", Satjipto Rahardjo say damage and decline in hunting justice through Modern law is caused by games the procedure that caused it arise the question " whether court That place look for justice or victory ?" Compare what happens United States, who uses *extreme adversary system* in OJ Simson case (1993), because

exists freedom big For playing around with procedure. Samson's defenders did not try prove Samson's innocence, rather highlighting procedure handling the case. By whole for rise from downturn in the field law, that is enforcement and image institution the judiciary does not visit improved perhaps need for do contemplation more in what meaning life social in a legal state. For answered it no enough only use logic and feelings, but more from that can used spiritual intelligence, because operate law no the same with apply letters regulation so course, but must seek and find meaning actually from something the regulations will be carry it out.

The law isn't it book just a phone call make a list of regulations and articles, but something loaded with meaning and value. Enforcement law environment is carried out formal institutions, such as courts and government during This not yet shifted from approach formal and procedural positivists. Apparatus enforcer law in respond and resolve various problem environment showing a formalist, deterministic, and giving attitude opportunity happen behavior exploitative among perpetrator business (investor). Instrument the law used only oriented procedure or not can reliable as the main pillar for overcome environmental problems, temporarily pollution environment in the process of time the more difficult for can controlled. Therefore, approach like that perhaps need quick terminated, replaced with Spirit approach law progressive starts from growing awareness from all those who have concern to environment for understand that problem environment already reach worrying rate. Therefore, it is necessary there is therapy immediate shock (*shock therapy*). rolled out in various efforts and steps in frame give more encouragement strong Again. For overcome it need done movement awareness in a way progressive with involve participation society, authorities enforcer law, and government will duties and responsibilities he answered in complete and solve problems environment. In this ontext for can operate law environment in the middle full society with complexity, required apparatus enforcer law, that is police, prosecutors, and judges who have vision, strong commitment, and adequate knowledge in the field environment. Therefore, that 's it it's time need done recruitment and coaching apparatus enforcer in a way specifically, which will be later expected can operate task special in handle dispute or complaint public problem environment, in the form of destruction or pollution environment. Appointed judge or appointed can just recruited from circles academics or expert law environment, practitioners who know ins and outs problem environment, or circles long- time activist this persistent fight for environment. Beside that, remembering nature and character case different environment with cases other, in a number of discussion *Focus groups* are growing thinking the need for a court model special as the expected court model. Institution court this can stand alone in a way independent or attached to existing courts someone is on duty in a way special handling, checking, and disconnecting dispute problem environment.

A special judge will handle problem dispute environment must have understanding, knowledge and skills more in the field environment. Beside that need done intensive training of special judges will task not quite enough he answered. The judge is expected will capable operate law with high complexity with prioritizing emphasis approach *humanity and ecology*. With thereby desire for realize justice society and justice environment can materialized. Beside the Ministry of the Environment Life (KLH) can do steps breakthrough in effort for do prevention or countermeasures pollution and destruction environment. Some of them KLH can do cooperation with police and prosecutor's office for equalize perception, understanding, and steps in frame do enforcement law environment with form Work The same enforcement law environment with management one roof placed at KLH. Beside that, you can done with method coaching apparatus enforcer law, police, prosecutors, and judges with load material law environment. In the judicial process that handles dispute environment to institution court so in use one of the judges must already certified in the field environment. As step concrete need offered to the Ministry of Environment Life for do work the same with Supreme Court for do coaching judges with related material law environment. From the coaching carried out by judges who have undergo in time certain will obtain certificate of skilled judge law environment. As follow the judges continued will programmed for handle dispute environments in various regions in Indonesia. The judge judged succeed in handle dispute environment will promoted to a higher position tall with hope will become Power pull separately for judges who take part in the coaching program that, after all matter the is obligation law in accordance with the mandate of Republic of Indonesia Law Number 48 of 2009 concerning Justice.

4. CONCLUSION

Protection law environment as arranged in constitution environment life already reflect enforcement good law, but still just there is obstacles that are not can be avoided in straighten up law. For that required enforcer law that has good mental and spiritual so as not to unsteady and affected nuances whatever in straighten up law because rescue environment moment this will impact on the future. Factor damage natural environment that has been damaged by parties who do not responsible answer no only just common actions but is problem existing

morality no controlled by supervision law consequence complexity start from no there is effect deterrent until with problem individual or not walking regulations only limited on paper just. Whereas what is being done apparatus enforcer law with law progressive must accompanied just in frame operate mandate law progressive in enforcement law. It's necessary law progressive in enforcement law criminal environment is has in accordance with objective Republic of Indonesia Law Number 32 of 2009 concerning protection and management environment life.

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