

# The Implementation of Polluter Pays Principle in Indonesian Land Policy Regulation

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## Abstract

Many lands are degraded; they are no longer productive, vital, damaged, or utilized and are instead overgrown with shrubs. The majority of the causes of this land degradation are irresponsible and arbitrary human actions. What is more perplexing is that these actors are not immediately punished for their actions but are instead allowed to roam freely outside. As a result, this research will discuss the accountability of land destroyers, which is based on one of the principles of international law, namely the “Polluter Pays Principle,” which requires an actor who is a land destroyer to be held accountable for all of his actions in an amount equal to the impact on the land itself. The application of the Polluter Pays Principle is hoped to improve the control and maintenance of land policy in Indonesia.

**Keywords:** *Polluter Pays, Land Policy, Regulation, Land Degradation*

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## 1. Introduction

Human life can not be separated from its environment, both the natural environment and the social environment. We breathe air from the environment. Eating, drinking, keeping healthy, everything involves the environment. The definition of the environment is everything around humans that affects the development of human life, either directly or indirectly<sup>1</sup>. If human actions have polluted an environment, the one who will feel the impact is the human being himself because humans depend on Nature without being aware of it. Humans are unconsciously very dependent on Nature, especially parts of Nature itself. We need a land policy that can overcome natural damage in line with the increasing population, so shelter/shelter for all humans will also increase. So with that, the role of the government here is very significant. The government must be able to make a policy that not only prevents damage to the land itself, but the government must be able to take firm action against those who deliberately destroy the property itself. What the author suggests is the application of one of the international principles, namely Polluter. Pays Principle in the national scope to control the processing of the land itself.

All forms of exploration and exploitation activities in Nature comprehensively will harm Nature itself, either directly or indirectly, inseparable from the processing activity itself. As in Law no. 32 of 2009 concerning Environmental Protection and Management (UUPPLH), we need to study further because all matters relating to the pretext of land use should not escape liability<sup>2</sup>. In the interaction of exploration and exploitation, one party can make mistakes or violations that harm the other party, so this requires accountability for all of these things<sup>3</sup>. In international law, state accountability is motivated by the idea that no country can enjoy its rights without respecting other countries. This kind of mindset can be applied to regulate land policy in Indonesia so that one party is not arbitrary and harms the other.<sup>4</sup>

<sup>1</sup> Undang- Undang No. 32 Tahun 2009 Tentang Perlindungan dan Pengelolaan Lingkungan Hidup (UUPPLH)

<sup>2</sup> Undang- Undang No. 32 Tahun 2009

<sup>3</sup> UNCLOS 1982

<sup>4</sup> Rangkuti, Sundari, 2000, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional*, edisi kedua, Airlangga University Press, Surabaya, hlm. 238.

Every violation against one other party causes the other party to be obliged to correct it or, in other words, be responsible for it. This is a common thing in the legal system where violations of legally binding obligations and create responsibility for the offender. The law regarding state liability is still in an evolutionary stage. It is likely to increase to the stage where all parties must be held liable for violations of the law, different from the usual responsibility for violations of obligations, resulting in compensation or compensation payments.

Every criminal act must have a regulation that regulates it, as for one of the regulations or principles governing Environmental Pollution, namely the "Polluter Pay Principle" as referred to in articles 88 and 87 of Law Number 32 of 2009 concerning Protection and Management of the environment, that this Principle requires the perpetrator or Legal subjects who commit a crime against Nature are obliged to pay compensation due to the losses it causes.<sup>5</sup>

This research was made to see how the implementation of the Polluter Pays Principle in the 1982 UNCLOS formula is related to the responsibility of International / National Law Subjects when doing damage to the land.

## 2. Discussion

### *Environmental Recovery & Environmental Responsibility*

Environmental responsibility is a series of obligations of a person or party to assume responsibility for sufferers whose rights have been violated to a good and healthy environment. Environmental responsibility includes both the issue of compensation to individuals (private compensation) and the cost of environmental restoration (public compensation). Thus, the Nature of environmental responsibility can be private and can also be public, in the sense that if a polluter has fulfilled his responsibility to an individual, it does not mean that it is finished and no longer in terms of environmental restoration or vice versa.

In other words, environmental polluters are obliged to carry out the environmental restoration. In connection with environmental responsibility, for environmental restoration, it is determined that whoever destroys or pollutes the environment is responsible for paying the cost of environmental restoration. One of the starting points for thinking about environmental policy is the core question of environmental management: "Who will pay for it?".

Compensation that can be imposed on polluters or destroyers of the environment can be determined to a certain extent. According to the stipulation of the prevailing laws and regulations, insurance requirements (social security) are determined for the business and activity concerned, or environmental funds are available. In Principle, the calculation of the cost of preventing and overcoming environmental pollution is carried out based on the Polluter pays Principle or *het beginsel de verifijer betaalt*). The Principle of internalizing social costs into the cost of planned activities is related to physical arrangements and financial facilities as outlined in various ways into statutory regulations. The economic aspect relates to providing incentives and disincentives in managing the environment and the activities concerned or the availability of environmental funds.

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<sup>5</sup> Philippe Sands, 2003, *Principles of International Environmental Law*, Second Edition, Cambridge Cambridge University Press, United Kingdom, hlm. 281.

In addition, pollution charges are an incentive for polluters to eliminate or reduce pollution. Incentives to prevent environmental pollution implemented by the government can be financial assistance, for example, subsidies, investment fees, and fiscal facilities. Still, this assistance can become a disincentive if polluters are not moved to escape dependence on the government.

The calculation of compensation (Polluter Pays Principle) in environmental cases is based on calculating the actual amount of loss measured based on the material value of the victim and the amount of loss calculated from the environment's economic value. Reflecting on International Law, UNCLOS 1982 only explains the obligation for countries that pollute the environment to be responsible and compensated, for the assessment of the amount is based on the view that in economic development, natural resources are needed both as an input for economic production (resource supplier), as a medium for assimilation. Waste (waste assimilator) and providers of environmental comfort (direct use of utility). The emergence of dangers due to mistreatment of natural resources and the environment because they do not recognize the positive value of the three economic functions.

### ***Polluter Pays Principle***

The Polluter Pays Principle is one of the essential principles in environmental management. FOR THE FIRST TIME, the PPP arrangement was formulated by the Organization for Economic Co-operation and Development (OECD) and the provisions of the European Communities (EC) law in 1972. Subsequently, in 1973, is the first application into environmental problems. The existence of PPP can be found in various legal/regulatory documents (exceedingly soft law in the category of soft principles), developed in its use and regulated in international legal documents, among them, the 1980 Athens Protocol for the Protection of the Mediterranean Sea against Pollution from Land-based Sources and activities, the 1992 Helsinki Convention on the Transboundary Effects of Industrial Accidents, the 1993 Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, the 1992 Helsinki Convention on the Protection on the Protection and Use of Transboundary Watercourses and International Lakes, the 1996 London Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. PPP is also found in the formulation of the 16th Principle of the Rio Declaration on Environment and Development, which states that:

“National authorities should endeavor to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the Polluter should, in Principle, bear the costs of pollution, with due regard to the public interests and, without. Distorting international trade and investment”.

The Organization for Economic Co-operation and Development (OECD) has formulated “what must be paid” concerning applying the Principle of pollution, namely paying one of its formulas, that polluters should be burdened with the obligation to pay compensation to have a deterrent effect on the perpetrators. Starting in 1972, the Polluter pays Principle was adopted and developed by the Member States of the Organization of Economic Cooperation and Development (OECD), which states that polluters must bear the burden or costs of preventing and overcoming the resulting pollution.

As an economic instrument, the Polluter pays Principle uses internalization of costs in the production process which is intended as a preventive measure for the possibility of pollution to emerge. In subsequent developments, the Polluter pays Principle is understood as an economic instrument and has begun to shift to the legal field. In Indonesia's positive legal perspective, the Polluter Pays Principle does not provide adequate regulation, both at the basic level of legal arrangements, the meaning in court decisions, including the clarity of their existence in the legal system<sup>6</sup>.

PPP is the Principle of allocating costs from employers for the potential pollution caused, especially in environmental utilization. It confirms that the use of the environment for economic activities (factors of production) should not be borne by those who do not share the benefits of business activities.

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<sup>6</sup> Soerjono Soekanto, Pengantar Penelitian Hukum, UI Press, Jakarta, 2006, hlm. 52

Entrepreneurs must seek funding internally from any expenditure that impacts the environment (cost internalization).

The application of the Principle of internalizing environmental costs can be interpreted as an effort to calculate the costs that economic activity actors must bear due to environmental losses. The basic idea of this Principle is that environmental and social costs must be integrated into the decision-making process related to these natural resources. The ratio of the importance of applying this Principle is motivated by natural resources, which is a trend or reaction to the impulse of market demand. The Principle of internalization of environmental costs underlies the content of sustainable development, essentially awakening economic actors' awareness to be more critical in calculating the impacts arising from their economic activities. It should be realized that the social costs of environmental damage are an urgent part of the decision-making process to create inspiration for economic benefits, both in the short and long term.

***The Responsibility of the Polluter Pays Principle in UNCLOS 1982 as a Reference for Making Land Policy in Indonesia***

Table 1. UNCLOS 1982 Principle

UNCLOS 1982 Article	Information
Article 139 "1. States Parties shall have the responsibility to ensure that activities in the Area, whether carried out by States Parties or state enterprises or natural or juridical persons which possess the nationality of States Parties or are effectively controlled by them or their nationals, shall be carried out in conformity with this Part. The same responsibility applies to international organizations for activities in the Area carried out by such organizations.	Article 139 UNCLOS 1982 outlines the responsibilities that must be carried out by legal subjects who commit violations to a sea area, starting from the responsibility for structuring & the obligation to pay compensation,
Article 235 "With the objective of assuring prompt and adequate compensation in respect of all damage caused by pollution of the marine environment, States shall cooperate in the implementation of existing international law and the further development of international law relating to responsibility and liability for the assessment of and compensation for damage and the settlement of related disputes, as well as, where appropriate, development of criteria and procedures for payment of adequate compensation, such as compulsory insurance or compensation funds."	Article 263 of the 1982 Law of the Sea Convention describes the responsibility & obligation for compensation of a legal subject who pollutes the environment in the sea area.
Article 115 " Every State shall adopt the laws and regulations necessary to ensure that the owners of ships who can prove that they have sacrificed an anchor, a net or any other fishing gear, in order to avoid injuring a submarine cable or pipeline, shall be indemnified by the owner of the cable or pipeline, provided that the owner of the ship has taken all reasonable precautionary measures beforehand." <sup>7</sup>	Article 115 describes compensation for losses in business to prevent damage to submarine cables or pipes.

<sup>7</sup> Pasal 115 UNCLOS 1982

Basically, in 1982 UNCLOS describes the obligation to pay compensation if a legal subject pollutes the environment, but determining the amount of compensation based on the damage suffered by an area and the cost of maintaining the Area is returned. Some of the articles above can be used as a reference for dealing with land damage in Indonesia. They can be used as a reference for policy-making related to land in Indonesia.

### 3. Conclusion

Land degradation is one of the central issues in the national realm because it will increase food problems in addition to causing other negative impacts economically, socially, and environmentally. The government has implemented various policies and regulations to overcome this problem, but these efforts have not effectively controlled land conversion. The calculation of compensation (Polluter Pays Principle) is present as a regulator of this problem, which in the case of the environment, the Polluter Pays Principle is based on the calculation of the number of actual losses which is measured based on the material value of the victim and the amount of loss calculated from the environmental, economic value. In its implementation, a public policy governing land conversion policies that have been implemented so far have many weaknesses, so that the policy is not implemented consistently. The weaknesses referred to include inaccurate formulation of policy objects, relatively narrow scope of policies, inefficient bureaucratic structures of policy implementing organizations, and non-conducive policy environment factors. The author argues that the Polluter Pays Principle can be present as a bright spot on this problem.

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