

## RE-ARRANGEMENT OF CRIMINAL IMMEDIATE SANCTIONS TO ACHIEVE ENVIRONMENTAL SUSTAINABILITY

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### ABSTRACT

*Fire forest and land is one of the causes of environmental damage. The adverse impacts are very broad, including damage to ecosystems, loss of biodiversity, decline in the economic value of forests, microclimate and global climate change, and the resulting smoke impacts public health, creates and disrupts traffic. The existence of criminal sanctions regulated in Law Number 32 of 2009 concerning Environmental Protection and Management must pay attention to the interests of the environment, which are the main victims of criminal acts. Judging from the Green Victimology theory, the environment as a victim of pollution or damage gets its rights in the form of recovery. The existence of additional penalties in the form of repairs due to criminal acts that can be imposed on corporations as perpetrators of criminal acts is the right sanction to restore the damaged environment to achieve environmental sustainability. However, this criminal repair failed to achieve environmental sustainability due to several weaknesses. This study aims to determine the concept of re-arranging sanctions for reparation due to criminal acts that can be imposed to realize environmental sustainability, based on Law Number 32 of 2009 concerning Environmental Protection and Management.*

*Keywords:* Environmental Crimes, Sanction, Environmental Sustainability, Green Victimology.

### INTRODUCTION

A good and healthy environment is a human right of every Indonesian citizen as mandated in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore, it is important to maintain the existence of the environment and maintain its sustainability. However, currently, there is a lot of environmental damage and pollution caused by human negligence, which has a negative impact on human life.

One of the causes of environmental damage is the burning of forests and land. The Ministry of Environment and Forestry found that between January and November 2021, 353,222 hectares of forest and land were burned. In 2021, the forest and land area will reach 296,942 hectares<sup>1</sup>. As reported by National Tempo, PT Sumber Sawit is the 11<sup>th</sup> company suspected of being involved in forest and land fires. There are 10 other companies, namely PT Kalista Alam, PT Bumi Mekar Hijau, PT Palmina Utama, PT National Sago Prima, PT Waringin Agro Jaya, PT Ricky Kurniawan Kertapersada, PT Jatim Jaya Perkasa, PT Merbau Pelalawan Lestari, PT Surya Panen Subur and PT Waimusi. Agroidah<sup>2</sup>. From these data, it is known that most forest and land fires are caused by business activities.

Corporations subject to law in criminal acts may be subject to additional penalties as regulated in Article 119 of the PPLH Law, namely:

- a. Deprivation of profits derived from criminal acts.
- b. Closure of all or part of the place of business or activity.
- c. Repairs due to criminal acts.
- d. The obligation to do what is neglected without rights.
- e. Placement of the company under the supervision of a maximum of 3 (three) years.

The researcher took several cases of environmental crimes, which in their decision stipulates the existence of additional criminal penalties for repairs due to criminal acts against business entities.

**Table of Forest and Land Fire Crime Cases With the Imposition of Correctional Penalties**

No	Case Name	Articles of Crime	Public Prosecutor's Claim	Judge's Decision
1.	PT. Adei Plantation and Industry Decision No: 2042/Pid.Sus /2015 dated March 14 , 2016	Article 99 paragraph (1) in conjunction with Article 116 paragraph (1) letter a UU PPLH	- A fine of IDR 5,000,000,000, - Additional punishment in the form of repairs due to criminal acts to restore land damaged by land fires covering an area of 40 hectares through the provision of compost, at a cost of Rp. 15,795,238,630,-,	- A fine of Rp. 1,500,000,000, - subsidiary of 5 months in prison to Tan Kei Yoong. - Additional punishment in the form of repairs due to criminal acts to restore land damaged by land fires covering an area of 40 hectares through the provision of compost, at a

<sup>1</sup> Muhamad Agil Aliansyah, KLHK Catat Areal Hutan dan Lahan Terbakar pada 2021 Capai 296.942 Hektare quoted from <https://www.merdeka.com/events/klhk-catat-areal-hutan-dan-lahan-terbakar-pada-2021-reach-296942-hectare.html>, on August 25, 2022

<sup>2</sup> Perusahaan ini Pernah Terseret Kasus Karhutla, quoted from <https://national.tempo.co/read/1234658/10-corporate-ini-pernah-terseret-case-karhutla>, accessed on August 21, 2022

				cost of Rp. 15,141,826,779,325,-
2.	PT. Triomas Forestry Development Indonesia Verdict Number: 37 / Pid.Sus -LH / 2018 / PN Sak	Article 99 paragraph (1) in conjunction with Article 116 paragraph (1) letter a UU PPLH	- A fine of 1,000,000,000,- - Additional punishment in the form of repairs due to criminal acts to restore land damaged by land fires covering an area of 251 ha at a cost of Rp. 18,825,000,000,-	- A fine of 1,000,000,000,- - Additional punishment in the form of repairs due to criminal acts to restore land damaged by land fires covering an area of 140 hectares at a cost of Rp. 13,000,000,000,-
3.	PT. Adei Plantation and Industry Decision Number : 190/ Pid.B /L H/2020/PN Plw	Article 99 paragraph (1) in conjunction with Article 116 paragraph (1) letter a UU PPLH	- A fine of Rp. 1,500,000,000,- - Additional punishment in the form of repairs due to criminal acts to restore land damaged by land fires covering an area of 4.16 hectares in the amount of Rp. 2,987,654,064,-	- Fines Rp. 1,000,000,000,- - Additional punishment in the form of repairs due to criminal acts to restore land damaged by land fires covering an area of 4.16 hectares by depositing to the State Rp 2,987,654,064,-
4.	PT. Source Prosperous Palm Decision Number : 349/ Pid.B /LH/2019/PN Plw	Article 99 paragraph (1) in conjunction with Article 116 paragraph (1) letter (b) of the PPLH Law and Article 109 in conjunction with Article 68 of Law Number 39 of 2014 concerning Plantations	- A fine of IDR 5,000,000,000,- - Additional punishment in the form of repairs due to criminal acts to restore land damaged by land fires covering an area of 155.2 hectares, at a cost of Rp. 55,212,592,890,-	- Fine of IDR 3,500,000,000,- - Additional punishment in the form of repairs due to criminal acts amounting to Rp. 38,652,262,000,-

That from the decision, it can be seen that there is no uniformity in imposing additional penalties for corporations, namely repairs due to criminal acts. Most of these repairs are converted into recovery costs, and there is also a judge's decision ordering that the repairs due to criminal acts in the form of recovery costs are deposited with the State. In fact, if we look at it from the perspective of *Green Victimology*, the environment that is the victim in environmental crimes should receive green justice, namely in the form of recovery so that environmental sustainability can be realized. However, the remedial sanctions due to criminal acts regulated in the PPLH Law have not been able to accommodate the recovery because there are several weaknesses in the regulation.

## RESEARCH METHODS

This study uses doctrinal law research methods and uses two of the approach methods: the statutory *approach*, and the *conceptual approach*. The statutory *approach* is carried out by examining various law and regulation which related with environment. Whereas conceptual *approach* from opinion or view which develop in knowledge law, especially those dealing with the environment.

## DISCUSSION

### Re-arrangement of Corrective Sanctions Due to Crimes That Can Realize Environmental Sustainability

In determining the types of sanctions that are regulated and imposed on perpetrators, the environment that is the main victim must be prioritized. This is in accordance with the Green Victimology theory, victims of environmental crimes are not only limited to humans, but also the environment itself, such as damage/pollution of soil, minerals, wildlife, bird, and fish<sup>3</sup>. The environment is understood as a direct victim of environmental crimes due to human actions (*green victimology*)<sup>4</sup> as the impact of an ecocentric approach. In particular, the environment as a victim of crime can be in the form of damage and degradation of ecosystems, species extinction, climate change and global warming, pollution, and loss of animals.<sup>5</sup>

By knowing the victim, the sentence imposed should be able to restore the environment. Refers to additional penalties in the form of actions that can be imposed on companies that commit environmental crimes in Article 119(c) of the PPLH Law. Criminal

<sup>3</sup> Michael Faure and Jing Liu, "New Models for the Compensation of Natural Resources", Kentucky Journal of Equine, Agriculture, and Natural Resources Law, 4, 2011-2012, pp. 261-262

<sup>4</sup> Matthew Hall, "Environmental Harm and Environmental Victims Scoping Out a Green Victimology", International Review of Victimology, 20, 2014, pp. 129-143

<sup>5</sup> Jan G. Laitos, "Standing and Environmental Harm: The Double Paradox", Virginia environmental Law Journal, 31, 2013, hlm. 67-71

remedies are imposed on companies that are proven to have committed criminal acts and caused very serious environmental pollution or damage. The imposition of fines is considered inappropriate. In this crime, the company must fix all the negative things caused by the crime it committed.<sup>6</sup>

That the corrective sanctions in Article 119 letter c of the PPLH Law should be able to realize the protection of the environment for the realization of environmental sustainability. But because there are some weaknesses that make it ineffective. First, Article 119 of the PPLH Law stipulates that companies may be subject to additional criminal or disciplinary action. The word can mean that criminal repairs are not required to be imposed on criminal business entities. The imposition of additional penalties is, in principle, facultative, but not mandatory. In the sense that the penalty can be imposed in matters determined by law, but it is not an obligation.<sup>7</sup> Its optional nature precludes enforcement of environmental protection, as Judges are not always obligated to impose penalties.

Whereas the corrective sanctions should be able to protect the environment damaged by environmental crimes, such as the Green Victimology theory. Because, through the existence of criminal sanctions, it is hoped that the damaged or polluted environment can be restored. According to the researcher, the remedial crime regulated in the PPLH Law requires a different arrangement, which is mandatory to be imposed. With the mandatory nomenclature, law enforcement officers, namely prosecutors and judges, will always apply criminal penalties for cases that cause pollution or environmental damage. In addition, there are no special provisions regarding the form or procedure for implementing additional criminal sanctions in the form of corrections. Article 120 of the PPLH Law only stipulates that the Prosecutor's Office will coordinate the execution with the agency responsible for environmental protection and management, in this case the Ministry of Environment and Forestry. However, there are no implementing regulations that regulate Article 120 of the PPLH Law. As a result, in practice, these remediation sanctions are then converted into recovery costs calculated by the Expert.

As the researchers present in the table, the imposition of criminal remedies for criminal acts depends on the understanding of each law enforcement officer, namely the Prosecutor and Judge. As is often the case in court decisions, the judge handed down the verdict, namely the criminal punishment for reparation into the cost of recovery. The next problem, is that the recovery fee cannot be executed because it is constrained by technical regulations. The researcher argues that further regulation is needed regarding the form of remedial sanctions, namely in the form of fees charged to business entities that commit criminal acts as a result of damage or pollution. Where the cost is calculated using the Regulation of the Minister of the Environment Number 7 of 2014 concerning Environmental Losses Due to Pollution or Environmental Damage. Furthermore, the government must also issue a technical regulation to implement the cost of the recovery, which can be in the form of a Ministerial Regulation that regulates the formation of a team to carry out land damage recovery, preparation of a framework of reference, details of the use of funds and their accountability.

That what must be regulated next is how the implementation of criminal repairs will be carried out and when the parameters for carrying out environmental improvements will be completed. The reason is, now there is no government regulation that regulates it. Article 120 of the PPLH Law only stipulates that in carrying out the provisions of the article on additional penalties for corporations, the Prosecutor coordinates with the agency responsible for environmental protection and management to carry out executions. With regard to the criminal correction, if it is not accompanied by implementing regulations, the criminal correction cannot be carried out for executions that are in arrears.

In addition, there are no legal consequences if the criminal offense is not carried out by the perpetrator of the crime. There has not been a coercive legal instrument if the additional punishment is not carried out, even though it has been determined in the judge's decision to make this criminal correction ineffective and result in the punishment being only in arrears that cannot be settled. Perpetrators of environmental crimes do not pay fines or carry out these additional penalties. It would be better if the confiscation of assets or wealth could be carried out for business entities that are perpetrators of criminal acts.

## CONCLUSION

In an effort to realize environmental sustainability, it is necessary to re-arrange the criminal remedial as regulated in Article 119 letter c of the PPLH Law by taking into account the environment which is the main victim of crime as in the perspective of Green Victimology. These arrangements include making repairs a mandatory sanction, the establishment of further regulations on additional forms of crime in the form of repairs, namely in the form of fees charged to business entities that commit crimes due to a damaged or polluted environment along with implementing regulations to carry out their executions and the regulation of legal instruments that compel if the perpetrator does not implement it.

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<sup>6</sup> Mahrus Ali, *Hukum Pidana Lingkungan*, (Rajawali Press : Depok, 2020), Hal. 82

<sup>7</sup> M. Sholehuddin, *Sistem Sanksi Dalam Hukum Pidana*, (Jakarta: Raja Grafindo Persada, 2003), Hal. 215

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