

## Legal Actions of Polri Investigators Against the Criminal Action of Environmental Damage

Badrunsyah<sup>1</sup>, Mona Minarosa<sup>2</sup>

<sup>1,2</sup>Universitas Borobudur Jakarta

badrunsyahborobudur@gmail.com, putrimonaminarosa@gmail.com

### Abstract

*The maintenance of the sustainability of environmental functions is intended for the benefit of the wider community. Therefore, it takes responsibility, openness, and community participation, so as to maintain and increase the carrying capacity and capacity of the environment, it becomes the basis for sustainable development. For this reason, Indonesia's environment must be managed with the principle of preserving harmonious, harmonious and balanced environmental functions to support sustainable development with an environmental perspective for increasing welfare and prosperity. On another aspect, while there is still abuse by legal entities, businesses carry out their business activities by logging forests through environmental destruction while at the same time increasing environmental damage. This is certainly a violation based on the provisions of Law Number 32 of 2009 concerning Environmental Protection and Management. The problem is; What are the legal actions of Polri investigators against perpetrators of environmental destruction that are strongly suspected of being carried out by corporate legal entities according to Law Number 32 of 2009 concerning Environmental Protection and Management. Research Methods In order to solve this research, the authors conducted a normative legal research approach. Research results and discussion; That in essence, the legal action that must be taken by Polri investigators against perpetrators of environmental destruction by a corporate legal entity who is strongly suspected of violating Law Number 32 of 2009 concerning Environmental Protection and Management, is to take legal action based on the provisions stipulated by the Criminal Procedure Code, which begins with conducting an investigation within the framework of the formulation of a criminal act as regulated under Law Number 32 of 2009 concerning Environmental Protection and Management. Furthermore, based on the results of the investigation related to the alleged case, the investigation was carried out to upgrade the status to an investigation, in order to ensure that there are parties responsible for the existence of legal entities that are considered to have committed acts of environmental destruction and their impacts. If a party is deemed to have fulfilled the elements, then that party can be made a suspect for the perpetrators of environmental destruction.*

### Keywords

Investigators' actions; against environmental; destruction perpetrators



## I. Introduction

The maintenance of the sustainability of environmental functions is in the interest of the community so it demands responsibility, openness, and the role of community members. It can be channeled through personal, environmental organizations, such as non-governmental organizations, indigenous people's groups, and others, to maintain and increase supporting capability, and environmental capacity which is the foundation of

sustainable development. Organization must have a goal to be achieved by the organizational members (Niati et al., 2021). The success of leadership is partly determined by the ability of leaders to develop their organizational culture. (Arif, 2019). Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement. Changes towards improvement require the mobilization of all human resources and reason to realize what is aspired. In addition, development is also very dependent on the availability of natural resource wealth. The availability of natural resources is one of the keys to economic growth in an area. (Shah, M. et al. 2020)

Development that integrates the environment, including natural resources, becomes a means to achieve sustainable advancement and is a guarantee for the welfare and quality of life of present and future generations. Therefore, the Indonesian environment must be managed with the principle of conserving a harmonious, congenial, and balanced environmental function to support sustainable development with an environmental perspective for increasing welfare and prosperity.

On the other hand, with increasing development efforts, the impact on the environment will increase. This situation encourages the need for attempts to control environmental impacts so that the risks can be minimized as much as possible. Efforts to control conservation impacts cannot be separated from supervisory actions so that the provisions of laws and regulations in the environmental sector have adhered to them. [1]

The Unitary State of the Republic of Indonesia was a state of law, in terms of developing an environmental management system as part of sustainable development with a conservative perspective, has a clear, firm, and comprehensive legal basis to ensure legal certainty for environmental management efforts as regulated by law. Law Number 32 of 2009 concerning Environmental Protection and Management. as regulated under Law Number 32 of 2009 concerning Environmental Protection and Management.[2]

The problem is; What are the legal actions of Polri investigators against perpetrators of environmental destruction that are strongly suspected of being carried out by corporate legal entities according to Law Number 32 of 2009 concerning Environmental Protection and Management?

## **II. Research Method**

Research Literature Review is carried out with the initial stage of collecting and critically reviewing the ideas, knowledge, and findings in books relevant to the topic to be studied. The purpose of the Literature Review is to describe theories relevant to the problems studied as reference material in the discussion of research results. In conducting a study with this, literature is obtained by reading, understanding, reviewing, criticizing, or reviewing literature from specific sources. This paper applies a qualitative descriptive method in the form of library research, namely collecting information or scientific writings that have a relationship with a literature review. This research is descriptive and qualitative, with the primary sources in journals, articles, books, and other relevant writings. The analysis technique describes and concludes briefly on various conditions from a collection of information derived from the literature (Ridwan et al., nd). The method of analysis is used to conclude objectively and systematically. The stages carried out in this literature study include:

1. Conduct an inventory of the titles of library materials related to research problems such as books, reports, theses, journals, and so on;

2. Conduct research on the contents of library materials that have been inventoried;
3. Group the reading results according to the problem formulation in the research.
4. The data that has been collected, namely primary and secondary data, were collected using library research, classified, and selected. After that, it was rearranged into a discussion result.

### **III. Result and Discussion**

As support for administrative law, the enactment of criminal law provisions still takes into account the principle of subsidiarity, namely that criminal law should be utilized if sanctions in other legal fields, such as administrative sanctions and civil sanctions, and alternative settlements of environmental disputes are ineffective and/or the perpetrator's level of error is relatively severe and/or the consequences of his actions are relatively large and/or his actions cause public turmoil. By anticipating the possibility of the emergence of criminal acts committed by a corporation in which Law Number 32 of 2009 concerning Environmental Protection and Management.

The constitutional basis for managing the environment or natural resources in the Indonesian state is contained in Article 33 paragraph (3) of the 1945 Constitution, which states that "Earth, water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people," and in Indonesia itself, the design of environmental law (Environmental Law) starting from the occurrence of mineral exploitation and exploration, especially oil and gas in Indonesian waters is a new development in Indonesian maritime law, this activity also includes marine areas located outside the territory of our country. At the end of 1969, a bilateral agreement on the continental shelf was concluded between Indonesia and neighboring countries.

The next stage of this development is enacting Law no. 1 of 1973 concerning the continental shelf with the provisions for its implementation. Then in the same year and the following year, the legislation on marine Pollution from offshore oil activities also developed, including Pertamina's general regulation on Pollution. With this development, it can be said that the era of transboundary marine environmental law has become an inseparable part of the development of modern environmental law. However, the development of environmental law in Indonesia, which is comprehensive, only occurred after the oil tanker Showa maru ran aground in the Malacca/Singapore Straits in 1975. As is well known, this incident has prompted the formation of the Indonesian Environmental Bill in 1976. the office of the State Minister for Development and Environmental Supervision (now the Minister of Environment), the environmental awareness movement, and efforts to prepare a draft Environmental Law by this office were formed in 1979. The draft UULH was later ratified as Law no. 4 of 1982 concerning Basic Provisions for the Environment, based on Article 4 letter e, environmental impacts are regulated across national borders, which read: "The protection of the State against the impact of activities outside the territory of the State that cause environmental damage and pollution."

Then Law no. 5 of 1983 concerning the Exclusive Economic Zone contains legal provisions that are transnational based on the new law of the sea convention, which has also been ratified by Indonesia as stated above, on the actual development of Indonesian environmental law after the 1972 Stockholm conference, Indonesia is like other countries, just woke up to pay attention to the Environment. The law on the introductory provisions of environmental management was created in 1982, namely Law no. 4 of 1982, which law has now amended No. 23 of 1997. 4 of 1982 and replaced by Law no. 23 of 1997, regulations that span across national borders are regulated in Article 4 letter f of Law no.

23 of 1997, which reads: "The protection of the Unitary State of the Republic of Indonesia against the impact of businesses and/or activities outside the territory of the State that cause environmental pollution and/or destruction."

Administrative law as an administrative tool can be preventive and aims to enforce environmental laws and regulations (for example, Laws, Government Regulations, Decrees of the Minister of Industry, Governor's Decrees, Mayor's Decrees, and so on). Law Enforcement can be applied to activities involving licensing requirements, environmental quality standards, environmental management plans (RKL), and so on. In addition to guidance in the form of instructions and guidelines and administrative supervision to entrepreneurs in the industrial sector, the benefits of the "Pollution Prevention Pays" concept should also be instilled in the production process. Furthermore, environmentally sustainable development, the development in question, is a pattern of development policies that do not disturb the balance of the ecosystem, namely development that is oriented to the management of natural resources while at the same time seeking to protect and develop them. Provisions regarding administrative sanctions are regulated in Articles 71 to 83 of Law no. 23 of 2009. Administrative sanctions have an instrumental function, namely controlling prohibited acts. In addition, administrative sanctions are mainly aimed at protecting the interests of those who are violated.

As a result of environmental pollution, it causes several enormous losses for the community's survival and the natural surroundings and threatens the lives of other living things, including humans and environmental sustainability. Currently, the destruction and pollution of the environment have become a complicated matter, which must be addressed. It has happened in a structured way environmental destruction by the company that owns the HPH PT Keang Nam Development Indonesia (ADELIN LIS) in North Sumatra which occurred between 2004 and 2007, which ended in an acquittal at the Medan District Court level, but on Cassation found guilty and sentenced to 15 years in prison.

Regarding cases of environmental destruction and pollution, the authority of police investigators and civil servant investigators in dealing with environmental crimes or crimes and violations of Law Number 32 of 2009 concerning Environmental Protection and Management is of course highly expected. Environmental offenses regulated in Articles 41,42,43,45,46,47 UUPH are material offenses involving the preparation of evidence and determining the causal relationship between polluting and polluting acts. In the new UUPH, namely Law no. 23 of 2009, the criminal provisions are contained in Articles 97 to 120. In the prosecution of environmental crimes, the procedures for prosecution are subject to Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP). The role of investigators is also significant to collect evidence that is often scientific.<sup>24</sup> Claims for compensation and environmental restoration costs in a civil manner can be made based on Article 20, paragraph 1, and paragraph 3 of the UUPH through the courts. However, regarding this civil law, it is necessary to distinguish between the application of the law by the competent authority and the implementation of environmental policies and the application of civil law to enforce compliance with environmental laws and regulations.

Environmental crimes, in their position as specific crimes, the task of police investigators are obliged to carry out legal proceedings against perpetrators of environmental destruction, whether committed by individuals or by business legal entities, has become an obligation to carry out legal actions optimally. It means that, in particular, law enforcement officers are Polri investigators who have the first opportunity to take repressive legal action, whose duties and authorities have been regulated in the Criminal Procedure Code.

Perpetrators of environmental crimes can also be individual or collective in nature, even in the form of crimes committed by business legal entities or corporations. Victims of conservative crimes are closely related to environmental loss and damage. Law Enforcement to achieve equity, obtain justice and protection as well as legal certainty, in carrying out the task of drafting laws and regulations, law enforcement requires professional personnel.

The function and authority of the National Police Investigator, as one of the law enforcers, has the duties and power regulated by the Criminal Procedure Code and Law Number 2 of 2002 concerning the State Police, as well as the main task in law enforcement legitimized by the Criminal Procedure Code in combating criminal acts, including against perpetrators of criminal environmental acts of destruction crimes committed by corporate legal entities.

Law enforcement is an effort and action that aims to protect the community to achieve the goal of the law, namely justice. Within that framework, all applicable legal products must be based on statutory provisions and must comply with applicable legal provisions and procedures.

Therefore, in the context of law enforcement on environmental crimes committed by corporate legal entities related to the duties and authorities of Polri investigators, in the context of investigating environmental crimes, Polri investigators are responsible for carrying out legal actions, whose responsibilities and authorities are regulated by the Criminal Procedure Code and the Law. -Law Number 2002 concerning the State Police.

At the investigation stage, investigators generally have the legitimacy to carry out legal actions in the form of investigations, investigations, arrests and detentions, searches and seizures, examination of suspects and witnesses, as well as making an examination report which is submitted to the public prosecutor for further legal action.

The responsibility of the investigator at the investigation stage as a law enforcer is to conceptualize "clearly or clearly" the existence of a criminal act that meets the elements so that the party suspected of committing an environmental crime deserves to be made a suspect, which is then processed up to the trial level in court.

The functions and authorities of the National Police, especially the law enforcement institutions of the National Police, in efforts to overcome and take legal action against perpetrators of criminal acts, in addition to the Criminal Procedure Code, the legal basis for their roles and functions are regulated in Law Number 2 of 2002 concerning the State Police.

In essence, regarding legal actions that must be taken against perpetrators of environmental destruction by legal entities or corporations, based on Law Number 32 of 2009 concerning Environmental Protection and Management, the authority of Polri (The Indonesian National Police) investigators are regulated under Article 94 and Article 95, which regulate Investigations whose authority is exercised by Investigators of the Police and Investigators of Civil Servants. Such authority, based on Article 94;

Paragraph (1) In addition to investigators from the Indonesian National Police, certain civil servants within government agencies whose scope of duties and responsibilities are in environmental protection and management are authorized as investigators referred to in the Criminal Procedure Code to carry out criminal investigations' environment.

Paragraph (2) Investigators of civil servants have the authority to a. conduct an examination of the veracity of reports or information relating to criminal acts in environmental protection and management; b. examine every person suspected of committing a crime in the field of environmental protection and management; c. request

information and evidence from everyone regarding criminal acts in the field of environmental protection and management; d. examine books, records, and other documents relating to criminal acts in the field of environmental protection and management; e. conduct inspections at certain places where evidence, books, records, and other documents are suspected; f. confiscate materials and goods resulting from violations that can be used as evidence in criminal cases in the field of environmental protection and management; g. request expert assistance in the context of carrying out the task of investigating criminal acts in the field of environmental protection and management; h. stop the investigation; i. enter certain places, take pictures, and/or make audio-visual recordings; j. Search for the body, clothing, room, and/or other places suspected of being the place where the crime was committed; and/or k. arrest and detain criminals.

Paragraph (3), In making arrests and detentions as referred to in paragraph (2) letter k, the investigator of civil servants shall coordinate with the investigator of the police officer of the Republic of Indonesia.

Paragraph (4), If the investigator of the civil service officer conducts an investigation, the investigator of the civil servant officer shall notify the investigator of the police officer of the Republic of Indonesia and the investigator of the police officer of the Republic of Indonesia to assist to facilitate the investigation.

Paragraph (5), The investigator of the civil service officer informs the commencement of the investigation to the public prosecutor with a copy to the investigator of the police officer of the Republic of Indonesia. Paragraph (6), The results conducted by the civil state officer investigator are communicated to the public prosecutor.

Article 95 Paragraph (1) In the context of law enforcement against perpetrators of environmental crimes, integrated law enforcement can be carried out between civil servant investigators, the police, and the prosecutor's office under the coordination of the Minister. Paragraph (2) Further provisions regarding the implementation of integrated law enforcement are regulated by laws and regulations.

Based on the provisions of Article 94 and Article 95 of Law Number 32 of 2009 concerning Environmental Protection and Management, the authority of Polri Investigators in taking legal action against perpetrators of environmental destruction is formally in collecting evidence based on the provisions stipulated in the Law. Criminal Procedure Code or abbreviated KUHAP.

Efforts to tackle environmental crimes are not only the task of law enforcement officers but also the task of law- making officials (legislative officers); even legislative policy is the most strategic stage of "penal policy." Therefore, errors/weaknesses in legislative policies are strategic mistakes that can become an obstacle to crime prevention efforts at the application and execution stages. According to Bambang Poernomo, that according to the science of criminal law, crime prevention can be viewed from two aspects, namely:

1. Preventive countermeasures, namely actions taken to launch at the time before unlawful acts in real terms. Countermeasures are also preventive measures because they can use non-legal means, such as guarding, shadowing, signaling, etc.
2. Repressive countermeasures are the actions of legal officers against someone's actions committed after a violation of the law. Combating this crime begins after the occurrence of a violation of the law. This countermeasure starts from the investigation and preparation of evidence by the police, prosecution by the prosecutor, then proceeds to an examination by a judge who prioritizes analysis of events that result in violation (primary) and the relevant (minor) legal rules to obtain a legal decision (conclusion) and ends with the execution of the decision.



In the case of an investigation into the alleged existence of a criminal act of environmental destruction by a legal entity or corporation, then at the initial stage, the investigator can conduct an intensive analysis to produce solid evidence for the benefit of the legal process. Such legal actions, especially environmental crimes, investigators require careful attention to the evidence to be used as a strong legal basis, at least obtaining at least two pieces of evidence that are useful for the next legal action, namely the stage of the prosecution that will be carried out by the Public Prosecutor.

#### IV. Conclusion

Based on the provisions of Law Number 32 of 2009 concerning Environmental Protection and Management, the authority of Polri Investigators in taking legal action against perpetrators of environmental destruction is materially regulated under Articles 94 and 95. Furthermore, formally collecting evidence is guided by the provisions stipulated in The Criminal Procedure Code or abbreviated KUHAP.

Environmental damage done by a corporate or corporate legal entity based on these articles must be held criminally accountable. In carrying out the criminal legal process, the National Police can carry out the criminal law process, with the participation of other relevant agencies, namely Investigators of Civil Servants.

In the context of law enforcement against the perpetrators of environmental crimes, the legitimacy of legal action is only given to the investigators to take further deeds professionally without any influence from outside the investigative institution that has the authority to take legal action.

#### References

- Arif, S. (2019). Influence of Leadership, Organizational Culture, Work Motivation, and Job Satisfaction of Performance Principles of Senior High School in Medan City. Budapest International Research and Critics Institute-Journal (BIRCI-Journal). P. 239-254
- Atik Pratikno. (2019). Aspek Hukum Pembangunan Berwawasan Lingkungan, Jakarta: Penamedia.
- Munadjat Hendarwikrama, Pembangunan Berwawasan Global, Bandung: Cendawa Press.
- Niati, D. R., Siregar, Z. M. E., & Prayoga, Y. (2021). The Effect of Training on Work Performance and Career Development: The Role of Motivation as Intervening Variable. Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences, 4(2), 2385–2393. <https://doi.org/10.33258/birci.v4i2.1940>
- Shah, M. et al. (2020). The Development Impact of PT. Medco E & P Malaka on Economic Aspects in East Aceh Regency. Budapest International Research and Critics Institute-Journal (BIRCI-Journal). P. 276-286.
- Soerjono Soekanto. (2006). Beberapa Permasalahan Hukum Dalam Kerangka Pembangunan di Indonesia, Jakarta: Yayasan Penerbit UI.
- Undang-undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup