

## RESEARCH ARTICLE

# Legal Aspects of Environment in Indonesia: an Efforts to Prevent Environmental Damage and Pollution

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## ABSTRACT

Pollution and destruction of the environment are some of the severe threats to the conservation of the environment in Indonesia. The disturbed environmental balance needs to be restored as the giver of life and welfare benefits society by improving environmental protection, community development, and optimization of environmental law enforcement. It aims to maintain the existence of nature and aimed at solving environmental problems in Indonesia, primarily the caused by human activity. this case could be through civil, administrative, or criminal law so that it can cope with and take action against perpetrators of pollution, and the destruction of the environment and create a good environment, healthy, beautiful and comfortable for all people.

**Keywords:** *Environmental Law; Environmental Damage; Indonesia.*

## INTRODUCTION

Indonesia is an archipelagic country that has enormous natural wealth. Therefore, the protection and maintenance of nature and the environment in Indonesia are essential. Based on Article 57 paragraph (1) of Law no. 23 of 2009 concerning Environmental Protection and Management, it is regulated regarding procedures for maintaining the environment, namely: "Environmental maintenance is carried out through the following efforts: a. conservation of natural resources; b. reserves of natural resources; or c. preservation of the function of the atmosphere." Indonesia is also in a very vulnerable position to the impacts of climate change. These impacts include a decrease in food production, disruption of water availability, the spread of pests and plant diseases, human diseases, rising sea levels, the sinking of small islands, and the loss of biodiversity.<sup>1</sup> Environmental damage is also caused by catastrophic natural disasters, such as the eruption of Mount Merapi, earthquakes, landslides, etc. Environmental problems for humans can be seen in declining environmental quality concerning environmental values for health, welfare, and peace. Environmental values for various forms of utilization will be lost or reduced in environmental values due to particular uses by humans. To anticipate environmental damage in Indonesia, it is essential to protect and safeguard the environment in Indonesia.<sup>2</sup>

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<sup>1</sup>Penjelasan Undang-Undang Nomor 23 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup, Lembaran Negara Tahun 2009 Nomor 140

<sup>2</sup>Andi Hamzah, *Penegakan Hukum Lingkungan*, (Jakarta: Arikha Media Cipta), 1995, p. 7-6.

With the preservation of nature and a clean environment, it can avoid various harms and various diseases. If the environment is dirty and unclean, then law enforcement in the environment and the imposition of strict sanctions on perpetrators who commit violations should be enforced in this beloved country of Indonesia. Environmental management in Indonesia must be based on state responsibility, the principle of sustainability, and the principle of justice. In addition, environmental management must provide benefits in the economic, social, and cultural fields, which are carried out based on prudence, environmental democracy, decentralization, and recognition and respect for local wisdom and environmental wisdom.<sup>3</sup> In Article 3 of Law no. 23 of 2009 explains the objectives of environmental protection and management in Indonesia, these objectives include:

- a. protect the territory of the Unitary State of the Republic of Indonesia from pollution or environmental damage;
- b. ensure safety, health, and human life;
- c. ensure the survival of living things and the preservation of ecosystems;
- d. maintain the preservation of environmental functions;
- e. achieve harmony, harmony, and environmental balance;
- f. ensure the fulfillment of justice for present and future generations;
- g. guarantee the fulfillment and protection of the right to the environment as part of human rights;
- h. controlling the wise use of natural resources;
- i. realizing sustainable development; and
- j. anticipate global environmental issues.

The environment is a resource. Therefore, it is necessary to manage these resources wisely. In connection with including the environment as a resource, then in principle, the environment is a resource that is needed for its existence by other creatures, especially humans. Based on this thought, Otto Soemarwoto divided needs into three major parts, namely:<sup>4</sup>

1. Basic needs for biological survival, living things always try to maintain their survival individually and as a species.
2. The basic need for human survival, unlike other living creatures, is not enough for humans to live biologically, but because culture must live humanely.
3. The basic need to choose, the ability to choose, is an essential trait of creatures to maintain their survival, both in plants, animals, and humans.

Environmental law in English is called environmental law. In Dutch, it is called *umweltrecht*. In French, it is called *droit de environment*, while in Malay, it is called natural law. All these terms indicate the part of the law relating to the physical environment and can be applied to overcome pollution and environmental destruction (physical). Environmental law generally aims to solve environmental problems, especially those caused by human activities, namely tackling pollution, depletion, and environmental destruction to create a good, healthy, beautiful, and comfortable environment for all people. Environmental law, as we understand it today, is a relatively new concept. According to Munadjat Danusaputro, it grows in line with understanding and awareness to protect and maintain the environment.<sup>5</sup>

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<sup>3</sup>*Ibid.*

<sup>4</sup>Supriadi, *Hukum Lingkungan Indonesia, Sebuah Pengantar* (Jakarta: Sinar Grafika, 2008), p. 4-5.

<sup>5</sup>Environmental law regulates the physical environment and environmental problems related to social phenomena, such as population growth, migration, and legal, social behavior, not only concerning natural sciences

Environmental pollution and destruction are no longer local but are now a national and even international problem. The level of pollution and destruction is also much more remarkable because of advances in industrial technology.<sup>6</sup> So that to overcome the increasingly severe environmental damage, it is necessary to have other factors that will determine the creation of a good environment, namely education, legal awareness, technology, and no less critical is adequate finance to finance projects to prevent pollution and environmental damage, even efforts to improve quality. And the beauty of the environment. Efforts to enforce environmental law are not only the task of the government, but all members of the community must participate, even starting from the household and themselves. In addition, it is also necessary that the cooperation between these agencies be harmonious, coordinated, and integrated and with good law enforcement. According to J.C.T. Simorangkir, laws are coercive regulations that determine human behavior in the community made by authorized official bodies, and violations of these regulations result in action being taken, namely with specific penalties.<sup>7</sup>

Whereas what is meant by law enforcement in English is called law enforcement, in Dutch, it is called *Rechthandhaving*. This distinction between the formality of the written rule of law and the scope of the value of justice it contains has even emerged in English itself with the development of the term 'the rule of law' versus 'the rule of just law' or in the term 'the rule of law and not of man.' versus the term 'the rule by law' which means 'the rule of man by law.' The term 'the rule of law' contains the meaning of government by law, but not in a formal sense, but also includes the values of justice contained in it. Therefore, the term 'the rule of just law' is used. Furthermore, the term 'the rule of law and not of man' is intended to emphasize that, in essence, the government of a modern legal state is carried out by law, not by people. The opposite term is 'the rule by law,' which is meant as a government by people who use the law as a mere tool of power.<sup>8</sup>

In ensuring the rule of law, if necessary, law enforcement officials are allowed to use force. In the national space, environmental law occupies the cross-point of various classical laws, namely public and private law. Public law includes criminal law, administrative law, tax law, constitutional law, and agrarian law. Our constitution regulates the use of nature and the environment for the community, which is contained in Article 33 paragraph (3) of the 1945 Constitution, which states that: "earth and water and the natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the people." Nevertheless, the use of earth and water, and natural resources for the prosperity of the people in Indonesia has not run optimally. This is caused by the amount of environmental pollution rife in Indonesia, water pollution, air

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but also relating to social phenomena. Environmental law generally aims to solve environmental problems, especially those caused by human activities, namely tackling pollution, depletion, and environmental destruction to create a good, healthy, beautiful, and comfortable environment for all people. See : Soejono, *bukum lingkungan dan peranya dalam pembangunan* (Jakarta : PT Rineka Cipta, 1996) p. 5.

<sup>6</sup>Andi Hamzah, *Penegakan Hukum Lingkungan* .....p. 9-13.

<sup>7</sup>C.S.T. Kansil, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia* (Jakarta : Balai Pustaka,1989), p. 38.

<sup>8</sup>In the new and old environmental laws, there is no literal meaning of law enforcement. However, to clarify the meaning of law enforcement, an understanding will be taken as regulated in Dutch, namely *handhaving*. According to Notie *Handhaving Mileurecht*, 1981, it is stated that law enforcement is the supervision and application (or threat) of the use of administrative, criminal, or civil instruments to achieve compliance with laws and regulations that are generally and individually applicable. Law enforcement is more or less an effort made to make the law, both in a narrow formal sense and in a broad material sense, as a behavioral guide in every legal action, both by the legal subjects concerned and by law enforcement officials assigned the task. and authority by law to ensure the functioning of legal norms that apply in the life of society and the state. See: A. Hamzah, *Penegakan Hukum Lingkungan*, (Jakarta: Arikha Media Cipta), 1995, p. 61.

pollution, and soil pollution. For example, in terms of water pollution, according to the results of a survey by the Ministry of the Environment based on the monitoring of 52 rivers in the country from 2006 to 2011, it is stated that the condition of water pollution in Indonesia has increased by 30 percent.

## DISCUSSION

### *History of the Development of Environmental Law in Indonesia*

Environmental Law only developed very rapidly in late 1968 and early 1970. In 1972 the first and historic international conference was held in Stockholm, Sweden. Since then, countries have begun to realize and rise to pay great attention to managing the environment, including creating laws and regulations regarding the preservation of human life, preparation of programs to tackle pollution, destruction, and environmental depletion. In Germany, the German federal government in 1970 made environmental and comprehensive programs in 1972, refined in 1976. Furthermore, in Canada, in the Canadian Criminal Code, you can find provisions relating to the environment, namely Article 180 of the 1989 Criminal Code. In India, the new nation was jolted after the disaster at the Union Carbide plant on December 23, 1984, and they suddenly drafted an environmental law called the environmental (protection) act 1986. In the PRC, the PRC incorporated basic environmental regulations into the 1978 constitution then 1982. In the Netherlands, since January 13, 1979, the Netherlands has had a Parent Law (umbrella) for the environment called *Wet Algemene Bepalingen Milieuhygiene* (Act on General Provisions for Environmental Health), which has been amended many times, and the last was on January 18, 1990, and in the United States, the set of environmental laws and regulations began in 1969, In that year the National Environmental Policy Act (NEPA)<sup>9</sup>.

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

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<sup>9</sup> Andi Hamzah, *Penegakan Hukum Lingkungan*.....p. 8-9.

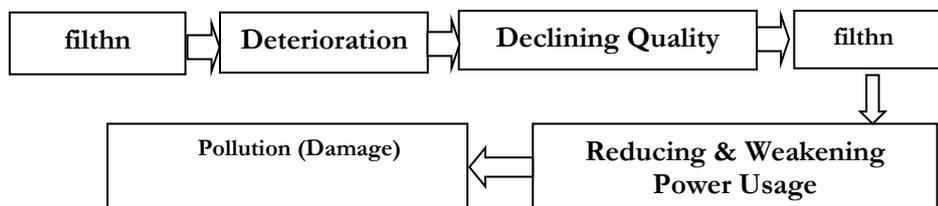
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formed in 1979. The draft UULH was later ratified as Law no. 4 of 1982 concerning Basic Provisions for the Environment, based on Article 4 letter e, environmental impacts are regulated across national borders, which read: "The protection of the State 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."

And then the last one was published and ratified by Law no. 23 of 2009 concerning the Protection and Management of the Environment. This law is to complement and at the same time replace and revoke Law no. 23 of 1997. The transitional provisions of Article 125 of Law no. 23 of 2009 concerning Environmental Protection and Management states that "At the time this law comes into force, Law Number 23 of 1997 concerning Environmental Management (State Gazette of the Republic of Indonesia of 1997 Number 68, Supplement to the State Gazette of the Republic of Indonesia Number 3699) revoked and declared invalid. However, the implementing regulations for the implementation of Law No. 23/1997 on Environmental Management remain in effect. This is following the provisions of Article 124 of Law no. 23 of 2009 concerning Environmental Protection and Management, which reads, "At the time this law comes into force, all laws and regulations which are implementing regulations of Law Number 23 of 1997 concerning Environmental Management (State Gazette of the Republic of Indonesia of 1997) Number 68, Supplement to the State Gazette of the Republic of Indonesia Number 3699) shall remain valid as long as it does not conflict with or has not been replaced by a new regulation based on this Law."

### ***Environmental Pollution and Destruction in Indonesia***

Making the environment clean, undamaged, and free of pollution is a form of environmental preservation, but environmental destruction and pollution are serious threats to environmental sustainability. The term pollution is used to translate the English word "Pollution," which describes a heavier situation than mere dirt. Muhammad Erwin explained that, in pollution, there is a combination of meanings from:<sup>10</sup>



<sup>10</sup>Muhammad Erwin, *Hukum Lingkungan Dalam Sistem Kebijakan Pembangunan Lingkungan Hidup*, (Bandung : Refika Aditama, 2011). p. 35.

Based on Article 1 paragraph (12) of Law No. 23 of 1997, which was amended by Law no. 23 of 2009, what is meant by environmental pollution is the entry or inclusion of living things, substances, or other components into the environment by human activities so that the quality decreases to a certain level which causes the environment to be unable to function following its designation. Meanwhile, based on Article 1 paragraph (14) of Law no. 23 of 2009, Environmental pollution is the entry or inclusion of living things, substances, energy, or other components into the environment by human activities to exceed the established environmental quality standards. Environmental destruction based on Article 1 paragraph (14) of Law No. 23 of 1997, which as amended by Law no. 23 of 2009, is an action that causes direct or indirect changes to its physical or biological properties which causes the environment to no more extended function in supporting sustainable development. Meanwhile, based on Article 1 paragraph (16) of Law no. 23/2009, environmental destruction is the act of a person causing direct or indirect changes to the environment's physical, chemical, or biological characteristics so that it exceeds the standard criteria for environmental damage. According to Munadjat Danusaputro, environmental pollution and destruction cause many losses and adverse impacts. These losses and adverse impacts occur in the form of:<sup>11</sup>

- a. Economic and social losses (economic and social in the jury).
- b. Sanitary hazard (sanitary hazard).

Meanwhile, according to Abdurrahman explained that environmental pollution could be divided into:<sup>12</sup>

- a. Chronic, where the damage occurs progressively but slowly.
- b. Shock or acute, sudden, and severe damage usually results from an accident.
- c. Dangerous, with heavy biological loss in the presence of radioactive genetic defects.
- d. Catastrophic, here the death of many living organisms and perhaps the living organisms become extinct.

Pollution and environmental destruction are no longer just a local problem but are now also a national and even international problem. The level of pollution and destruction is also much more significant because of advances in industrial technology. Environmental pollution can occur in several sectors, including water pollution, air pollution, and soil pollution.

### 1. Water Pollution

The existence of water is needed for the needs of human life and other living things, namely plants and animals.<sup>13</sup> Water is a basic human need in life. In Indonesia itself, there are still residents whose needs for clean water are not met. The consequences of water pollution include the emergence of various diseases (stomach, damage to organs due to poisoning), a decrease in dissolved oxygen in the waters (resulting in the death of living things in the waters), the occurrence of algae overgrowth (nitrates and phosphates resulting in eutrophication), the entry of toxins into the water. Aquatic system (can

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<sup>11</sup>St. Munadajat Danusaputro, *Hukum Lingkungan dan Pencemaran Lingkungan Melandasi Sistem Hukum Pencemaran, Buku V: Sektorial*, (Bandung : Bina Cipta, 1986), p. 35.

<sup>12</sup>Abdurrahman, *Pengantar Hukum Lingkungan Indonesia*, (Bandung : PT Citra Aditya Bakti), p. 99.

<sup>13</sup>Water as a natural resource has a significant and vital meaning and function for human beings and other living things because there is no life without water (H<sub>2</sub>O), while water on earth is ± 1,360,600,000 Km<sup>3</sup>, which consists of ± 97.25% salt water ( 37,400,000 Km<sup>3</sup>), 1% surface water (374,000 Km<sup>3</sup>), 23.965% groundwater (8,963,000 Km<sup>3</sup>) and 75% snow or ES water (28,050,000 Km<sup>3</sup>). Look : Moh. Soerjani, Rofiq Ahmad dan Rozy Munir, *Lingkungan, Sumber Daya Alam dan Kependudukan Dalam Pembangunan*, (Jakarta :UI Press, 1987). p. 60.

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accumulate in living things in the waters), the death of living things in the waters, and others. A survey by the Ministry of the Environment stated that the condition of water pollution in Indonesia has increased by 30 percent. This figure was obtained from monitoring 52 rivers in the country from 2006 to 2011.<sup>14</sup> Monitoring river water quality in 33 provinces by utilizing deconcentration funds has been carried out since 2008 in an integrated manner on a national scale. During 2008-2013, data on river water quality has been collected in almost 57 rivers across provinces, countries, and national strategic rivers from 33 provinces. The monitoring data concluded that around 70-75% of the monitored rivers were polluted, either lightly polluted, moderately, or heavily polluted. The dominant pollutants that pollute rivers are from sources of domestic waste pollution (waste originating from households). This information will become a priority for KLH in dealing with and the direction of water quality management.<sup>15</sup>

## 2. Air Pollution

As with water, the air is needed for human life, which requires oxygen (O<sub>2</sub>). Furthermore, other living things, namely plants that require carbon dioxide (CO<sub>2</sub>) and animals that require oxygen (O<sub>2</sub>). The effects of air pollution include impaired visibility, psychological disturbances (due to noise), the emergence of respiratory diseases, decreased productivity of plants and animals (due to acid rain), damage to buildings (due to acid rain), and others. The leading causes and effects of air pollution are always related to humans. Humans are the primary and most significant cause of air pollution. Humans also feel the worst impact of air pollution. The entry of pollutants into the atmosphere that causes air pollution can be caused by two factors: natural and human factors. Causes of air pollution from natural factors, for example, are a volcanic activity that emits volcanic ash and gases, forest fires, and the activities of microorganisms. Pollutants produced are usually in the form of smoke, dust, and gases.<sup>16</sup> Polluted air consequently resembles polluted water. It does not know the boundaries of sub-districts, regions, and provinces. For example, it can be seen in forest areas in

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<sup>14</sup>In Indonesia, the supply of drinking water for the population in 2011 is still lacking. Based on the Central Statistics Agency data, the fulfillment of safe drinking water is only 55.04 percent, and there are still 80 million people whose drinking water needs have not been met. This condition will continue to increase along with the growth of our population. In Indonesia, public access to good sanitation services has only reached 55.60 percent, towards 62.41 percent of the MDGs. Indonesia also continues to catch up in the drinking water sector. The United Nations (UN) Agency noted that at least 780 million people in the world do not have access to clean water, and nearly 2.5 billion do not have access to adequate sanitation. Not to mention that six to eight million people die each year from disasters and water-related diseases. Look : <http://health.liputan6.com/read/542058/hari-air-sedunia-80-juta-penduduk-indonesia-kekurangan-air>,

<sup>15</sup>The impact that is no less detrimental than water pollution is the disruption of the environment, ecosystem, and biodiversity. Polluted water can kill various organisms that live in the water. The Asian Development Bank (2008) once stated that water pollution in Indonesia causes a loss of IDR 45 trillion per year. Costs due to water pollution include health costs, clean water supply costs, lost productive time, the bad image of tourism, and high infant mortality rates. Look: <http://alamendab.org/2010/08/01/pencemaran-air-di-indonesia/>, Diakses Pada Tanggal : 10 Juli 2015, Pada Pukul 11:08. Lihat Juga : <http://www.menlh.go.id/klh-melakukan-pemantauan-kualitas-air-di-33-provinsi/> Diakses Pada Tanggal : 10 Juli 2015, Pada Pukul 11:45.

<sup>16</sup> Air pollution is one of the environmental damage, in the form of a decrease in air quality due to the entry of harmful elements into the air or the earth's atmosphere. Hazardous elements that enter the atmosphere can be in the form of carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), chlorofluorocarbons (CFCs), sulfur dioxide (SO<sub>2</sub>), hydrocarbons (HC), particulate matter, lead (Pb), and carbon dioxide. Dioxide (CO<sub>2</sub>). These elements can also be referred to as pollutants or types of air pollutants. Look: <http://pollutiononmyearth.weebly.com/pencemaran-udara.html>.

Scandinavia and several tropical countries that have been damaged leaves fall and so on due to polluted air (atmosphere).<sup>17</sup>

### 3. Land Pollution

Soil pollution is a condition in which physical, chemical, and biological materials enter and change the natural soil environment. The consequences of soil pollution are damage to soil structure, decreased plant productivity, death of plants and animals, aesthetic disturbance, unsightly, disease vectors (flies, rats), and others. Pollution can occur due to routine human activities or due to carelessness, such as leakage of liquid waste or chemicals in industrial or commercial facilities; pesticide use; ingress of polluted surface water in the sub-surface layer; accidents of oil, chemical, or waste transport fleets; wastewater from landfills as well as industrial waste that is directly discharged to the ground in an illegal manner (illegal dumping). Soil pollution can occur through various consequences; there are direct or indirect chemical substances such as pesticides or insecticides, or detergents. Chemicals, including pesticides and various detergent forms, besides being useful if used in excess, will cause various forms of pollution to the environment, including soil. It has been revealed that due to the use of Herbicides (2,4,5,T and 2,4D) to clear forests in Latin America for the cultivation of livestock grass, Herbicides 2,4,5,T leave dioxin residues in soil and water, Dioxins is one of the most lethal poisons ever created, can cause congenital disabilities, skin damage, and miscarriage.<sup>18</sup> While indirect pollution occurs due to being polluted by petroleum and rice fields and fish ponds polluted by oil waste, even excessive land is polluted by harmful substances.<sup>19</sup>

### *Efforts to Prevent Environmental Damage and Pollution in Indonesia: Optimization of Law Enforcement*

The disturbed balance of the environment needs to be restored to its function as life and provides benefits for the welfare of society and intergenerational justice by increasing the development and enforcement of the law. In the legal language, environmental management is based on the preservation of harmonious and balanced environmental capabilities to support sustainable development for improving human welfare, and in realizing this, it is necessary to optimize environmental law enforcement in Indonesia. Enforcement of environmental law is closely related to the ability of the apparatus and the compliance of citizens with applicable regulations, which cover three areas of law, namely administrative, criminal, and civil. Thus, environmental law enforcement aims to comply with regulations and requirements in general and individual legal provisions through supervision and application (or threats) of administrative, criminal, and civil means.

Resolution of problems that arise in environmental cases can be made through the court or outside the court. Especially for dispute resolution through the courts, it still refers to the three instrument approaches, namely administrative law, criminal law, and civil law. The three

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<sup>17</sup>The earth is now getting hotter due to various industrial activities, burning coal, reshuffling or uncontrolled deforestation (deforestation), excessive use of aerosols, and the consequences of other pollution sources can damage ozone which will damage and pose a danger to the life of living beings and ecosystems. The Environment on the earth's surface, the emergence of holes in the ozone is a severe threat to humans and all creatures on this earth. Moreover, the increasing heat will cause sea levels to rise to about three meters (melting icebergs at the North Pole) by 2100. Look : John Salindeho, *Masalah Tanah Dalam Pembangunan*, (Jakarta : Sinar Grafika, 1987). p. 193-194.

<sup>18</sup>David Weir dan Marc Scarpiro, *Lingkaran Racun Pestisida*, (Jakarta: Sinar Harapan, 1985). p. 35.

<sup>19</sup>*Ibid*,

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approaches are the main instruments in environmental law enforcement.<sup>20</sup> In Indonesia, environmental law enforcement involves various government agencies at once, such as the police, prosecutors, local governments, the central government, especially the Ministry of Trade, the Ministry of Forestry and the Ministry of Public Works, the Office of the State Minister for the Environment, Criminal Laboratories, and even the private sector such as NGOs (non-governmental organizations), and others.<sup>21</sup>

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.<sup>22</sup> 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. Several types of administrative sanctions include:<sup>23</sup>

- a) Government coercion or coercion (Bestuursdwang);
- b) Forced Money (Publiekrechtelijke dwangsom);
- c) Closure of the place of business (Sluiting van een inrichting);
- d) Cessation of the company's machinery activities (Buitengebruikstelling van een toestel);
- e) Revocation of license through a process of reprimand, government coercion, closure and forced money.

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

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<sup>20</sup>Supriadi, *Hukum Lingkungan Indonesia, Sebuah Pengantar* (Jakarta : Sinar Grafika, 2008), p. 4-5.

<sup>21</sup>The definition of law enforcement in Indonesian terminology always leads to Force, so that there is an impression in the community that law enforcement is related to criminal sanctions. This is also related to how often people refer to law enforcers as police, prosecutors, and judges. At the same time, administrative officials (bureaucracies) act as law enforcers. Law enforcement is carried out by the bureaucracy (administrative officials) in the form of preventive. Preventive enforcement is carried out by conducting counseling or socialization of statutory regulation, both statutory regulations originating from the center and regulations made in the regions. Law enforcement is a process of making efforts to enforce or function legal norms as guidelines for behavior in traffic or legal relations in social and state life. In a broad sense, the law enforcement process involves all legal subjects in every legal relationship. Anyone who applies normative rules or does something or does not do something based on the norms of the applicable law means that he is carrying out or enforcing the rule of law. In a narrow sense, in terms of the subject matter, law enforcement is only defined as the efforts of certain law enforcement officials to guarantee and ensure that the rule of law runs as it should. See : Andi Hamzah, *Penegakan Hukum Lingkungan ....* p. 8-9.

<sup>22</sup>Siti Sundari Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional*, (Surabaya : Airlangga University Press, 1996) p. 192. See also : Muhammad Erwin, *Hukum Lingkungan Dalam Sistem Kebijakan Pembangunan Lingkungan Hidup*, (Bandung : Refika Aditama, 2011). p. 117-118.

<sup>23</sup>*Ibid*,

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 UULH 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.<sup>25</sup>

For the environmental law enforcement process to run optimally, it is necessary to carry out an exit strategy as an essential solution that policyholders must take in saving environmental functions. First, intensify the integration and coordination between related sectors in managing natural resources and the environment. Second, there are adequate sanctions (enforceability) for stubborn waste management companies following applicable regulations. If there are indications of a criminal act, law enforcement officers can take firm action against the perpetrators/responsible for the activity. Third, public participation, transparency, and democratization in the management of natural resources and the environment should be improved. Environmental management will be related to three elements, namely the government, entrepreneurs, and the community. In turn, in environmental management, everyone has the same right to enjoy a good and healthy environment. It is time for law enforcement for every business and activity that burdens the environment to be optimized and intensified so that the preservation of environmental functions can be well maintained.<sup>26</sup>

### ***Integral Policies as Efforts to Prevent Environmental Damage in Indonesia and Efforts to Eradicate Environmental Destroyer/ Pollutants in Indonesia***

Policies or efforts to combat crime against environmental destruction in Indonesia are essentially an integral part of protecting society (social defense) and efforts to achieve social welfare. Therefore, it can be said that the ultimate goal or primary goal of criminal politics is the "protection of society to achieve public welfare."<sup>27</sup> Winsubroto explained that criminal politics can be associated with actions:<sup>28</sup>

- 1) What are the government's efforts to tackle crime with criminal law;
- 2) How to formulate criminal law to suit the conditions of society;
- 3) What is the government's policy to regulate society with criminal law;
- 4) How to use criminal law to regulate society in order to achieve a bigger goal.

This is in line with what was expressed by Barda Nawawi Arief that criminal politics is "a rational effort of the community in overcoming crime." Thus, it can be said that criminal politics

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<sup>24</sup>*Ibid*,

<sup>25</sup>Muhammad Asikin, *Penegakan Hukum Lingkungan dan Pembicaraan di DPR-RI*, (Jakarta: Yarsif Watampone,2003). p. 37.

<sup>26</sup>Janpatar Simamora, Dosen Hukum Tata Negara Fakultas Hukum Universitas HKBP Nommensen (UHN) Medan. *Harian Batak Pos, Refleksi Hari Lingkungan Hidup Se-Dunia, 5 Juni 2008, Powered by WordPress.com*

<sup>27</sup> *Ibid*

<sup>28</sup>Al.Winusubroto, *Kebijakan Hukum Pidana Dalam Penanggulangan Penyalahgunaan Komputer* (Yogyakarta: Universitas Atmajaya Yogyakarta, 1999), p. 12.

is also an integral part of social politics (i.e., policies or efforts to achieve social welfare). Schematically, the relationship can be described as follows:<sup>29</sup>

- 1) Crime prevention must support the goals ("goals"), "social welfare (SW), and "social defense" (SD). Aspects of social welfare and social defense that are very important are social welfare/protection, which is immaterial, especially the value of trust, truth/honesty/justice.
- 2) Crime prevention and control must be carried out with an "integral approach," that is, there is a balance between "penal" and "non-penal" means.
- 3) Combating crime utilizing "penal" is a "penal policy" or penal law enforcement policy whose functionalization/operationalization goes through several stages:
  - a. Formulation stage (legislative policy);
  - b. Application stage (judicial/judicial policy);
  - c. Execution stage (executive/administrative policy).

With the "formulation" stage of the rules regarding the environment, 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.<sup>30</sup> According to Bambang Poernomo, that according to the science of criminal law, crime prevention can be viewed from two aspects, namely:

- a. 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.
- b. 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.<sup>31</sup>

According to M. Hamdan, crime prevention can use two policies: using a penal policy (using criminal sanctions) and using non-penal policies (using administrative sanctions, civil sanctions, etc., unfortunately, M. Hamdan's ideas are related to non-penal policies). Penalties (using administrative sanctions, civil sanctions) are not explained in more detail than Barda Nawawi Arief and Bambang Poernomo, who emphasized that the non-penal policy in crime prevention is to take preventive steps before a crime occurs.<sup>32</sup>

### ***Strategies for Preventing Environmental Damage in Indonesia and Eradicating Environmental Pollutants in Indonesia***

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<sup>29</sup> Barda Nawawi Arief, , *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*, (Jakarta: Kencana Predana Media Group, 2007), p. 77-78.

<sup>30</sup> *Ibid.*, p. 39.

<sup>31</sup> Bambang Poernomo, *Orientasi Hukum Acara Pidana*, Yogyakarta: Amastata Buku, 1998), p. 90.

<sup>32</sup> M. Hamdan, 1996, *Politik Hukum Pidana*, PT Radja Grafindo Persada, Jakarta, p.26.

In the context of enforcing environmental law as an effort to prevent environmental damage in Indonesia, there are several things that need to be considered, including:<sup>33</sup>

- a. Handling environmental problems at this time should be placed as part of the process of reforming the legal system, in which it is necessary not only to complete the legal provisions but also the ability of the judiciary to absorb legal values that develop in society.
- b. Handling environmental problems is not only approached in terms of the application of criminal or civil sanctions but also needs to be done accumulatively with administrative sanctions, because in reality, the standard of law violation or environmental crime always starts from the existence of administrative actions, both licensing and the application of environmental quality standards
- c. The police should develop structuring models other than criminal, especially using the information to incentivize and disincentives to anyone who pollutes and destroys the environment.
- d. The judiciary needs to apply the principle of strict liability and polluters payments to parties polluting and destroying natural resources.
- e. Participation in environmental management includes the role of individuals as parties subject to regulations and the participation of groups and other social organizations.
- f. Community members are expected to always actively participate in it, for example, reporting to the competent authorities for violations of environmental law and efforts to hide the reporter's identity to protect the reporting witness.

The development that is carried out is certainly expected to provide benefits in the form of favorable conditions. However, on the other hand, we are also dealing with environmental risks (Environmental Risk) or an adverse situation, so to secure development in the environmental sector, it should be done seriously from the planning, implementation stage to the assessment stage, as well as aspects of law enforcement, become very important as an effort to fight environmental destroyers/polluters in Indonesia.<sup>34</sup>

## CONCLUSION

Making the environment clean, undamaged, and not polluted is a form of environmental preservation, but environmental destruction and pollution are severe threats to Indonesia's environmental sustainability. The provisions of Article 33 paragraph (3) of the 1945 Constitution states that: "earth and water and the natural resources contained therein are controlled by the State and used as much as possible for the prosperity of the people." The implementation of this article cannot be carried out optimally. The use of earth and water and natural resources for the prosperity of the people in Indonesia has not been going well. This is caused by the increasing prevalence of environmental pollution in Indonesia, both water pollution, air pollution, and soil pollution. The disturbed balance of the environment needs to be restored to its function as a giver of life and benefit for the welfare of society and intergenerational justice by increasing the development and enforcement of the law. Therefore, it is necessary to optimize environmental law enforcement and implement integral policies to prevent environmental damage in Indonesia

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<sup>33</sup>Muhammad Erwin, *Hukum Lingkungan Dalam Sistem* ..... p. 121-122.

<sup>34</sup>*Ibid*, p. 123.

This work is licensed under a Creative Commons Attribution 4.0 International License (cc-by). and efforts to eradicate environmental destroyers/polluters in Indonesia. This aims to maintain nature and aims to solve environmental problems in Indonesia, especially those caused by human activity. In this case, the enforcement can be through civil law, administrative and criminal law, to overcome and take action against the perpetrators of pollution, depletion, and environmental destruction and create a good, healthy, beautiful, and comfortable environment for all people.

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