



Preventive and Repressive Efforts for Environmental Damage through Payment of Polluters

Teguh Endi Widodo; Sadjijono; Slamet Suhartono

Faculty of Law Universitas 17 Agustus 1945 Surabaya, Indonesia

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Abstract

Article 87 Paragraph (1) of the UUPPLH regulates "the principle of polluter payment" only covers aspects of environmental recovery and does not accommodate compensation for victims of pollution, even though humans are the victims who feel the most damage to the environment. The formulation of the problem of this research is the effort to protect the environment through the principle of polluter payment. This research is a juridical-normative research that uses primary, secondary, and tertiary legal materials that are analyzed using prescriptive methods. Efforts that can be made in the occurrence of environmental damage are preventive and repressive efforts. Preventive efforts include recovery and compensation because they must be done together. While repressive efforts are carried out in two ways, namely non-litigation (including arbitration, negotiation, mediation, and conciliation). Whereas the only way is litigation which includes settlement in court, both administrative, civil and criminal. The UUPPLH must regulate all of these efforts or at least be clearly linked and make repressive efforts a second attempt if preventive efforts cannot resolve the problem (carried out in stages).

Keywords: *Payment; Pollutants; Efforts*

1. Introduction

The environment has been a human need since he was born or even since he was still in the womb. This is because the environment includes everything outside the physical body. Nevertheless, the environment must not then be left and should not be used. The environment must still be exploited to meet human needs, but certainly in a friendly way so as not to damage its existence and its ecosystem. True environmental problems have become the talk of times and have received attention even internationally. "A meaningful and holistic development and spread to various corners of the world occurred after the United Nations Conference on Human Environment in Stockholm in 1972"¹. "The United Nations by holding a conference to review the results of world development during the decade 1960-1970. Discussions on environmental issues at the meeting were made by representatives of Sweden in 1968. One of the suggestions

¹ Sari Marlina, *Aspek-Aspek Hukum Lingkungan*, Uwais Inspirasi Indonesia, Ponorogo, 2018, p. 2-3.

given was "the need for an international conference on the environment". The United Nations accepted the Swedish Government's offer to hold a United Nations Conference on the Environment in Stockholm in June 1972².

"2012 will be an important momentum in building global awareness for local action. Agenda 21: The Global and Atmospheric Protection Action Plan for 1998-2020 stated in Agenda 21: Indonesia requires the need to promote the restoration of environmental quality"³ Based on this, Indonesia then regulated the environment for the first time in 1982 through Law Number 4 of 1982 concerning Basic Provisions for Environmental Management which was later revised by Law Number 23 of 1997 concerning Environmental Management.

The environment becomes important even philosophically, Pancasila contains philosophical values of the environment. "In Pancasila it can also be applied in environmental management so that we can manage the environment properly and correctly in tackling environmental pollution and damage⁴." "The basic thoughts are formulated more concretely in Article 33 paragraph (3) of the 1945 Constitution which expressly provides" mastery rights "to the state of all Indonesian natural resources and provide" obligations to the state "to use them for the greatest prosperity of the people". This was then regulated again in Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) as a derivative in environmental protection.

UUPPLH becomes a path for the creation of a sustainable environment, one of which is by providing sanctions for environmental destruction actors, that is, based on the principle of "polluter pays" as stipulated in Article 87 paragraph (1) of the UUPPLH which regulates that "Every business responsible and / or activities that carry out acts that violate the law in the form of pollution and / or environmental damage that cause harm to other people or the environment must pay compensation and / or take certain actions ". At first glance the provisions of the principle of "polluter payment" is a strong foundation for sanctions to perpetrators of environmental destruction by giving sanctions "environmental recovery", but the principle escapes to pay attention to "compensation" for people affected by environmental damage.

2. Problem Formulation

The formulation of the problem in this study are as follows:

- Efforts to protect the environment through the principle of polluter payment.

3. Research Method

a. Types of Research

This type of research is juridical-normative.

² I Made Arya Utama, *Hukum Lingkungan*, Pustaka Sutra, Bandung, 2007, p. 68-69.

³ Suparto Wijoyo, *Hukum Perlindungan Lingkungan Hidup*, Airlangga University Press, Surabaya, 2017, p. 2.

⁴ Bambang Yuniarto, *Membangun Kesadaran Warga Negara dalam Pelestarian Lingkungan*, Deepublish, Yogyakarta, 2018, p. 95-96.

b. Problem Approach

The approach used in this study is:

- 1) Statutory Approach (*Statute Approach*)
- 2) Conceptual Approach (*Conceptual Approach*)
- 3) Philosophical Approach (*Philosophical Approach*)

4. Discussion

1) Preventive Efforts to Protect the Environment

Humans who use the environment using a variety of ways, namely conventional and modern ways by utilizing sophisticated technology. The sophistication of technology is in fact used excessively for the benefit of environmental exploitation, resulting in a damaged environment. This is compounded by the growing human population so that environmental exploitation is carried out continuously regardless of environmental conditions. "The increasing human population, the exploration of the environment is also carried out to meet the increasingly complex needs of life. As a result, the balance between interaction with the environment is disrupted as a logical consequence of excessive environmental exploitation"⁵.

Development for the sake of development carried out by humans is carried out without regard to environmental sustainability. "The environment has become increasingly damaged in the form of pollution, and damage to biological resources such as the depletion of forest reserves, the extinction of various types of biota, such as animals and plants, and various diseases resulting from industrial pollution"⁶. This has a complex impact. "These conditions not only cause a decrease in the quality of the environment, but also have a very serious impact on human health and spirit. Poor environmental quality is characterized by, among others: an increase in the area of critical land which currently reaches 21,969,430 Ha, acid rain that has occurred in some areas due to declining air quality, water pollution, and reduced availability of clean water which is thought to be 15-35% per-capita per year"⁷.

Industrial development and businesses that depend entirely on the exploitation of nature and leave waste from these practices become massively damaging dynamics. "As a result of the latest legal civilization of nations called modern. The appearance appears revolutionary in quality to challenge the practice of industrialization that has been favored and admired by humans since the advent of the technological revolution. Since the advent of environmental law and environmental awareness, the practice of industrialization which was originally almost unmatched, then began to face obstacles. Arestation of the freedom of industrialization is carried out by environmental law as through its concept of sustainable development"⁸.

⁵ Marhaeni Ria Siombo, *Hukum Lingkungan dan Pelaksanaan Pembangunan Berkelanjutan di Indonesia*, GPU, Jakarta, 2012, p. 1-2.

⁶ NHT Siahaan, *Hukum Lingkungan dan Ekologi Pembangunan*, Erlangga, Jakarta, 2004, p. 22.

⁷ YLBHI dan PSHK, *Panduan Bantuan Hukum di Indonesia: Pedoman Anda Memahami dan Menyelesaikan Masalah Hukum*, YLBHI, Jakarta, 2007, p. 225.

⁸ Aditia Syapriallah, *Buku Ajar Mata Kuliah Hukum Lingkungan*, Deepublish, Yogyakarta, 2018, p. 44.

Pollutant compensation principle in Article 87 paragraph (1) UUPPLH in principle provides hope for protection of the environment, but does not provide enough protection because the provisions are not accommodating to compensation against human victims.

Whereas the compensation provisions should have at least four objectives, namely:

- a. As a legal effort to restore the circumstances caused by the perpetrators.
- b. As a concrete step in fulfilling someone's rights because of violations that harm someone's rights.
- c. The intended compensation is part of legal sanctions.
- d. The compensation is the implementation and fulfillment of the provisions stipulated by the Law which states that it is an obligation, not a person's right.⁹

Concrete steps to prevent environmental damage need to be done as the most effective step because no damage has occurred and there is no need to impose any sanctions on legal subjects who want to do damage to the environment. Preventive efforts that can be done are as follows:

a. Compensation

Preventive efforts to create a healthy environment are triggered in the principle of compensation, as a follow-up to the provisions of Article 87 paragraph (1) of the UUPPLH, which is a rule that explains that every person in charge of a business and / or activity that violates the law or does a damage must pay compensation certain losses and / or actions. Pollutant provisions pay because it involves the lives of many people and the ecosystems contained therein.

b. Recovery

Not only paying compensation by pollutants, Article 87 indicates certain actions, such as the provisions contained in Article 54 of the UUPPLH, which requires every polluter and / or environmental destroyer to restore environmental functions. Based on this, environmental recovery can be done one of them by paying compensation that has been done by pollutants.

2) Repressive Efforts to Protect the Environment

Problems that arise in applying the principle of pollutants must pay compensation can meet technical obstacles in the field, although in the UUPPLH there is an explanation of Article 87 as explained earlier. As for the opposition to these principles that can be found in the field are:

⁹ N.H.T. Siahaan, *Ekologi Pembangunan dan Hukum Tata Lingkungan*, Erlangga, Jakarta, 1987.

1. The application of the principle through the restoration of a severely damaged environment cannot be completely isolated only by compensation.
2. Damage recovery can not be completely run smoothly as expected, even often find difficulties that have a time duration that is not small and the possibility of other impacts caused indirectly.
3. Estimated costs to cope with damage due to pollution in its recovery and repair often meet with economic waste, because it is not necessarily fully overcome.¹⁰

Repressive efforts that can be done are as follows:

- a. Non-litigation / Alternative Dispute Resolution
- b. The steps that can be taken are based on what is regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Settlement (hereinafter referred to as the APS Law), as follows:
 1. Arbitration
 2. Negotiation
 3. Mediation
 4. Conciliation
- c. Litigation

While litigation efforts are as follows:

1. Administration

Article 87 provides sanctions or administrative penalties for environmental polluters by paying compensation and / or taking actions to protect and preserve the environment that has been polluted. In addition, the authority of judges in its application gives the discretion to judges to determine sanctions or penalties for environmental polluters. The administrative law instrument in the form of sanctions is divided into two namely reparatory and punitive sanctions. The purpose of reparatory sanctions is sanctions that are intended because there is a reaction to violations of norms and aims to restore conditions and the original situation or based on legal provisions. Whereas punitive sanctions are sanctions aimed at punishing someone¹¹

2. Civil Code

¹⁰ Siti Sundari Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional*, Airlangga University Press, 1996, p. 253.

¹¹ Latifah Amir, Analisis Yuridis Hak Gugat Pemerintah Terhadap Pelaku Pencemar/ Perusakan Lingkungan Hidup Berdasarkan UU No. 32 Tahun 2009, *Jurnal Penelitian Universitas Jambi Seri Humaniora*, Vol. 15, No. 2, Juli-Desember 2013, p. 72.

Repressive law enforcement can be seen in the absolute responsibility provisions that must be carried out by the polluter to carry out the burden of paying compensation. Repressive law in question is after the act of violation so as to require the offender to pay compensation in accordance with mutually agreed upon and restoration of pollution or destruction. and the obligation to pay compensation for pollution and environmental damage is regulated in Article 1365 of the Civil Code and is certainly complemented by the application of the *strict liability* principle contained in Article 88 of the UUPPLH.

3. *Crime*

Crimes in environmental destruction or pollution have a relationship between one party and another in law enforcement, so that the legal provisions and sanctions in question can run properly. This means that the application of criminal law in environmental issues must be implemented in a harmonious, structural, substantial, structural manner in the criminal justice system both regulated in Law Number 8 of 1981 concerning Criminal Procedure Law and UUPPLH.

5. *Closing*

Based on the discussion of these problems, it can be concluded as follows:

1. *Preventive Efforts to Protect the Environment*

Preventive measures are an effective step because they are carried out before environmental destruction occurs. In addition, preventive measures are also carried out because the principle of polluter pays, which in principle only covers environmental recovery and does not accommodate compensation for human victims. Preventive efforts that can be done are in the form of compensation and restoration of the damaged environment.

2. *Repressive Efforts to Protect the Environment*

3. *Repressive efforts can be done in two ways, namely non-litigation (including arbitration, negotiation, mediation, and conciliation). Whereas, the only way is litigation which includes settlement in court, both administrative, civil and criminal.*

Based on the results of the study, there are things that need to be recommended related to these problems, namely preventive efforts should be clearly regulated in the UUPPLH and included in the principle of polluter pays not only in the form of recovery, but also in the form of compensation. repressive efforts should be used as a second or second solution if preventive efforts are unable to be realized.

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