



Juridical Analysis of Ecocide Crimes in a Positive Legal Perspective in Indonesia

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Abstract. Ecocide is a modern crime that has a very bad impact on the right to life, the survival of human life and the environment of the present and the future. And this ecocide should have the opportunity to be included in the laws and regulations in Indonesia because ecocide has a lot of enormous impacts on the destruction of ecosystems and violates part of human rights. In this study, the author examines the meaning of ecocide, the position of ecocide in the Indonesian legal system and the urgency of ecocide regulation in Indonesia. This research uses normative juridical research methods with a statute approach and a conceptual approach. The purpose of this study is to examine the regulation of ecocide in a positive legal perspective in Indonesia and encourage ecocide as the applicable law in Indonesia. The results of this study conclude that Indonesia does not yet have regulations governing ecocide crimes and the government should immediately make ecocide arrangements because the current legal provisions are not able to solve the existing environmental criminal law problems.

Keywords: Ecocide, Human Rights, Environment

1 Introduction

The environmental damage that occurs in various parts of the world today has reached such a massive and systematic scale. The global climate and ecological crisis that has spiraled out of control lately is believed by environmentalists around the world to be a consequence of Ecocide. Individual countries may already have rules and regulations in place to prevent the destruction of nature, but environmentalists argue that mass environmental damage will continue until a global law is in place. In December 2019, at the International Criminal Court in The Hague, Vanuatu's ambassador to the European Union gave a radical suggestion of making environmental destruction a crime. Ecocide crimes have violated environmental ethics, such as environmental justice, the right to the environment, environmental sustainability, and environmental sustainability. Therefore, making ecocide a criminal offense is a way to end the destruction of the Earth's ecosystem and the living things that live in it.

Indonesia as the largest archipelagic country and has high biodiversity and conservation areas needs to have an important place in the discourse of combating ecocide as an effort to protect justice for the environment. Currently, according to WALHI, there

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are 3 cases in Indonesia that are included as ecocide, namely the lapindo mud case, forest siltation in Kalimantan, and the construction of the Koto Panjang hydropower plant. However, until now the case has not been completed due to the weak environmental protection system and punishment for corporations in the Indonesian legal system. Crimes committed by corporations until now there is no legal umbrella underlying them. So that the discourse of deprivation of space in the form of violation of rules by corporations will always be repeated.

From all the discussions above, it can be seen that the urgency of ecocide regulation must be carried out immediately by the government. The government must immediately regulate ecocide because the current legal provisions are not able to solve the existing environmental criminal law problems. This opinion is in line with Hartiwiningsih's opinion, the current condition of environmental criminal law enforcement is macro not in accordance with community expectations. In addition, law enforcement is insensitive to environmental crises and people's sense of justice, and still puts too much emphasis on formal and procedural truths compared to extracting substantial justice. The environment must have a proper place in the Indonesian legal system so that any crime against the environment will be seen as an extraordinary crime and the perpetrators will be brought to justice seriously.

Based on the background that the researcher previously revealed, the researcher is interested in raising in a scientific paper / journal with the title "Juridical Analysis of Ecocide Crimes in a Positive Legal Perspective in Indonesia".

1.1 Problem Formulation

Based on the background above, the formulation of the problem that the author raises is:

- 1) What is ecocide?
- 2) What is the position of ecocide in the Indonesian legal system?
- 3) What is the urgency of ecocide crime in Indonesia?

1.2 Methods

The type of research used in writing this journal is a normative or doctrinal type of juridical research. In its definition, doctrinal legal research is research based on literature whose focus is the analysis of primary and secondary materials. In this study, the authors used a statute approach, and a conceptual approach.

Peter Mahmud Marzuki argues that normative legal research is a process to find a legal regulation, legal principles, or legal doctrines to answer the legal problems faced. In this type of legal research, law is often conceptualized as something written in laws and regulations or laws that are conceptualized with rules or norms to be used as a measure of human behavior that is considered appropriate.

As for the legal material used by the author, it is secondary legal material. Secondary legal material is a legal material that can provide explanations for primary legal materials, this can be in the form of draft legislation, research results, books, scientific journals, newspapers (newspapers), pamphlets, leaflet, brochures, and internet news. Non-

legal materials are legal materials in the form of literature from non-laws as long as they are related or have a correlation with research topics.

2 Discussion

2.1 Understanding Ecocide

Ecocide is a term introduced by Arthur W. Galston at the Conference on Accountability for War in Washington. Since then, ecocide has become a popular term among environmental activists to refer to massive environmental destruction. Furthermore, Polly Higgins identified two types of ecocide, namely human-caused ecocide and naturally occurring ecocide. Human-caused ecocide refers to cases in which human actions such as harmful industrial activity, cause massive destruction to the environment. Naturally occurring ecocide includes damage caused by events such as tsunamis or volcanic eruptions that cause damage. Both types of ecocide have a very strong negative impact on the world. But the attempt to criminalize ecocide here is against ecocide which can be ascertained i.e. that caused by human activities.

Codification of ecocide as the fifth crime against peace, namely genocide, crime of aggression, crime against humanity, war crime and ecocide. This effort aims to transform our understanding of nature as property into an equal partner with humans in building a sustainable society. The initiative to criminalize ecocide crimes expresses the worldview that the defense of nature appears in laws that give intrinsic value to the right to the environment. On that basis, the position of ecocide is a modern crime equivalent to other international crimes referred to in the Rome Statute. It is based on action, engagement, and its impact on the essence of peace and peace of the population, the right to life and the system of survival of human life and the environment today and in the future.

For this reason, the crime of ecocide is so important to be opposed for several reasons, including: First, environmental exploitation has so far led to the act of destroying human resources. Second, the extermination is an act that is closely related to the practice of eliminating the rights to human life and has even caused the right to live in the ecosystem in it to be eliminated. Third, to be part of the exploitation of natural resources that leads to the threatened security of human life today and the lives of future generations. So is the threat to the extinction of living diversity and other biodiversity. The extermination of ecology in this case should not be separated from the fact that ecosystems are the system and series of human life.

In the perspective of the impact caused, there are three elements of impact intended in the ecocide discourse, including: First, the impact is very long on a unit and function of life and cannot be recovered. Second, there are destroyed units and functions in a series of life from the original state. Third, there are physical and psychic deviations of man. Thus, describing the proposed ecocide crimes alongside other crimes against peace, is an extension of the paradigm of our concern for the sustainability of human life. It is no longer just human to man, but now man to the wider earth community.

2.2 Ecocide's Position in the Indonesian Legal System

The Constitution of the Republic of Indonesia The 1945 Constitution in the 2nd Amendment, Article 28H paragraph (1) states that everyone has the right to live a prosperous life born and mentally, to live and to have a good and healthy living environment. Law Number 39 of 1999 concerning Human Rights, article 9 paragraph 3, states that the community has the right to a good and healthy living environment. Likewise with the Environmental Protection and Management Law No. 32/2009. In human rights instruments, the right to the environment is a human right that is included in the family of economic, social and cultural rights, although of course it cannot be separated from civil and political rights, as well as as individual and collective rights.

Takdir Rahmadi stated that environmental law is a field of law called the functional field of law, which is a field of law that contains the provisions of state administrative, criminal and civil law. Although this UUPPLH is classified as a progressive legislation, especially with the concept of strict liability adopted by it, Until now the term ecocide has not been adopted into law. As for the criminal liability of perpetrators of environmental destruction has been regulated by UUPPLH, this law recognizes corporations as legal subjects that can be subject to criminal liability. Environmental crimes in the Indonesian legal system are seen as 'ordinary crimes' rather than as extraordinary crimes (most serious crime) as it is known in the conception of modern international environmental law. This causes criminal liability for perpetrators of criminal acts for the environment to be classified as not heavy and not as strict as criminal liability for extraordinary crimes.

For example, forest and peatland fires in Sumatra and Kalimantan, the Ministry of Environment and Forestry recorded that forests and peatlands burned throughout 2019 reached 328 thousand hectares. Aftermath of wildfires, the smoke spread to various neighboring countries, namely Singapore, Malaysia and Thailand. In addition, a case that also attracted attention was a mudflow in Porong District, Sidoarjo Regency, which was caused by PT. Lapindo Brantas who made an oil drilling error in the area has submerged 7 villages and left thousands of residents homeless. The above cases of environmental damage are all caused by corporate activities, and almost all corporations responsible for environmental damage due to these industrial activities are free from legal entanglements. Law enforcement efforts from the community pushing for the Lapindo mud case to be categorized as an ecocide crime have been carried out, although the effort failed because Indonesia's positive law has not included environmental crimes in the scope of criminal law.

The barrage of data and facts about ecocide crimes above shows that there is something wrong with environmental law policies, especially the enforcement of our environmental criminal law so that environmental destruction continues to occur. Weak law enforcement even though the guarantee of a good environment is a constitutional mandate shows that there is something lacking in existing regulations. Our regulations have not accommodated the crime of ecocide as a serious crime and is part of the violations of the constitution as well as human rights that allow perpetrators to be severely punished. This opinion is in line with what Walhi Executive Director Nur Hidayati stated

that the government does not yet understand environmental rights as Human Rights so that there is no regulation that can resolve this matter.

These various things are reflections on the weak environmental protection system and punishment for corporations in the Indonesian legal system. Crimes committed by corporations until now there is no legal umbrella underlying them. So that the discourse of deprivation of space in the form of violation of rules by corporations will always be repeated.

In Law Number 1 of 1946 concerning Criminal Provisions or known as the Indonesian Criminal Code (KUHP), only natural humans can commit criminal acts and can be held criminally responsible Article 59 of Book I of the Criminal Code which regulates criminal liability within the scope of a corporation only stipulates that where a criminal offense occurs against the management of a corporation, the management of the corporation who does not interfere in committing the offense is not punished. The article in the provisions of the Criminal Code implies that criminal liability is only for persons who manifestly commit criminal acts although within the scope of the corporation.

The establishment of the Criminal Code is in line with the past legal establishments of both civil and common law. The famous maxim mentions "societas delinquere non potest" which means corporations cannot be held criminally liable. The establishment was motivated by the difficulty of formulating how to make a corporation that is legal fiction do and be criminally responsible. Now that stance has changed, although the codification of criminal law has not recognized corporations as legal subjects, a number of laws outside the Criminal Code have recognized and regulated the criminal liability of corporations. This can be understood considering that the Criminal Code that is now in force in Indonesia is a regulation made in 1881, which at that time still adhered to the idea that corporations could not be subject to criminal liability, which based on the principle of concordance becomes the general criminal law rule in Indonesia.

In order to implement ecocide crimes against environmental destroyers and cut off the right of corporate impunity of environmental destroyers in Indonesia is still very difficult even though in its journey ecocide is equivalent to other international crimes and / or is a serious human rights crime, The application of ecocide is hindered by Indonesian legislation that has not made ecocide a norm so that often judges in deciding cases that have actually fulfilled the elements of ecocide crimes do not dare to apply the ecocide crimes.

Looking at the development of ecocide crimes that occur today, our government does not seem to be responding to the existing problems. When compared to the response of western countries, we are far behind in efforts to protect human rights for the environment. For example, the President of France announced that the government would consult to incorporate ecocide into French law and the Green Party in Belgium introduced ecocide legislation to address environmental issues at the national and international levels.

2.3 The Urgency of Ecocide Regulation in Indonesia

Currently, environmental damage in Indonesia continues to occur in various regions, this makes environmental sustainability in Indonesia very concerning. Many corporations engaged in industry and mining are ecocide actors, this has an impact on the occurrence of ecological disasters. To overcome these various problems, an update to the criminal system is needed for corporations that commit criminal acts in the environmental sector in Indonesia, besides that Indonesian law needs to include ecocide in the law and criminalize the perpetrators. This ecocide crime must certainly get attention for Indonesia, which has a wealth of natural resources as an effort to protect justice for the environment, humans and other living things. Oppose ecocide is indispensable on the grounds that:

1. Exploitation of the existing environment is no longer an ordinary use activity but can be ascertained as the destruction of human resources;
2. The destruction of the environment is closely related to the loss of the right to human life including also the rights of other living beings who are lost in their viability;

There are several things that make special regulations regarding ecocide, namely:

1. No threat of life imprisonment
2. Limited to fines of no more than 15M
3. Loss of environmental and economic damage is still with the approach of a civil lawsuit (Article 87 UUPH)

In addition, given the conception of modern international environmental law experts that ecocide has the same degree as genocide, crimes against humanity, war crimes and aggression, where Indonesia through Law Number 26 of 2000 has recognized genocide and crimes against humanity as gross human rights violations, then by being incorporated into ecocide into the Indonesian legal system, ecocide will be viewed as a criminal act equivalent to gross human rights violations. This will also boil down to his criminal liability which will become heavier and stricter. The inclusion of ecocide in the Indonesian legal system The government will also be given a legal obligation to prevent ecocide and bring the perpetrators to justice. As long as the conception of ecocide does not have a special place in the Indonesian legal system, law enforcement in the environmental field will always be hobbled and corporations will enjoy impunity.

By regulating ecocide regulations into law, the government means carrying out the mandate of the constitution while providing human rights protection to its citizens. This is certainly in line with one of the legal principles that states that. The safety of the people is the supreme law. Because by codifying in the form of regulatory arrangements for ecocide crimes so that perpetrators can be severely punished, it shows that the government recognizes sovereignty over the safety of the people. This is certainly in line with one of the legal principles that states that. The safety of the people is the supreme law. Because by codifying in the form of regulatory arrangements for ecocide crimes so that perpetrators can be severely punished, it shows that the government recognizes sovereignty over the safety of the people. People who have always been surrounded by

bad environmental conditions caused by irresponsible behavior will soon regain their right to a good environment.

More than that, this ecocide codification will again bring the earth slowly to recover itself, especially on this equatorial earth. The classification of ecocide, which is an extraordinary crime, is expected to eliminate the intentions of rogues who try to cheat the earth at the expense of the people's safety by committing human rights violations of a good environment.

The inclusion of ecocide in Indonesian laws and regulations will also provide a legal obligation to the government to prevent ecocide and prosecute whoever the perpetrators are in order to achieve legal certainty. As long as the conception of ecocide does not receive special attention in Indonesia, then law enforcement related to serious environmental damage will always limp and corporations will enjoy their immunity as actors who often result in damage to the environment and injustice to the living things affected by it. In formulating ecocide as a criminal act in Indonesian laws and regulations Keep in mind that environmental losses and damage are not only real but also those that are potential threats, both to the environment and general health.

The codification of ecocide as a criminal offense of extraordinary crimes in the field of the environment in positive legal norms can be carried out by issuing a special draft law regulating ecocide. This method is more efficient than revising one by one the provisions of laws and regulations governing environmental crimes. The law will later be drafted by the omnibus law method considering the many regulations related to it.

3 Cover

3.1 Conclusion

Based on the discussion above, the ecocide crime has the potential to have a very large and massive impact. If allowed to continue, it will become a threat to the living beings of the present and future generations. Seeing the condition of the community that is increasingly concerned and continues to urge the government to care about this ecocide issue and the negative impacts that arise due to ecocide actions that cause damage to the environment, It is expected to be the basis for the government's consideration to immediately make arrangements related to the regulation of ecocide crimes in the form of laws as some countries have incorporated the term ecocide into their legal systems, those countries include Russia, Ukraine and Vietnam. Moreover, this ecocide arrangement will again bring the earth slowly to recover itself, especially on this equatorial earth. With the ecocide arrangement, it is hoped that it can eliminate the intentions of rogue individuals who try to cheat the earth at the expense of the people's safety by committing human rights violations of a good environment. The environment must have a proper place in the Indonesian legal system so that any crime against the environment will be seen as an extraordinary crime and the perpetrators will be brought to justice seriously.

3.2 Suggestion

The author's suggestion regarding this issue is to draft a law related to the ecocide concept and include it in the National Legislation Program. The House of Representatives (DPR) and the Government as a bulwark and shield of human rights must seriously respond to this issue, amending the constitution by including the term ecocide in it. If ecocide has been explicitly stated in the constitution, can be an indication of more serious law enforcement. Nationally, the politics of law in Indonesia must be in favor of environmental preservation and protection, by ratifying ecocide crimes into the Indonesian legal system it will help to carry out law enforcement and cut off the right of impunity from environmental destroyers and serious human rights violators in Indonesia.

4 Authors' Contributions

Table 1. Authors' Contributions

Name	Author position	Science	Contribution
Yopani Selia Almahisa	First Author	Law	Collecting library data and preparing journal drafts
Rida Ista Sitepu S.H.,M.H	Last Author	Law	Director and final coordinator of the journal

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