ENVIRONMENTAL CRIMES IN INDONESIA AND THE ISSUE OF PROPORTIONALITY IN FINE IMPLEMENTATION

NATHALINA NAIBAHO  
Universitas Indonesia, Jakarta, Indonesia  
Email: nathalina.mh@ui.ac.id

ANINDITA YULIDANINGRUM PURBA  
Universitas Indonesia, Jakarta, Indonesia  
Email: anindita.yulidaningrum@ui.ac.id

Abstract: This article discusses the imposition of fines for environmental crimes cases in Indonesia. Due to the absence of law, there are explanations gaps concerning indicators that can be considered when imposing fines on environmental crimes. This study discusses three research questions using the desk research: First, how has Indonesia regulated the application of fines for environmental crimes in Indonesia; Second, what are the indicators to be considered to determine proportional fines as sentencing for environmental crimes in Indonesia; and Third, how has Indonesia applied fines as sentencing for environmental crimes within Indonesian courts. In answering these questions, the study conducts a comparative analysis between the practices of the UK and Singapore regarding environmental crimes. The results of this study indicate that sentencing was ultimately imposed by fulfilling the elements required in the article, added with aggravating and mitigating factors associated with the facts in the trial. In addition, the judgment did not provide further explanation as to how the fine was determined. Therefore, this creates urgency for the Supreme Court to formulate a particular sentencing guideline for handling environmental crimes. The guideline must include provisions on what indicators and stages need to be considered by judges while imposing fine in factual cases.

Keywords: sentencing, environmental crimes, fines, proportionality.

Abstrak: Artikel ini membahas tentang penjatuhan pidana denda dalam kasus tindak pidana lingkungan hidup di Indonesia. Mengingat undang-undang tidak memberikan penjelasan lebih lanjut mengenai indikator yang dapat dipertimbangkan oleh hakim manakala menentukan pidana denda dalam tindak pidana lingkungan hidup. Dengan menggunakan metode penelitian normatif, penelitian ini membahas permasalahan yang dituangkan dalam tiga pertanyaan penelitian: Pertama, bagaimana pengaturan mengenai sanksi pidana denda dalam tindak pidana lingkungan hidup di Indonesia; Kedua, apa saja indikator yang dapat dipertimbangkan untuk menentukan penjatuhan pidana denda yang proporsional dalam pemidanaan atas tindak pidana lingkungan hidup di Indonesia; dan Ketiga, bagaimana penerapan penjatuhan sanksi pidana denda tindak pidana lingkungan hidup dalam praktik peradilan di Indonesia. Penelitian ini turut membandingkan ketentuan, pedoman pemidanaan, dan penerapannya di Inggris dan Singapura terkait tindak pidana lingkungan hidup. Temuan penelitian ini menunjukkan bahwa pemidanaan dalam kasus pada akhirnya dijatuhi dengan pemenuhan unsur-unsur pasal semata, ditambah dengan faktor memberatkan dan meringankan yang diakaitkan dengan fakta dalam persidangan. Putusan Hakim juga tidak mencantumkan penjelasan lebih lanjut tentang bagaimana besaran pidana denda itu ditentukan. Karenanya, terdapat suatu urgensi bagi Mahkamah Agung untuk
menyusun suatu pedoman pemidanaan khusus untuk penanganan tindak pidana lingkungan hidup. Pedoman pemidanaan ini mencakup ketentuan tentang indikator apa saja yang perlu dipertimbangkan oleh hakim dalam menentukan pidana beserta tahapan yang perlu dilalui dalam hal pemidanaan.

Kata Kunci: pemidanaan, tindak pidana lingkungan hidup, pidana denda, proporsionalitas

I. INTRODUCTION

The imposition of penalty is an essential and exciting issue in the discourse on the science of law. Imposition of penalty is also an area in the science of law where the state acts in a most coercive and intrusive way. Thus, the imposition of penalty could not be separated from a criminal sanction used to maintain the existing norms in the law. The criminal sanction which provides plight has put the criminal law as ultimum remedium, meaning that the criminal law is only used if the efforts of other laws are not afforded and hence the criminal law known as the subsidiary law. According to Santoso, a criminal is a formal reaction of the country through the judge’s decision against any person or corporation violating the norms. They are threatened with a criminal sanction in legislation; the consequences to the perpetrator are deprivation of liberty, property, or other consequences specified by law.

Types of criminal sanctions can be sentenced to a defendant stipulated in Article 10 Criminal Code (known as KUHP). In Article 10 of the KUHP, various crimes are grouped into principal and additional crimes. The principal crime consists of imprisonment, confinement, and fines. Meanwhile, additional crime includes revocation of certain rights, confiscating certain goods and announcing the judge’s decision. Indonesia does not have many issuing regulations concerning fines and the formulation of a policy on applying fines outside of the KUHP. The implementing regulation is one of the fundamental components to ensure the provisions in the legislation can be implemented. The implementing regulation is used as a guide for Law Enforcement Officers (APH) in carrying out the technical provisions of the law. The imposition of fines relies on KUHP Articles 30 and 31 regarding KUHP Article 103. The fact that fines are the principal crime that judges rarely impose, especially in judicial practice in Indonesia, could not be denied. However, fines could be an alternative to imprisonment considering the overcrowded prisons in Indonesia.

One of the crime provisions forms in the act of non-criminal is Law No. 32 of 2009 on the Protection and Management of Environment (UUPPLH). UUPPLH is a significant law regulating the provision of environmental crimes in Indonesia. Although fines of environmental crimes in UUPPLH are significant, with at least IDR 1,000,000,000.00 and the most IDR 15,000,000,000.00, compared to fines in other crimes regulated in the KUHP, the absence of implementing regulations or guidelines on the imposition of fines resulting in the existence of a problem in the imposition of

---

1 Mirko Bagaric, *Punishment and Sentencing: A Rational Approach*, (London: Cavendish Publishing Limited, 2001), p. 4.
2 Topo Santoso dan Eva Achjani Zulfa, eds., *Hukum Pidana Materiil dan Formiil*, (Jakarta: USAID; The Asian Foundation; Kemitraan Partnership, 2015), p. 16.
3 Topo Santoso, *Hukum Pidana Suatu Pengantar*, (Depok: Rajawali Pers, 2020), p. 161.
4 Lihat Sistem Database Pemasyarakatan berupa Data Terakhir Jumlah Penghuni Per Kanwil pada http://smslap.ditjenpas.go.id/public/grl/current/monthly
fines in cases of environmental crime. There is no specific guideline in the imposition of fines or certain indicators to be considered by the Panel of Judges before imposing sanctions in fines or specifying the amount of the fines. Moreover, the environmental crimes tend to rising each year based on the environment and forestry data statistics in 2018, issued by the Ministry of Environment and Forestry. Thus, there should be a discourse about the proportionality of the imposition of fines in environmental crimes.

Normative research was conducted to examine the written law's norms in the legislation and court decisions. Furthermore, the problems are described in the following research questions: First, how has Indonesia regulated the application of fines for environmental crimes in Indonesia?; Second, what are the indicators to be considered to determine proportional fines as sentencing for environmental crimes in Indonesia?; and Third, how has Indonesia applied fines as sentencing for environmental crimes within Indonesian courts?. In addressing the problems, the normative research applied relied on a written law in the form of applied legislation, the theory of law, the concept of law, and the doctrine or opinion of an expert. This research method was used to address the problem based on the positive law and the theory and supplementary doctrine. The data was from a secondary document with the experts’ interviews, relevant to this article’s topic and the study in Singapore and the UK.

II. DISCUSSION
A. Fines in the Environmental Crimes in Indonesia

Environmental crimes are regulated in Law No. 32 of 2009 on the Protection and Management of Environment in Chapter XV that discusses the provisions of Crimes related to the Protection and Management of Environment. The regulation of environmental crimes is one of the efforts to uphold environmental law. The rule of environmental law is an attempt to achieve adherence to the rules and requirements of the provisions of the environmental law, which applies generally and individually. The implementation could be done by monitoring and implementing administrative sanctions, penal law, and civil. In general, the qualification of the offense of the environmental crime, which is in Chapter XV Article 97 UUPPLH, is categorized as a crime. The categorization of the criminal offense carries some consequences in its enforcement, as follows:

a. the existence of the trial and inclusion concept in each offense,
b. the expiration calculation that is longer than the violation,
c. the threat of criminal deprivation of liberty like imprisonment and fines could be imposed simultaneously.

Along with the enactment of Law No. 11 of 2020 on Job Creation per 2 November 2020, the criminal sanctions provisions in UUPPLH are also changed. UUPPLH sets fines for each type of environmental crime at least IDR.500,000,000.00, and the most are at IDR15,000,000,000.00. UUPPLH also regulates six types of environmental crimes, as follows:

---

5 Kementerian Lingkungan Hidup dan Kehutanan Republik Indonesia, Statistik Lingkungan Hidup dan Kehutanan Tahun 2018, (Jakarta: Pusat Data dan Informasi KLHK, 2018), p. 383.
6 Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif, (Jakarta: Rajagrafindo Persada, 2007), p. 14.
7 Laode M. Syarif dan Andri G. Wibisana, eds., Hukum Lingkungan Teori, Legislasi dan Studi Kasus, p. 495.
8 Ibid., p. 215.
a. Criminal Acts on Exceeding Quality Standards  
b. Criminal Acts on Licensing, Waste, B3 and B3 Waste  
c. Criminal Acts on Forest/ Land Fires  
d. Criminal Acts by State Administrative Officials  
e. Criminal Acts on Monitoring Information and Enforcement Law  
f. Criminal Acts on Administrative Supervision and Sanctions  

Provisions corporate crimes are also arranged in UUPLH in Articles 116 to 119. Furthermore, the imposition of fines may be exacerbated by one-third if directed to a leader who commits criminal that performed by, for, or on behalf entity enterprises as stipulated in Article 117 jo Article 116 paragraph (1) letter b UUPLH. However, there is no particular guideline on how the judge can impose proportional fines in environmental crimes. Mertokusumo explained that reading the legislation could not be done simply by reading the formulation (Naar de letter van de wet). Yet, it must also be associated with the explanation, preamble provisions of other kinds of that legislation or others. In the absence of a guideline, particularly in the imposition of fines for the offense of environmental crimes, fines divergent, and even the amount is below the minimum fine that UUPLH has set.

B. Indicators to Determine the Imposition of Proportional Fines in Environmental Crimes in Indonesia

The previous session discusses the definition and categorization of environmental crimes in UUPLH. At the same time, this part will elaborate on the indicators in determining the imposition of proportional fines in environmental crimes. Furthermore, this section also compares the law of environmental crimes in the UK and Singapore and explains the sentencing guidelines in each country. This discussion aims to compare the primary analysis in this article regarding the proportionality of the imposition of fines in environmental crimes. By outlining the arrangement acts of criminals and the sentencing guidelines, there is an overview of how the criminal sanction is positioned and any indicators that helped consider the imposition of sanctions.

The issue of proportionality in the imposition of criminal

Proportionality comes from the word "proportional," which is defined as "according to proportion; comparable; and balanced" in the Indonesian Language Dictionary. In the context of criminal law, proportionality in the imposition of punishment is an issue that will continue to evolve and not endlessly discussed. In short, the principle of proportionality is that the imposed penalties should suit the crime. This principle aims to withstand excessive punishment, arbitrary and capricious, by requiring the punishment was not allowed to exceed the severity of the action. In proportionality theory, Andrew von Hirsch asserted that the purpose of the imposition of sanctions in the criminal law is to punish the defendant in proportion to the offense of criminal that they do. The more severe criminal acts, the more the perpetrators should be blamed, and thus the penalties are more appropriate. The seriousness involves caused losses, at stake or threatened by crime, and fault actors in doing crime.

9 KBBI, "Proporsional," https://kbbi.web.id/proporsional accessed on 18 November 2020.  
10 Mirko Bagaric, Punishment and Sentencing: A Rational Approach, (London: Cavendish Publishing Limited, 2001), p. 165.  
11 Ibid.
Orientation of Environmental Law Enforcement

Regarding the orientation of the law of environmental crime, it can be seen that the main rule of law environment, from the terms of administrative, civil, or penal, is the restoration of the environment. Considerations of proportionality can be used to impose sanctions to restore the environment with a succession. It is considered how the rule of law can lead to a deterrent effect, and if there is a result of crime in the form of pollution or damage, there is a guarantee that the environment can be restored based on the imposed sanctions.12

Environment Loss

The victim is the environment. One of the ways to measure the severity is to look at the environmental loss that occurs in each crime. Regarding the environmental loss, mentioned in the explanation of Article 90 paragraph (1) UUPPLH that the environmental loss is damage that arises as a result of pollution and damage to the environment, which is not a private belonging. The environmental loss will be discussed in this session as if discussing acts of environmental crime.

When discussing environmental loss, an exciting question is how to "monetize" damage or pollution of the environment. Because of the science of the economic environment, an analysis of cost-benefit is used for assessing an environment loss.13 The cost-benefit analysis is often used in the environmental policy to balance the quality aspects of the environment with the other interests in determining the optimal quality of the environment in terms of ratings of the environmental loss. Analysis of cost-benefit also can be used as the optimal standard of environmental quality has been determined. The benefits and costs are measured in connection with the protection and utilization of the environment to monetize the environmental damage or pollution using cost-benefit analysis. However, the weakness of this analysis is that it does not indicate who is getting benefits and who had to pay fees. In other words, the cost-benefit analysis does not pay attention to the distributional problem.14

In Indonesia, the environmental loss has been governed specifically in the Minister of Environment and Forestry Regulation No. 7 of 2014. Yet, the point is not to be applied in the criminal law context because part of the regulation mentioned that it is formed to carry out the provisions of Article 90 paragraph (2) UUPPLH. Article 90 UUPPLH regulates the right to sue governments related to a lawsuit loss replace and the particular act, which is the realm of civil law. Various kinds of calculation methods in compensation losses depend on the type of loss. The calculation process in the Minister of Environment and Forestry Regulation No. 7 of 2014 is a derivative of the UUPPLH.

Judge's Views on Law Enforcement of Environmental Crime

As officers of justice who were given the authority by law to hear a case, it is the task of the judge to receive, examine and decide a case based on the principles of

---

12 Interview with Prof. Andri Gunawan Wibisana, A professor in Environmental Law at The Faculty of Law Universitas Indonesia (FH UI) on 27 April 2021.
13 Michael G. Faure dan Roy A. Partain, Environmental Law and Economics Theory and Practice, (Cambridge: Cambridge University Press, 2019), p. 107.
14 Ibid., p. 110.
independence, fairness and not take sides in a regulated court in law.\textsuperscript{15} Judgments of punishment for wrongdoing, harm, and the need for action are drawn from case information and filtered through the knowledge and attitudes of judges.\textsuperscript{16} How judges examine, organize, interpret, and use information about a case becomes pivotal to be explained in the imposition of penalties. The previous section described the orientation of the rule of environmental law and environmental loss. In this part, the environmental judges' view against the proportionality of the imposition of criminal penalties in the environmental case.

In enforcing environmental law, first, it is necessary to understand that judges who handle environmental criminal cases are judges who have been certified as environmental judges. The purpose of the certification is to show the qualification level, understanding competence, and concept mastery that has been given during the educational period and the process of certification of the judges. Their experiences are expected to assist the judges in deciding the environmental crimes.\textsuperscript{17} In addition, the obligations related to the environmental case that must be done by the certified environmental judge and has been appointed by the Chairman of Supreme Court regulated in Article 2 and Article 1 of Supreme Court Decision No. 134/KMA/SK/IX/2011 on Certification of Environment Judge. The appropriate proportion is implemented when the judges consider whether the criminal can be imposed as an alternative or cumulative in imposing the sentence. Furthermore, the facts related to the weight and severity of the crime and the impact will help judges impose the criminal, particularly in the context of the offense of environmental crime.\textsuperscript{18} In addition, the criminal could not be constituted by matters outside of the fact and the applied law.

Regarding the issue of proportionality in the imposition of fines, each judge has a different view. Still, the proportion of the imposition of fines should be seen by the fact and settled in a case per case carefully. Furthermore, the main point is how a decision can resolve a case and be fair for all parties involved.\textsuperscript{19}

The following part discusses rules in the UK and Singapore which could determine the indicators to be considered in the imposition of proportionate fines in the case of environmental crimes.

**Guidelines for Punishment of Environmental Crimes in the UK**\textsuperscript{20}

Environmental crimes in the UK were regulated in various laws of the environment and the judicial decision. Penalties for violations of most significant environmental legislation are a prosecution against an individual or a company (organization). Penalties include fines and imprisonment. The company's director and officials could be prosecuted if the offense was done with their consent or intention or

\textsuperscript{15} Muh. Yusuf, et. al., "Role of The Judge in Creating Justice as an Instrument of Social Change," *University of Bengkulu Law Journal (Ubelaj)*, Vol. 1 Issue 1 (October, 2016), p. 15.

\textsuperscript{16} Arthur J. Lurigio, et. al., *Understanding Judges Sentencing Decisions* dalam Linda Heath, et. al., eds., *Applications of Heuristics and Biases to Social Issues*, (New York: Springer Science Business, 1994), p. 91.

\textsuperscript{17} Interview with Rudi Suparmono, S.H., M.H. The Chairman of the Kendari District Court and Secretary of Environment group at Supreme Court, on 26 April 2021

\textsuperscript{18} Ibid.

\textsuperscript{19} Ibid.

\textsuperscript{20} Sentencing Council, *Environmental Offences Definitive Guideline*, (Inggris: Sentencing Council, 2014), pp. 15 – 25.
caused by their negligence.\textsuperscript{21} Guidelines of Punishment Act of Environmental Crime in the UK published by the Sentencing Council with the title of Sentencing Council: Environmental Offenses Definitive Guideline (1 July 2014).\textsuperscript{22} In the guidelines of punishment of environmental crime for individuals, twelve stages must be passed to impose criminal against the organization, namely:\textsuperscript{23}

1. First Stage: Determine compensation. Payment of compensation made by the offender for personal injury, loss, or damage that arises from crimes. Reasons must be given if a compensation order is not made by the Court (Section 130, Powers of Criminal Courts Act 2000).\textsuperscript{24}

2. Stage Two: Confiscation (performed by order of the Crown's Court at the place where the case was tried or carried out). This stage is following Sections 6 and 13 of the Proceeds of Crime Act 2002.\textsuperscript{25}

3. Stage Three: Determine the crime category by considering the errors and dangers caused by the crime. In determining the category of criminal, it should be paid more about the categories of errors and dangers.\textsuperscript{26}

4. Stage Four: Determine the starting point and the range of categories related to the fine to be imposed. The determination is based on the organization's size (superb, medium, small, and micro), financial condition, and factors that aggravate and alleviate the crimes. The court essentially has to determine the level of fines following Section 164 of the Criminal Justice Act 2003, which requires that the penalty reflect the seriousness of the offense of the criminal by considering the financial aspect of the suspect. The penalties level reflects how far the offender falls from a required standard.\textsuperscript{27} The court must refer to the table that has been set in the guidelines for any size organization. The beginning point can be adjusted to the top or bottom depending on aggravating and alleviating the crimes. The case sets in the guidelines (what is set in the guidelines does not limit other factors considered).\textsuperscript{28}

5. Stage Five: Ensure that the combination of command financial (compensation, foreclosure if appropriate, and fines) eliminates the benefits of the economy, which is obtained from the action that is done, reaching the suitable extra penalty, and has a deterrent effect.\textsuperscript{29}

6. Stage Six: Check whether the fines were calculated based on the principals' turnover and proportionate. The nominal should be sufficiently large to have an economic impact on companies and enough to bring management and shareholders obedient to the rules.\textsuperscript{30}

7. Stage Seven: Consider other factors that may require adjustment of the proposed fine.\textsuperscript{31}

\textsuperscript{21} Ibid.
\textsuperscript{22} Accessible at http://www.sentencingcouncil.org.uk/wp-content/uploads/Final_Environmental_Offences_Definitive_Guideline_web1.pdf
\textsuperscript{23} Sentencing Council, \textit{Environmental Offences Definitive Guideline}, pp. 3 – 14.
\textsuperscript{24} Ibid., p. 4.
\textsuperscript{25} Ibid., p. 4.
\textsuperscript{26} Ibid., p. 5.
\textsuperscript{27} Ibid., p. 6.
\textsuperscript{28} Ibid., p. 11.
\textsuperscript{29} Ibid., p. 12.
\textsuperscript{30} Ibid., p. 12.
\textsuperscript{31} Ibid., p. 13.
8. Stage Eight: Consider the other factors that show a reduction in crime, such as the defendant assisting in the case’s settlement.32
9. Stage Nine: Reduction of punishment if there is a guilty plea.33
10. Stage Ten: Consider ancillary orders. Ancillary orders include forfeiture of the vehicle, deprivation of property, and remediation.34
11. Stage Eleven: Consider the principle of totality. The principle of totality means that the court has to consider punishing offenders for more than one criminal offense or where the perpetrator is already undergoing punishment. The court must consider whether the total sentence is fair and proportionate.35
12. Stage Twelve: The court is obliged to give reasons and explain the impact of the imposed sentence by Article 174 of the Criminal Justice Act 2003.36
The stages have to be fulfilled to determine the proportionality of nominal fines imposed for the corporation.

Guidelines for Punishment of Environmental Crimes in Singapore

In deciding to discuss the types of specific penalties and the duration of the penalty, and the reasons behind the charges, Attorney Prosecutor will consider four principles of essential punishment (retribution, deterrence, prevention, and rehabilitation)37 and some of the following factors:38
1. Prescription penalties for the criminal and maximum or minimum limit of penalties.
2. Factors related to the crime such as the nature, impact, and prevalence of crime.
3. Factors related to the offender as if the perpetrator regret. It could be whether the perpetrator has a poor record or never commit a similar violation, whether the perpetrator has been doing voluntary restitution or compensation to the victim, whether there are circumstances related to the offender that may reduce mistakes in doing crime.
4. Total demand. The perpetrator facing many charges may have been convicted on all of them or may have charges he considers to approve.
5. Criminal which is accepted by defendant’s accomplice, if available.
6. Sentences are imposed in similar cases and court decisions.

Lastly, courts can impose several types of sentences in Singapore, categorized according to the main principles of punishment. In terms of fines, they are imposed depending on the type and severity of the crime. In Singapore, the punishment involves balancing the complexity of all the facts and circumstances of cases, and the duty to determine proportionate penalties is on the judges.

Table 1

---

32 Ibid., p. 13.
33 Ibid., p. 13.
34 Ibid., p. 13.
35 Ibid., p. 14.
36 Ibid., p. 14.
37 Ministry of Law, Guide on Sentencing in Singapore. (Ministry of Law: Singapore, 2021), hlm. 7. https://www.agc.gov.sg/docs/default-source/default-document-library/guide-on-sentencing-in-singapore-(final).pdf diakses 25 April 2021.
38 Attorney-General's Chambers, “Sentencing in Singapore.” https://www.agc.gov.sg/legal-processes/sentencing-in-singapore accessed on 25 April 2021.
The Comparison among UK, Singapore, and Indonesia related to the Regulation of Environmental Crimes, Guidelines for Punishment and Indicators in the imposition of criminal sanctions

| Comparison                                      | UK                                                                 | Singapore                                      | Indonesia                                      |
|-------------------------------------------------|----------------------------------------------------------------------|------------------------------------------------|------------------------------------------------|
| Regulation of Environmental Crime               | The Environmental Protection Act 1990, the Environmental Permitting (England and Wales) Regulations 2016, the Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (SI 2015/810) (ED Regulations), The Regulatory Enforcement and Sanctions Act 2008, etc. as well as the decisions of other judges. | Arranged in seventeen legislations: Environmental Protection and Management Act (EPMA), Environmental Public Health Act (EPHA), Prevention of Pollution of the Sea Act (PPSA), Transboundary Haze Pollution Act (THPA), and others. | Law No. 32 of 2009 on the Protection and Management of Environment (UUPPLH). There are other rules regarding environmental crimes in other sectors of law. |
| Guidelines for Punishment of Environmental Crimes | Regulated by the Sentencing Council in the Sentencing Council: Environmental Offences Definitive Guideline (1 July 2014) | Not explicitly regulated, but there are guidelines for sentencing in general, which the Singapore Ministry of Law published | Not set |
| Indicators in imposing criminal sanctions        | The error level, the danger level of crimes, a factor that increases the seriousness of the crime, a factor that reduces the seriousness of the crime, a factor that indicates the reduction in sentence. The judge must pass twelve stages in | Four principles of an introductory sentence (Retribution, deterrence, prevention, and rehabilitation). A factor associated with crime, punishment, and the limits of punishment, the maximum or the minimum | Based on interviews with judges of the environment, the judge's indicators in deciding the criminal sanction of the environment are different depending on the judges' educational background, sensitivity, awareness, and |
Comparison | UK | Singapore | Indonesia
--- | --- | --- | ---
determining the criminal sanctions according to the Environmental Offenses Definitive Guideline (1 July 2014) | punishment. A factor associated with the perpetrator, the number of demands the perpetrator faces, a criminal the defendant's accomplice accepts (if available), and penalties are imposed in similar cases. | insight. Yet, Indonesian judges generally consider the evidence and the fulfillment of the elements following facts in court by relying on the factors that aggravate and relieve the corresponding facts in the proceedings before determining the appropriate criminal sanction. |

Source: Analyzed by the Author

C. Imposition of Fines to Environmental Crimes in the UK, Singapore, and Indonesia Judicial Practice

In comparing the proportionality of the application of fines in the rule of law environment practice, this article analyses the court decision in the UK, Singapore, and Indonesia to see judges’ consideration in the imposition of fines in environmental crimes. The application of fines will be analyzed and criticized in this part. Specifically, this section will analyze the environmental crimes with a corporation conducting the pollution environmental crimes with the legal subject. Indicators that should be considered in the analysis of the cases are judges’ consideration related to the criminal and other factors as specified in the punishment guideline (for the decision of the UK and Singapore) and each country’s rules to assess the proportionality of the imposition of fines.

In the UK, The case of R. v Thames Water Utilities Ltd [2019] known that the judge in the description considered the degree of fault of the defendant, losses and potential losses are incurred as a result of the environmental crimes, the mitigating factors, an aggravating factor, and the financial condition of the company before finally imposing and determining the amount of the fines. In R. v Thames Water Utilities Ltd [2019], the judge at the level of appeal evaluated whether the judge at the previous level had been implemented the Environmental Offenses Definitive Guideline appropriately. The guidelines bring the court through twelve steps; to assess the actual environmental loss or risk, defendant’s errors, and the appropriate beginning point to determine penalties, especially fines, attributed to corporate offenders. This stages-based approach is associated with arranging other punishments like a prison and the punishment from the community for individuals.39

In the decision of R. v Thames Water Utilities Ltd [2019], the judge argued that the judge imposed penalties at the previous level had been appropriate. The companies' actions were a massive violation due to the error level in the form of

39 Brosan, Anne, “The new environmental offences sentencing guideline - a summary with comments,” Environmental Law Review 16, No. 3 (August 2014), p. 204.
reckless by the company. To ensure remorse and awareness to the directors and shares holders on the need to protect the environment, Judges assessed that a significant amount of fines must be dropped. In the case of R. v Thames Water Utilities Ltd [2019], the fines reached millions of pounds, specifically for £ 2,000,000 fully considered comparable.\textsuperscript{40}

In Singapore, based on Public Prosecutor v Zhao Yang Geotechnics Pte Ltd [2017], fines amounted to $ 40,000. The judge explained the violations were carried out by the defendant classified as severe because it will cause severe consequences for the environment and the health of society as a result of sewer pipe damage. According to the judge, it is a fact that any leakage of waste will cause environmental pollution. The judge also stressed the need for a deterrent effect to ensure that the sewer pipe is not damaged in the future.\textsuperscript{41}

Furthermore, in this case, the judge also stressed the need for \textit{general deterrence} and \textit{specific deterrence} so that the circumstances that led to the doing offense are also much highlighted. In terms of this, the defendant knew that there is a sewer pipe around the drilling area. However, there was no prevention conducted to avoid infringement by the defendant. The damage occurs in the pipes was not small because it required four nights to fix at the cost of about $ 15,000. Then the judge ordered the defendant to pay a fine of $40,000.\textsuperscript{42}

In Indonesia, three cases are described in the previous sub-chapters, Decision No. 287/Pid.B/LH/2020/PN.Bdg, No. 1016/Pid.B/2020/PN.Bdg, and No. 1088/Pid.B/LH/2020/PN Bdg equally imposition the defendant with Article 104 in conjunction with Article 116 paragraph (1) letter a in conjunction with Article 118 in conjunction with Article 119 of Law No. 32 of 2009 on the Protection and Management of Environmental which formulated as follows:

"\textit{Dumping waste and materials to the environment without a license as referred in Article 60, shall be punished by imprisonment for a minimum 3 (three) years and fine of IDR 3,000,000,000.00 (three billion rupiahs) are performed by, for, or on behalf of a business entity.}"

This case is a formal offense because the chapter focuses on the prohibition of waste dumping without a permit. In formal offense, the punishment is threatened for a certain act and a consequence. So, criminal thought had been completed when proven by the fact of law presented in court; the defendant had been doing the waste dumping without permission. The waste referred to in the three cases is also the same, namely B3 waste form of Fly Ash and Bottom Ash, the results of the use of coal in the engine boiler owned by the defendant in each case. In the provisions of Article 104, UUPPLH does not set the minimum fine that the Panel of Judges can impose, but from the three cases, it can be seen that the nominal fines were imposed variedly, ranging between Rp.50,000,000, Rp.400,000,000, and Rp.500,000,000. It is proven that the defendant in each case does not have the permission of B3 waste management and turns proven to save B3 waste form of Fly Ash and Bottom Ash at their polling station.

One thing that needs to be criticized from the three decisions is how the judge did not mention or consider the purpose of punishment to be achieved by the imposition of fines. Criminal sanctions are designed to achieve specific objectives of

\textsuperscript{40} R. v Thames Water Utilities Ltd, 2019, p. 7.

\textsuperscript{41} Public Prosecutor v Zhao Yang Geotechnics Pte Ltd - [2017] SGDC 318 (27 November 2017), p. 8.

\textsuperscript{42} \textit{Ibid}.
the criminal justice system.\textsuperscript{43} The experts identified four significant objectives in sentencing that are retribution, deterrence, incapacitation, and rehabilitation.\textsuperscript{44} Criminal sanctions may also be designed to achieve one or more purposes.\textsuperscript{45} The judge in the three decisions focussed on considering the fulfillment of the elements of the article based on facts and evidence, especially the elements of the fault, and consider mitigating and aggravating factors before positioning the fines.

The panel of Judges in each case have considered their consideration which adapted to the case and the facts. Unfortunately, the judges do not explain the rationality and argumentation of laws regarding the nominal fines. No particular guideline requires the Assembly of Judges to consider the specified factors before dropping criminal fines and load them into their decision. Moreover, the sentencing orientation, the rationality of fines nominal, and minimum fines are not drawn in the decision, so the imposed fines are varied.

\section*{III. CONCLUSION}

Based on the problem analysis in this article, the research found that: First, fines for environmental crimes in Indonesia are very varied. Second, Based on the results of the analysis and comparison between the UK and Singapore legislations, indicators that can be considered to determine the imposition of proportionate fines in sentencing on environmental crimes in Indonesia are the purpose of punishment (retribution or deterrence), the error level of the environmental crime, the damage level, the financial status of the perpetrator, the mitigating and aggravating factors. Last, the imposition of fines the environmental crimes in Indonesia is varied. There is no one guideline used in determining the number of fines by the Panel of Judges. In the three analyzed cases, the nominal amount of the fine imposed is very different, even though the threat of punishment and the fact of the law of each case have similarities.

In connection with the proportionality issue of applying the fine in environmental crimes in Indonesia, the recommendation will be urgent for the Supreme Court to draw up a guideline sentencing specifically for handling environmental crimes. The guidelines for indicators by the Panel of Judges to impose criminal, the stages before the Panel of Judges conclude the number of fines. As have been applied in the UK and Singapore as a sentencing guideline, the stages before dropping the penalties are: considering factors such as the error level, losses or potential losses, aggravate factors, alleviate factor, the financial status of the company or individual. These guidelines can be created in the form of a Supreme Court Regulation. Furthermore, the guidelines should also consider RKUHP and how the specific guidelines could be used in environmental crime cases. The Supreme Court also needs to add a purpose of punishment as mentioned in the decision of criminal cases, especially in the environmental crime, so the Assembly of Judges is also clear to adjust the type of criminal sanction imposed with the purpose of punishment. In the end, the Judges who handle the environmental crime cases should have adequate knowledge and insight to handle the environmental crime cases. It is indicated on the participation of the Judges in training and certified as environmental crime Judge.

\section*{REFERENCES}

\textsuperscript{43} Dennis M. Ryan, "Criminal Fines: A Sentencing Alternative to Short-Term Incarceration," \textit{Iowa Law Review} 68, No. 5 (July 1983), hlm. 1285.

\textsuperscript{44} Ibid.

\textsuperscript{45} Ibid.
Books
Bagaric, Mirko. *Punishment and Sentencing: A Rational Approach*. London: Cavendish Publishing Limited, 2001.
Faure, Michael G. dan Roy A. Partain, *Environmental Law and Economics Theory and Practice*. Cambridge: Cambridge University Press, 2019.
Kementerian Lingkungan Hidup dan Kehutanan Republik Indonesia. *Statistik Lingkungan Hidup dan Kehutanan Tahun 2018*. Jakarta: Pusat Data dan Informasi KLHK, 2018.
Mamudji, Sri et al. *Metode Penelitian dan Penulisan Hukum*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2005.
Santoso, Topo dan Eva Achjani Zulfa, *eds. Hukum Pidana Materiil dan Formiil*. Jakarta: USAID; The Asian Foundation; Kemitraan Partnership, 2015.
Santoso, Topo. *Hukum Pidana Suatu Pengantar*. Depok: Rajawali Pers, 2020.
Soekanto, Soerjono dan Sri Mamudji, *Penelitian Hukum Normatif*. Jakarta: Rajagrafindo Persada, 2007.
Syarif, Laode M. dan Andri G. Wibisana, *eds. Hukum Lingkungan Teori, Legislasi dan Studi Kasus*. Jakarta: USAID; Kemitraan; The Asia Foundation, 2014.

Journals
Brosan, Anne. "The new environmental offences sentencing guideline - a summary with comments," *Environmental Law Review* 16, No. 3 (August 2014).
Lurigio, Arthur J., et al., *Understanding Judges Sentencing Decisions* dalam Linda Heath, *et al.*, *eds., Applications of Heuristics and Biases to Social Issues*. New York: Springer Science Business, 1994.
Ryan, Dennis. "Criminal Fines: A Sentencing Alternative to Short-Term Incarceration," *Iowa Law Review* 68, No. 5 (July 1983).
Yusuf, Muh. *et al.*, "Role of The Judge in Creating Justice as an Instrument of Social Change," *University of Bengkulu Law Journal (Ubelaj)*, Vol. 1 Issue 1 (October, 2016).

Legislations
Indonesia. *Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup*. UU No. 32 Tahun 2009. LN No. 140 Tahun 2009, TLN No. 5059.
Indonesia, *Undang-Undang Cipta Kerja*, UU No. 11 Tahun 2020, LN. No. 245 Tahun 2020, TLN. No. 6573

UK Court Decisions
R. v. Southern Water Services. Ltd' (2014) Court of Appeal, Criminal Division. *Westlaw* [Online]. Dapat diakses di https://uk.westlaw.com/Document/IB5913B40858711E38EB7B5A79208030A/View/FullText.html (Diakses pada 11 Mei 2021).
R. v. Thames Water Utilities Ltd.' (2019). Court of Appeal. Criminal Division. *Westlaw* [Online]. Dapat diakses di https://uk.westlaw.com/Document/IF3DB5E700A1111E5AACDB3885A72D413/View/FullText.html (Diakses pada 11 Mei 2021).

Singapore Court Decisions
Public Prosecutor v Zhao Yang Geotechnic Pte Ltd. (2017). SGDC 318. http://www.commonlii.org/cgi-bin/disp.pl/sg/cases/SGDC/2017/318.html (Diakses pada 11 Mei 2021).

**Indonesia Court Decisions**

Pengadilan Negeri Bandung, Putusan Nomor 287/Pid.B/LH/2020/PN Bdg  
Pengadilan Negeri Bandung, Putusan Nomor 1016/Pid.B/2020/PN.Bdg  
Pengadilan Negeri Bandung, Putusan Nomor 1088/Pid.B/LH/2020/PN Bdg

**Other Documents**

Ministry of Law. *Guide on Sentencing in Singapore.* Ministry of Law: Singapore, 2021.  
Sentencing Council. *Environmental Offences Definitive Guideline.* Inggris: Sentencing Council. 2014.

**Internet**

Attorney-General's Chambers, "Sentencing in Singapore." Diakses dari https://www.agc.gov.sg/legal-processes/sentencing-in-singapore pada 25 April 2021  
Ministry of Law, *Guide on Sentencing in Singapore.* (Ministry of Law: Singapore, 2021), hlm. 7. Diakses dari https://www.agc.gov.sg/docs/default-source/default-document-library/guide-on-sentencing-in-singapore-(final).pdf pada 25 April 2021  
KBBI, "Proporsional," https://kbbi.web.id/proporsional diakses pada 18 November 2020.