Law Enforcement of Environmental Pollution and Damage

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Abstract. Each year, environmental pollution and damage is always increasing and tends to be out of control. The use of administrative and civil sanctions is considered ineffective, however to implement criminal sanctions is still difficult. Therefore, the purpose of this study is to analyze the regulation of criminal offense in Law No. 32 of 2009, factors that influence the enforcement of environmental crime, and the projection of enforcement of environmental crime in the Criminal Code Bill. The research showed that in Law no. 32 of 2009 some offense formulated as material offenses and some others constituted formal offenses, some provisions were formulated in ultimum remedium, and a small part in primum remedium. There are factors that influence law enforcement of environmental crime which actually becomes a weakening factor in terms of legal structure, legal substance and legal structure. However, the legal substance of the Criminal Code Bill may weaken enforcement of environmental criminal law in the future.

1. Introduction
The environmental problem that must be faced by many countries in the world, including Indonesia, is pollution and environmental degradation. Even though Law No. 32 of 2009 concerning Environmental Protection and Management provide diverse provisions in form of administrative, civil or criminal sanctions in, but environmental pollution and degradation each year is still increasing and tends to be uncontrollable. This is where humans provide a very significant causative factor in the damage.

According to Siahaan, Science and Technology has created stimulus for humans to not only fulfill their needs, but also the needs to achieve more satisfaction than desired needs. Uncontrolled desires will have an impact on the environment, and environmental systems become the first victims of desire patterns [1]. The increasing pace of development marked by industrial expansion is tackling the effects of pollution and environmental damage.

The problem of environmental crime in Indonesia is mostly done by corporations and usually the damage it causes is on a large scale [2]. Actions of individuals and groups of people also contribute to the aggravation of environmental degradation. Nowadays more people declare the needs of environmental sustainability with implementation such as "go green" action. However, this action is only run by a handful of people and still very few corporations that have work programs and are committed to controlling environmental impacts. According to Deny Bram, [3] that on the other hand regulations and or application of regulations are lacking or even not used at all. Ironically, this actually happened when Indonesia was actively committed to various international contract and agreements on environment issue both regional and international levels.
In reality, means to protect the environment through administrative sanctions are less effective in reducing or stopping environmental pollution and degradation in Indonesia. Even using civil sanctions in the form of compensation is still not optimal in reducing pollution and environmental degradation in Indonesia [4]. Therefore, acts of pollution and environmental degradation need stricter means through the application of criminal sanctions, so that in combating environmental criminal offenses it is necessary to implement criminal sanctions with primum remedium principle [5]. Shifting from the application of environmental criminal law to the application of primum remedium is a necessary means in reducing environmental pollution and degradation in Indonesia [4]. However, in practice, enforcement of environmental crime is still oriented in ultimum remedium, therefore it's still difficult to impose criminal sanctions on the perpetrators. In such conditions, rather than creating better form enforcement of environmental crime substitution provisions formulated in the Draft Law of the Criminal Code (RUU KUHP) weakens it instead.

Hence, the problem that will be discussed in this article is how criminal offence is regulated in Law No. 32 of 2009, factors that influence the enforcement of environmental crime, and the projection of enforcement of environmental crime in the Criminal Code Bill.

2. Methodology
The research methodology used is qualitative, with normative juridical approach. Sources and types of data are secondary data consisting of primary, secondary and tertiary legal materials, with qualitatively analysis.

3. Result and Discussion
3.1 The regulation of criminal offence of pollution and environmental degradation according to Law Number 32 of 2009 concerning Environmental Protection and Management

Environmental Crime or Environmental offense is an order and prohibition from laws to legal subjects which if violated are threatened with the imposition of criminal sanctions, including imprisonment and fines with the aim of protecting the environment as a whole including every elements in said environment such as animals, land, air, and water and humans. Therefore, with this definition, environmental offenses are not only criminal offense formulated by Law Number 32 of 2009 concerning Environmental Protection and Management, but also criminal offense formulated in other statutory regulations throughout the formulation of the provisions it is intended to protect the environment as a whole or its parts.

Criminal law can be categorized into two, formal offense and material offense. Material offense focuses on undesirable consequences, while formal offense emphasizes prohibited acts [6]. As for the regulation of criminal acts in Law No. 32 of 2009 can be categorized that in Articles 98, 99 and 112 are the formulation of material offenses, while in Articles 100-111, 113-115 are formal offenses.

Article 98 and 99 of Law No. 32 of 2009 formulate that environmental offenses is an acts whether intentionally or negligently resulting in exceeding ambient air quality standards, water quality standards, sea water quality standards, or environmental damage criteria, as well as causing people injuries, serious injuries and / or human health hazards or death of people. Meanwhile, Article 112 formulates an environmental offense as a deliberate official's authority not to carry out environmental controls and permits resulting in environmental pollution and / or damage resulting in loss of human lives. Violations of formal offenses in Law No. 32 of 2009 are found in Articles 100 to 111 and Articles 113 to Article 115. As for the formulation of the implementation of criminal sanctions is carried out in mostly ultimum remedium and a small portion in primum remedium.

3.2. Factors That Influence Enforcement of Environmental Crimes

According to Keith Hawkin, as quoted by Koesnadi Hardjasoemantri that environmental law enforcement can basically be seen from two systems or strategies characterized by regulation and sanctions (sanctioning with penal style) [7]. Weakening factor of environmental criminal law enforcement in general, according to Achmad Santosa, include: (a) lack of coordination in gathering
information (investigations and prosecutions) carried out by different agencies, which results in very time-consuming coordination especially if differences perception, happened and the police and prosecutors are basically not agencies that specifically handle environmental cases; (b) the absence of expert judge institutions (ad hoc judges) especially environmental experts as members judicial panel in order to overcome the judges’ illiteracy in the field of environmental law; (c) lack of guidelines for law enforcement and environmental management as a reference for law enforcement officials; (d) Limited public access to information on the management status of an activity; (e) Integrity of the judiciary [8].

Success for law enforcement requires all components to work in harmony. There are three components in the legal system as stated by Lawrence Meir Friedman, that law is a combination of legal structure, legal substance, and legal culture components [9]. Regarding this issue Lawrence Meir Friedman further explained as follows. First, in terms of legal structure there are still many law enforcement agencies lack ability to solve cases properly, which is also influence the difficulty of proving environmental crime cases. Second, in terms of legal substance of environmental law there are handful number of operational policies that contradict the principles of environmental protection and management in Law Number 32 Year 2009 and other laws relating to environmental management. Third, the component of legal culture or culture in terms of external legal culture, people in general lack of knowledge and understanding related to environmental law and their apathetic attitude in responding to or reporting allegations of environmental crimes. Internal legal culture is related to the culture of law enforcement, commitment and attitude in handling environmental cases.

3.3. Proyeksi Projection of Environmental Law Enforcement in the Criminal Code Bill

Enforcement of environmental criminal law in its development has progressed since Law no. 32 of 2009 pass into law which applies criminal law enforcement with premium remedium principle [8]. However, in practice its rare for criminal sanctions is imposed as a means to enforce environmental law, worsen by the legal substance of the Criminal Code Bill that weakens enforcement of environmental criminal law. The formulation of environmental criminal sanctions in the Criminal Code Bill is more lenient which tend to use alternative sanctions system such as imprisonment or fines. On the contrary, Law No. 32 of 2009 uses cumulative system of imprisonment and fines simultaneously. Therefore, it’s hard for corporations members to be sentenced with imprisonment, making it more likely fines will be more applicable to offence done by both people and corporations.

In the Criminal Code Bill no longer uses the threat of a special minimum sentence, on the other hand Law No. 32 of 2009 uses it. This is certainly doesn’t reflect government's commitment in dealing with environmental degradation and pollution in Indonesia in the first place. And on the other hand, it is possible that in the future it create disparities in punishment.

Unlawful element is formulated in the Criminal Code Bill, whereas Law No. 32 of 2009 concerning Environmental Protection and Management does not instead uses fault based liability with the wording "intentionally". Even though unlawful element already formulated before amended in Law No.23 of 1997 concerning Environmental Management, but then then abolished with Law No. 32 of 2009 pass into law.

In Law No. 23 of 1997, unlawful element is formulated in Article 41. Definition of unlawful requires that the perpetrators of a criminal act knowingly violate a law that is threatened with criminal sanctions. If the perpetrators know and understand that the environment must be protected and preserved, but the perpetrators continue to act to pollute and / or destroy the environment, the perpetrators can be held liable for criminal liability. Then it must be proven true that there has been pollution or degradation to the environment [10]. Likewise in the Criminal Code Bill, it is also needs to be proven that an actions have resulted in pollution or Environmental Degradation that is not in accordance with the criteria for environmental quality standards and environmental damage standards. With the inclusion of unlawful element in Criminal Code Bill, this still spark a pros and cons [11].

In practice is indeed not easy to apply the principle of primum remedium in environmental crime because of the difficulty to prove. However, the Criminal Code Bill does not confirm whether or not
the principle of ultimum remedium and primum remedium can be applied to environmental crimes. As a comparison, the application of criminal sanctions with ultimum remedium principle is regulated in the provisions of Article 100 of Law No. 32 of 2009, stated that criminal offenses related to violations of waste water quality standards, emission quality standards, and quality standards can only be imposed if administrative sanctions that have been imposed are not obeyed or for violations that have been committed multiple times. This means that new criminal sanctions can only be utilized after other form legal sanctions, such as administrative sanctions, are not effective. Whereas the premium remedium application includes the management of hazardous and toxic waste (B3 waste) as regulated in Articles 102 and 103 of Law No. 32 of 2009 [8], and also the damping as regulated in Article 104. Furthermore, not all types of environmental crimes listed in Law No. 32 of 2009 is adopted in the Criminal Code Bill. This further shows the lack of commitment in overcoming environmental degradation and pollution, so that in the future it can have implications for law enforcement. Regarding corporate criminal liability, there are still pros and cons. Given the definition of corporate criminal liability is yet to be cleared [12].

4. Conclusion
The problem of pollution and environmental degradation in certain actions can be categorized as an environmental crime, which in Law No. 32 of 2009 is partly formulated as material offenses and others are formal offenses. Whereas the application of criminal sanctions is mostly formulated in ultimum remedium, and a small number is applied in primum remedium. There are factors that influence law enforcement of environmental crime, which actually becomes a weakening factor, in terms of legal structure the lack of coordination between law enforcement agencies and the ability of law enforcement officers in the environmental field so that environmental crime is increasingly difficult to prove. There are still weaknesses in the aspect of legal culture, including people’s apathetic behavior in respond to environmental crimes, as well as the culture of law enforcers themselves in handling environmental cases. Furthermore, the legal substance in the Criminal Code Bill also weakens the enforcement of environmental criminal law, including the use of alternative system sanctions in the form of imprisonment or fines, no longer using the threat of a special minimum sentence, not all types of environmental criminal acts are covered in the Criminal Code Bill, unlawful element in the Criminal Code Bill, as well as other forms of weakness.

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