



Political Implications of Criminal Law in Efforts to Protect River from Pollution

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ABSTRACT

This study aims to discuss the legal regulation of river environmental protection, as well as comprehensively examine the legal policies (penal and non-penal) of river protection from pollution. The research method used is normative legal research, namely research referring to legal norms in laws and regulations, libraries, and norms in society. The type of research used qualitative research is carried out by examining literature materials in the field of law and legislation related to the problem under study. The results of this study show that the legal regulation of river environmental protection is regulated in several regulations, including Law No. 32 of 2009 concerning Environmental Protection and Management, Law No. 17 of 2019 concerning Water Resources, PP No. 38 of 2011 concerning Rivers, and PP No. 37 the Year 2012 on Watershed Management. The penal policy includes normative legal arrangements contained in laws and government regulations on river environmental protection, imposing criminal sanctions to give the effect of looting. Non-penal policies are reforestation of the river environment, revitalization of industrial estates, increasing public awareness, sustainable resource management, and empowerment of green technology (environmentally friendly).

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1. INTRODUCTION

The government is obliged to maintain the sustainability of a healthy environment as referred to Article 28 H of the Constitution of the Republic of Indonesia Year 1945. Article 2 of Law Number: 32 of 2009 concerning Environmental Protection and Management states that environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement.

Rivers as part of the environmental ecosystem have a very large existence in the development of human civilization to date. Rivers are not only a provider of clean water for basic needs but play an important role in the sustainability of the ecosystem at large [1]. Therefore, rivers must be maintained and protected equally from various forms of destruction and pollution. As time goes by, the condition of rivers in Indonesia is getting worse and worse. Many rivers have experienced a decline in quality with indications of increasing critical land area, increasingly frequent floods, droughts, landslides, and water pollution that harms humans and the environment. This condition is further exacerbated by low public awareness of the sustainability of the river environment, as well as weak law enforcement against pollution actors, especially corporations.

To maintain environmental and ecosystem sustainability, firm and clear legal policies are needed to crack down on river pollution actors. Environmental law is a juridical guideline for environmental management and protection. Law enforcement efforts are carried out to answer the challenge of environmental degradation which is getting worse day by day to become very urgent.

One of the objectives of the state stated in the preamble of the 1945 Constitution is to create a prosperous, just, and prosperous society based on Pancasila and the 1945 Constitution. This is one form of social policy in the Indonesian nation. Achieving social politics needs to be fully supported by the politics of community protection (social defense policy). One of the means to protect people's lives is through law enforcement which is an inseparable part of the legal politics of the Indonesian nation [2].

Mahfud MD stated the relationship between law and politics, namely law is a political product. Law is seen as a dependent variable and politics as an independent variable. Thus, legal politics can be assumed as the legal policy that will or has been implemented nationally by the government, including understanding how politics affects the law by looking at the configuration of forces behind law enforcement [3]

Criminal law politics means how to choose, strive, and formulate a good criminal law in accordance with the objectives to be achieved. The politics of criminal law is a policy line in determining how far the applicable law needs to be updated, what can be done to prevent criminal acts, and how investigations, prosecutions, trials, and criminal executions should be carried out. The main problem of criminal law in terms of policy or politics of criminal law in the sense of policy using criminal law lies in the problem of how far the authority to regulate and limit human behavior (citizens) with criminal law.

Based on the background description of the problem above, the formulation of the problem that is the focus of this study is: First, what is the legal regulation on river environmental protection? Second, what is the legal policy of protecting rivers from pollution?

2. METHODOLOGY

A method is a way of working or working techniques to be able to understand the object that is the target of the science concerned. Research is a scientific work that aims to reveal the truth systematically, methodologically, and consistently.[4] The specification of this study is normative legal research, namely research that refers to legal norms contained in laws and regulations, libraries, and legal norms of society. The data obtained is then analyzed to answer problems in the research [5]. The type of research used qualitative research is carried out by examining literature materials in the field of law and legislation related to environmental protection and management issues, especially rivers.

3. RESULTS AND DISCUSSION

3.1 Legal Regulation on River Protection from Pollution

Criminal politics can be interpreted as both a science and an art that ultimately has a practical purpose to enable better positive laws and guidelines. Criminal politics is part of law enforcement politics in a broad sense, everything is part of social politics, namely the efforts of the community or state to improve the welfare of its citizens.

Efforts and policies to make good criminal law regulations are intrinsically inseparable from the purpose of crime reduction. Criminal law policy or politics is also part of criminal politics. As part of criminal politics, criminal law politics is synonymous with the notion of crime reduction policy with criminal law. Viewed from legal politics, implementing criminal law politics has two meanings, namely: 1) Efforts to realize good regulations in accordance with circumstances and situations that exist at one time (including in the future); 2) The policy of the state through the authorized body to establish desired regulations, which is expected to be used to express what is contained in society and to achieve what is aspired to [6].

Article 14 of Law Number: 32 of 2009 concerning Environmental Protection and Management states that environmental pollution is the entry or inclusion of living things, substances, energy, and/or other components into the environment by human activities to exceed the established environmental quality standards. Legal regulation on river protection from pollution (one form of penal policy) is regulated in several regulations including:

Law Number 32 of 2009 concerning Environmental Protection and Management

Article 98, regulates legal protection and criminal sanctions for perpetrators of water pollution and destruction of river ecosystems with a maximum penalty of imprisonment of 15 years and a maximum fine of Rp. 15,000,000,000 (fifteen billion rupiah);

Undang Law Number 7 of 2004, as amended into Law Number 17 of 2019 concerning Water Resources

The establishment of a Special Investigator who is authorized to inspect the field of water resources (Article 93) and the existence of a maximum prison sentence of 9 months and a maximum fine of Rp. 1,500,000,000 (one billion five hundred million rupiah), against each person deliberately carrying out activities that result in damage to water sources and infrastructure.

Government Regulation of the Republic of Indonesia Number 38 of 2011 concerning Rivers regulates licensing, conservation, river development, and community empowerment.

Government Regulation Number 37 of 2012 concerning Watershed Management Regulates watershed

management, including water resources management, flood control, and environmental management in watersheds.

Law enforcement policy covers all areas of law related to public life, both public and private [7]. To protect the community from crime, it is necessary to formulate a criminal policy which according to Marc Ancel is a rational organization of the control of crime by society [8]. Concerning the politics of criminal law, the objectives and guidelines of punishment are based on the following thoughts: 1) The criminal law system is a purposive system and crime is only a tool or means to an end; 1) The purpose of crime is a sub-system of the entire penal system or criminal law system in addition to other sub-systems namely criminal acts, criminal liability (wrongdoing), and criminal; 3) The formulation of penal goals and guidelines is intended as a function of control while providing the basis of philosophical foundations, rationality, motivation, and justification of punishment; 4) Viewed functionally, the penal system is a series of processes through the formulation stage (legislation policy), application stage (judicial policy), and execution stage (administrative). Therefore, for there to be intertwining and integration between the three stages as a unified penal system, goals and guidelines are needed in crime [9].

3.2 Legal Policy on River Protection from Pollution

Based on data from the Ministry of Environment and Forestry (KLHK), from the monitoring of 564 river points in Indonesia, there are 59% of rivers experience heavy pollution, 26.6% experience moderate pollution and 8.9% others lightly polluted. Meanwhile, data from the Central Statistics Agency (BPS) of the Republic of Indonesia in 2021, there are 10,683 villages/villages that experience water pollution.

Combating crime with criminal law is also essentially part of law enforcement efforts. In addition, crime reduction efforts through the making of criminal laws are also an integral part of efforts to protect and welfare the community [10]. Well-being refers to the term social welfare as a condition of meeting material and non-material needs. According to Midgley, social welfare is defined as a condition or state of human well-being. Naturally, criminal law policy or politics is also an integral part of social policy or politics. Social policy can be interpreted as all rational efforts to achieve community welfare and at the same time includes protection in the sense of social policy including social welfare policy and social defense policy [11].

Crime reduction policies in society cannot only be tackled through criminal law means, this is considering the various limitations in the law, especially regarding new types of crimes that can only be tackled if there are binding rules as Article 1 Paragraph (1) of the Criminal Code (the principle of legality) [12]. Crime reduction must also be carried out using other means outside the criminal law (non-penal policy). These policies are such policies in the context of efforts to improve the standard of living and welfare of the community, policies in the fields of health, public education, and so on [13]. In general, the legal policy of river protection from pollution is divided into penal and non-penal policies, namely:

3.2.1 Penal policy

Criminal policy is a rational and organized effort of a society to overcome crime. Crime prevention policy commonly known as criminal politics can cover a fairly broad scope. Barda Nawawi Arief stated that efforts to overcome crime can be taken by: First, the application of criminal law (criminal law application). Second, prevention without punishment. Third, influence people's views on crime and punishment through mass media. G.P. Hoefnagels stated that crime reduction efforts can be pursued by: 1) Criminal law application; 2) Prevention without punishment; 3) Influencing views of society on crime and punishment) [14].

Based on this opinion, efforts to reduce crime can be broadly divided into two, namely through penal channels (criminal law) and through non-penal channels (outside criminal law). Efforts to combat crime through the penal route focus more on the repressive nature after the crime has occurred, while the non-penal route focuses more on the preventive nature (prevention/control) before the crime occurs.

That penal policy in river environmental protection focuses on law enforcement [15], as per the laws and government regulations described above. In addition, increased supervision of companies or industries that have the potential to pollute rivers can also be carried out, such as through inspections and audits. Granting administrative sanctions: Penal policy can be carried out through granting administrative sanctions to companies or industries that violate environmental regulations, such as revocation of business licenses as stipulated in 76 Law Number: 32 of 2009 concerning Environmental Protection and Management.

Mardjono Reksodiputro has views on ways to prevent environmental pollution and is associated with criminal law enforcement, namely: 1) Pollution of wastewater quality standards, emission quality standards, and environmental disturbance quality standards, criminal sanctions only act as an alternative to administrative sanctions; 2) Criminal sanctions can only be imposed if the perpetrators are proven to knowingly and intentionally violate cases of pollution of wastewater quality standards, emission quality standards, and environmental disturbance quality standards, resulting in health threats to the community; 3) In the responsibility of the corporation as a perpetrator of pollution of wastewater quality standards, emission

quality standards, and environmental disturbance quality standards, those responsible for representing the company are the directors.

3.2.2 Non-Penal Policy

Crime prevention through non-penal channels is more of a preventive measure for the occurrence of crime, so the main target is to deal with factors conducive to crime. These conducive factors include focusing on social problems or conditions that can directly or indirectly cause/trigger crime [16]. Non-penal policy is one approach that can be taken in river protection, including: 1) Reforestation: reforestation by planting trees and normalizing river areas; 2) Revitalize industrial estates so that they are not in zoning and dispose of waste in watersheds; 3) Raising public awareness about environmental law and the impact of environmental crime can be done to help criminals understand the impact of their crimes on the environment and tackle crime; 4) Sustainable management of natural resources: the use of river resources must be carried out sustainably by prioritizing aspects of environmental sustainability for current and future generations;

Green technology empowerment: the industrial sector in the future must use environmentally friendly technology that does not produce hazardous waste that can pollute the river environment.

5. CONCLUSION

The legal regulation of river environmental protection is regulated in several regulations, including Law No. 32 of 2009 concerning Environmental Protection and Management, Law No. 17 of 2019 concerning Water Resources, PP No. 38 of 2011 concerning Rivers, and PP No. 37 Year 2012 on Watershed Management. Perpetrators of river pollution are threatened with a maximum prison sentence of 15 years and a maximum fine of Rp. 15,000,000,000 (fifteen billion rupiah).

The penal policy includes normative legal arrangements contained in laws and government regulations on river environmental protection, imposing criminal sanctions to give the effect of looting. Non-penal policies are: reforestation of river environment, revitalization of industrial estates, increasing public awareness, sustainable resource management, and empowerment of green technology (environmentally friendly).

6. RECOMMENDATION

increases public awareness of the protection and management of the environment (river) in a sustainable manner, as well as law enforcement by applying severe criminal sanctions against perpetrators of river pollution.

7. REFERENCES

- [1] Nurlidiawati, "Sungai Sebagai Wadah Awal Munculnya Peradaban Umat Manusia," *Rihalah J Sej dan Kebud*, vol. 1, no. 2, pp. 93–103, 2014, doi: <https://doi.org/10.24252/rihlah.v2i01.1349>.
- [2] Sudarto, *Hukum Pidana dan Perkembangan Masyarakat : Kajian Terhadap Pembaharuan Hukum Pidana*. Bandung: Sinar Baru, 2012.
- [3] Teguh Prasetyo, *Politik Hukum Pidana (Kajian Kebijakan Kriminalisasi dan Dekriminalisasi)*. Yogyakarta: Pustaka Pelajar, 2012.
- [4] S. dan S. M. Soekanto, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: Rajagrafindo Persada, 2001.
- [5] K. Benuf, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan*, vol. 7, no. 1, p. 23, Apr. 2020, doi: 10.14710/gk.2020.7504.
- [6] Islamiyati, "Analisis Politik Hukum Dan Implementasinya," *Law, Dev Justice Rev*, vol. 2, no. 1, p. 107, May 2019, doi: 10.14710/ldjr.v2i1.5139.
- [7] Muhammad Arifin, "Penyalahgunaan Keadaan Sebagai Faktor Pembatas Kebebasan Berkontrak," *J Ilmu Huk*, vol. 14, no. 2, p. 283, 2019, [Online]. Available: <https://publikasiilmiah.ums.ac.id/xmlui/handle/11617/4196>
- [8] S. Chandra, "Politik Hukum Pengadopsian Restorative Justice Dalam Pembaharuan Hukum Pidana," *FIAT JUSTISIA Jurnal Ilmu Huk*, vol. 8, no. 2, p. 272, Aug. 2015, doi: 10.25041/fiatjustisia.v8no2.301.
- [9] Novi E. Baskoro, *Konstruksi Teori Hukum Pidana dalam Perspektif RUU Hukum Pidana*. Bandung: Cendekia Pers, 2020.
- [10] E. T. Agustina, "Implementation Of Pancasila Philosophy On Construction Services In Realizing A Fair And Prosperous Society," *Russ Law J*, vol. XI, no. 5, pp. 1506–1516, 2023, doi: 10.52783/rlj.v11i5.2870.
- [11] T. Tongat, S. N. Prasetyo, and Aunuh, "Hukum yang Hidup dalam Masyarakat dalam Pembaharuan Hukum Pidana Nasional," *J Konstitusi*, vol. 17, p. 157, May 2020, doi: 10.31078/jk1717.
- [12] N. A. Harahap, "Tanggung Jawab Pribadi dalam Kasus Pungutan Liar yang Dilakukan oleh Pegawai

- Negeri Sipil,” *Undang J Huk*, vol. 2, no. 1, p. 79, Oct. 2019, doi: 10.22437/ujh.2.1.69-93.
- [13] M. Ismail, “Kebijakan Hukum Pidana Cyberpornography,” *J Huk Ekon Syariah*, vol. 1, no. 2, p. 120, 2018.
- [14] Aji Prakoso, “Kajian Viktimologi Dalam Tindak Pidana Penggelapan Pada Perusahaan Pembiayaan,” *STVIS PACEM*, vol. 1, no. 1, p. 6, 2023, [Online]. Available: <https://sivispacemjournal.my.id/index.php/login/article/view/3>
- [15] I. A. Wicaksono, “Penerapan Asas Ultimum Remedium Dalam Penegakan Hukum Di Bidang Lingkungan Hidup Isya,” *Univ Bengkulu Law J*, vol. 5, no. 1, p. 50, Jun. 2021, doi: 10.33369/ubelaj.v3i1.4795.
- [16] M. P. Lestari, “Kebijakan Hukum Pidana Terhadap Tindak Pidana Kesusilaan Berdasarkan Internet (Cyber Sex),” *Krtha Bhayangkara*, vol. 13, no. 1, p. 128, 2019, doi: 10.31599/krtha.v13i1.17.