



# Criminal law policy: Environmental pollution at Palembang port

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## ARTICLE INFO

### Article history:

Received May 28, 2023

Revised Jun 8, 2023

Accepted Jun 22, 2023

### Keywords:

Annex 5 marine pollution 73/78  
Criminal law policy  
Environmental pollution cases

## ABSTRACT

This research examines the criminal law policy towards environmental pollution cases in Boom Baru Harbor and its surroundings in Palembang City, with a focus on Annex 5 Marine Pollution 73/78. This research aims to answer two main questions: 1) How is the criminal law policy towards environmental pollution cases based on Annex 5 Marine Pollution 73/78 at the Port of Boom Baru and its surroundings in Palembang City? 2) What are the factors that influence the application of the criminal law policy? The research method used is normative juridical research method using primary data and secondary data. The results showed that the current criminal law policy, such as UUPPLH No. 5 of 1978, has not been effective in handling cases of environmental pollution in the port. The relationship between UUPPLH No. 5 of 1978 and the provisions of UUPPLH No. 32 of 2009 Article 63 paragraph (2) letter a is still unclear. Some of the factors affecting the implementation of criminal law policy include problems in the law that are not clear enough, higher priority of law enforcers on other cases such as theft and murder, limited facilities including laboratory facilities and costs for involving expert witnesses, as well as a lack of legal awareness and public concern for the environment. This research provides an understanding of the challenges in implementing criminal law policies to protect the environment in the New Boom Port and its surroundings in Palembang City. Recommendations include expanding legal explanations, increasing public awareness, improving facilities, and expanding repressive measures in handling environmental pollution cases.

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## 1. INTRODUCTION

Criminal law is the law that regulates violations and crimes against the public interest, these violations and crimes are punishable by punishment which constitutes suffering or torture for those concerned.(Mulyadi, 2013) According to Van Hamel in his book *Moeljatno*: "Criminal law is all the principles and rules adopted by the state in the administration of order of law (rechtsorde), by prohibiting what is contrary to the law and imposing penalties on those who violate the prohibition (Romanides et al., 1997).

Indonesia applies this criminal law when it is related to environmental pollution, especially the problem of marine pollution, which requires serious and consistent action by countries that

have a good interest in maintaining the security aspects of their maritime area. (Sukmaniar et al., 2021) The increasing need for sea transportation on a national and international scale has led to the use of the sea as a shipping route. (Hartanto et al., 2019) Especially when transporting goods that have the potential to reduce marine environmental degradation. (KURNIAWAN, 2021) This is caused by oil, hazardous and toxic liquid materials, both in bulk and bulk packaging, as well as potential pollution from ship operations that cannot be avoided, such as oil and exhaust gas pollution from ship engines and waste or trash, as well as resources from spills. oil from shipwrecks (Jing & Sutikno, 2020).

As a coastal country, Indonesia faces the problem of marine pollution caused by the shipping industry. (Mulyadi, 2013) This problem should have been anticipated earlier and given more space not only for the government, but for all interested parties to take advantage of the sea. The government as the person in charge of formulating policies should ideally be able to increase all natural resources in the form of the wealth and beauty of marine biota through a set of national laws and regulations against the threat of sea pollution in order to protect and maintain its sustainability. (Sinaga, 2018) Strategic utilization of marine ecosystems. However, it is very unfortunate that pollution of the marine environment in Indonesian waters has not been resolved (Sumartono, 2015)

Along with the increasing demand and need for sea transportation both on a national and global scale. Shipping as the main method of transporting an increasing amount of goods globally has a costly impact on the environment. (Sutendi, 2019) Significant degradation of the marine environment has been identified as oil-derived pollution arising from normal shipping activities, as well as accidents from the growing international merchant fleet. (Rochmiatun et al., 2023) Regarding this environmental pollution, there is the most ambitious international regulation in order to prevent marine pollution due to normal activities or ship accidents, namely Marine pollution 73/78 (Corbett & Winebrake, 2008).

Marine pollution 73/78 is a set of rules that apply on a global scale and aims to prevent pollution of the marine environment caused by ships. The idea of "Marpol" appeared nearly fifty years ago, but increasing marine pollution in recent years has made it one of the world's most strategic regulations, which entered into force on November 2, 1973 at the company's headquarters. International Maritime Organization (IMO) in London, UK. Marine pollution 73/78 does not only cover the prevention of marine pollution due to oil spills from ships, but through its five annexes it also regulates the issue of toxic materials, hazardous materials in packaging, including waste and waste from ships which are generated during normal times. In 2007, an annex was added that regulates air pollution from ships (Effanie, 2011).

Marine pollution 73/78 consists of 6 (six) which will be raised in this study, namely Annex V Prevention of Pollution originating from Ship Trash. This annex came into effect on December 31, 1988 containing agreements regarding various types of waste that are prohibited, provisions regarding the permitted disposal distance from land and provisions regarding mechanisms and procedures for disposal. The most important aspect of this Annex is the complete regulation that strictly prohibits the disposal of all forms and types of plastic into the sea. (Corbett & Winebrake, 2008)

The government's reasons for ratifying the Marine Pollution Convention No. 73/78 are: First, this convention is used as the main reference for Indonesia to ask for compensation from parties caught polluting Indonesian waters. Indonesia's status as not a superpower will make it difficult for Indonesia to negotiate elsewhere, especially with big countries. With Indonesia's participation in this multilateral institution, Indonesia has quite strong bargaining power. In addition, through this convention, Indonesia can also fulfill Indonesia's mutual cooperation interests. The second reason is that the ratification of this convention can benefit Indonesia in its efforts to create a clean Indonesian maritime environment. Indonesia can reduce the level of pollution along its sea area, especially from outsiders who are irresponsible and only pursue personal and group gains. Unfortunately, even though such an arrangement occurred, with the strengthening of PP No. 19 of 1999 concerning control of marine pollution and/or destruction, marine pollution by ships still occurs in Indonesia. It is different with the Province of South Sumatra, one of which is that there are many residential areas around the Boom Baru port which is located in Ilir Timur II Regency. The people

who feel the impact of environmental pollution or sea water pollution the most are people who live in Kelurahan 1 Ilir and 3 Ilir. This can actually be minimized by strengthening the supervisory and licensing instruments regulated in Law no. 17 of 2008 concerning sea transportation, namely instruments in the form of navigation approval letters, where the port state can carry out this supervisory function to effectively prevent, guard and supervise ships that have the potential to cause pollution by disposing of them. waste from ships into the open sea.

## 2. RESEARCH METHOD

This is a type of research conducted to analyze and interpret the applicable law and examine the consistency and compatibility of a legal regulation with applicable legal principles. This research focuses on legal aspects and uses a normative approach, which means referring to existing legal norms. Normative juridical research uses secondary legal materials as the main source of information. Secondary legal materials include documents such as laws and regulations, court decisions, opinions of legal experts, legal literature, and other legal documents. Researchers will collect this secondary legal material to analyze and explore the understanding of the law being studied. In normative juridical research, researchers will analyze these legal materials using legal interpretation methods, such as systematic methods, teleological methods, historical methods, or comparative legal methods. The main purpose of this research is to understand existing legal concepts, identify weaknesses or lacunae in the applicable law, and provide recommendations or critical thinking related to the improvement or development of relevant laws. In the context of this research, normative juridical research is used as an approach to analyze and interpret the legal issues under study. The researcher will use secondary legal materials, such as laws and regulations, court decisions, and legal literature, to examine legal aspects related to the research topic under investigation

## 3. RESULTS AND DISCUSSIONS

In the Marine Pollution Regulation (MARPOL) 1978, which contains provisions relating to the prevention of oil pollution from shipping activities, Marpol 73/78 outlines: a) Obliges the state to provide receiving facilities for the disposal of oil and chemical waste. It covers all technical aspects of pollution from ships, with the exception of dumping into the sea by dumping, and applies to all types of ships, although it does not cover pollution arising from the exploration and extraction of marine mineral resources, b) National laws to enforce the conventions and promises he made to me, c) All ships flying the flags of States that have signed the Convention Marpol is subject to these requirements, wherever they sail, and Member States are responsible for ships registered based on the nationality of their respective countries, d) Each signatory country is responsible for enforcing laws in accordance with conventions, annexes and laws relating to other countries, e) Ship design and equipment management, f) Establish certification and control systems

In Appendix 5 of the MARPOL Convention 1973/1978, especially in Appendix 5: Prevention of Pollution of Waste from Ships (31 December 1988) Regulations governing the prohibition of disposal of plastic waste into the sea.

The criminal law policy on cases of environmental pollution based on Appendix 5 Marine Pollution 73/78 in the vicinity of Boom Baru Port, Palembang City, is punishable by imprisonment for a maximum of 2 years and a maximum fine. Rp. 48 million which is an absolute responsibility as stated in Law Number 32 of 2009 concerning the Protection and Management of the Environment and with preventive efforts it means that the Environment and Forestry Service of South Sumatra Province has carried out prevention, mitigation and recovery. UU no. 32 of 2009 § 4 letters c) and e) that environmental protection and management includes one of the implementation of control and supervision (van der Giesen et al., 2020).

It can be further emphasized in Article 13 paragraph (2) UUPPLH Control of environmental pollution and/or damage as referred to in paragraph (1) includes: prevention; countermeasures; and recovery. The author relates the theory above to the success or failure of law enforcement in terms of its legal substance, meaning that in implementing this law enforcement it is necessary to have modified legal regulations to enforce the law on environmental pollution. sea, but in practice it is not as effective as it could be. Implementation of law enforcement. Based on the legal structure,

the success or failure of enforcing the law on marine pollution can be seen from the law enforcement officers to make it happen, one of which is enforcing environmental law at the provincial level (UUPPLH number 32 of 2009 article 63 paragraph 2 letter. WITH). Meanwhile, when viewed from the context of legal culture, the level of public awareness of law enforcement will determine the success or failure of law enforcement. When oil spills occur repeatedly, it is common for ship actors to deliberately dump oil into the OPL area. . , as the author says, they spread before (Stewart, 2021).

There are no uniform signs of criminal activity in the articles of the Criminal Code and Other criminal laws. (Equatora & Chethiayar, 2023) Each article contains different elements, in fact many articles only mention the qualifications of a crime. Although the elements of the crime are different, in general they have the same characteristics, namely: a) Action/behavior (active/positive or passive/negative), b) Consequences (specifically for objectively formulated crimes), c) unlawful (against formal law relating to the principle of legality and against substantive law/secret elements); A, d) There is no basis for payment.

Based on the formulation of Articles 98 and 99 UUPPLH-2009, the elements of environmental crimes include: a) Each person, b) Intentionally or through negligence, c) Doing deeds, d) Resulting in exceedance of ambient air quality standards, water quality standards, seawater quality standards, or environmental damage standard criteria (Schabas, 2012).

As for the elements of each person in the previous law, said in the sense of anyone. In the legal literature, any person and any person is usually referred to as a legal entity, which includes both natural persons and legal entities. Likewise with the concept of every person contained in Article 1 point 32 UUPPLH-2009, that every person is an individual or a business entity, whether registered or not. perpetrator. Therefore, proof requires separate knowledge and skills.

Based on its doctrine, legal actions are divided into *formeel wedrechtelijk*, namely actions that are prohibited and punishable by punishment, and *materieel wedrechtelijk*, namely actions that are contrary to law, even though not expressly prohibited and subject to punishment. law. In practice, unlawful acts are generally against the law. Environmental cases are cases that are quite difficult to prove, so that in some cases it takes courage for judges to expand the meaning of the word against the law, not only against the law, but also against decency, as decided by the Hoge Raad in the Netherlands January 26, 1912 (Junaidi & Imansyah, 2018).

Regarding the elements that cause the exceedance of ambient air quality standards, water quality standards, seawater quality standards, or environmental damage standard criteria. In the previous law, the element of effect was formulated in the form of environmental pollution and/or damage. The legal consequences of the two provisions are actually the same, because environmental pollution and/or damage does not exceed the quality standards and standard criteria for environmental damage (Water, Sanitation, 2001).

### **Factors Influencing the Implementation of Criminal Law Policies on Environmental Pollution Cases Based on Annex 5 Marine Pollution 73/78 in Boom Baru Port and its Surroundings, Palembang City**

The factors that influence the application of criminal law policies to environmental pollution cases based on Annex 5 Marine Pollution 73/78 in Boom Baru Harbor and its surroundings in Palembang City are.

First, the legal factor itself (law). The difference in authority possessed by each stakeholder agency in the sea requires that each agency coordinate between agencies to increase synergy. Criminal provisions in the UUPPLH are regulated in Articles 98-120, there are 12 articles regarding formal offenses. This *ultimum remedium* principle can only be applied to Article 100 paragraph (2), in the remaining articles the function of *primum remedium* criminal law. This kind of provision is very illogical, because in the general elucidation of number 6 it is stated that in the context of controlling environmental impacts it is necessary to put forward preventive efforts, namely to make maximum use of monitoring and licensing instruments. If an attempt commits violations more than once, then actually the administrative law is not being utilized or is not working properly. The application of *primum remedium* criminal law to formal offenses on the grounds that the violation has been committed more than once has violated the mandatory provisions for the application of criminal law enforcement as a last resort. Limiting the application of the *ultimum remedium* principle

to only certain formal offenses, namely crimes against environmental pollution cases based on Annex 5 Marine Pollution 73/78, there is no further explanation (Fitria, 2022).

Second, law enforcement factors, namely those who form or apply the law. In addition to legal issues that are no less important, the role of law enforcement officials is considered very important. (Carter, 1990) The problem is, the police and prosecutors prioritize cases of theft, murder rather than environmental pollution cases and it is sometimes difficult for each case to provide very strong evidence, such as it is difficult to prove an environmental pollution case investigation. (Rochmiatun et al., 2023) The scope of the term law enforcement is very broad, because it includes those who directly and indirectly involved in the field of law enforcement including the police, prosecutors, judiciary, correctional institutions and attorneys. (Nugraha, 2022) Law enforcers are role models in society. who should have certain abilities in accordance with the aspirations of society, they must be able to communicate and gain understanding from the target group, in addition to being able to carry out or carry out roles that are acceptable to them. (Rochmiatun et al., 2023) Apart from that, role models must be able to take advantage of certain traditional pattern elements, so as to stimulate participation from the target group or the wider community (Carter, 1990). Role models must also be able to choose the right time and environment in introducing new legal norms or rules and set a good example. then role models must be able to take advantage of certain traditional pattern elements, so as to stimulate participation from the target group or the wider community. Role models must also be able to choose the right time and environment in introducing new legal norms or rules and set a good example. then role models must be able to take advantage of certain traditional pattern elements, so as to stimulate participation from the target group or the wider community. (Widodo et al., 2019) Role models must also be able to choose the right time and environment in introducing new legal norms or rules and set a good example.

Third, the factor of facilities or facilities that support law enforcement. Facilities and facilities factor is a factor supporting the implementation of law enforcement, without this factor it will not run smoothly. Facilities or facilities to support law enforcement in environmental crimes are a constraining factor, especially laboratory facilities. Environmental cases are included in the settlement of high-cost cases in connection with the involvement of expert witnesses and laboratories which are very expensive, while the operational budget for handling cases is quite limited (Widodo et al., 2019).

These facilities and facilities include, among others, educated and skilled human resources, good organization, adequate equipment, adequate finances and existing facilities and activities in the successful process of law enforcement. If these things are not fulfilled it is impossible for law enforcement to achieve its goals (ALLI, 2008).

Fourth, community factors, namely the environment in which the law applies or is applied. Lack of public legal awareness and lack of concern for the environment. Law enforcement comes from society and aims to achieve peace in society. Therefore, viewed from a certain angle, society can influence law enforcement, but it must have something to do with the previous factors, namely laws, law enforcement and facilities or facilities. The pluralism of legal culture in society is a unique phenomenon and contains potential risks, so that it often places the position and profession of law enforcement officers in a dilemma, which in turn can lead to ambivalence in carrying out their actual role. Where there are some people who obey the law, there are those who pretend to obey it, there are those who don't pay attention at all and there are also those who are openly against it (Cronje, 2020).

Fifth, cultural factors (cultural). Cultural factors, namely as a result of creative works and feelings based on human initiative in social life, and cultural factors unite with community factors. Thus, because the community factors have been described previously, the discussion regarding cultural factors that might influence law enforcement is not described in too much detail (Fryer & Dinsmore, 2020)

#### 4. CONCLUSION

The criminal law policy on environmental pollution cases based on Annex 5 Marine Pollution 73/78 in Boom Baru Port and its Surroundings in Palembang City has not been effective when referring to

the linkage of Annex 5 Marine Pollution 73/78 which is in accordance with UUPPLH provisions Number 32 of 2009 Article 63 paragraph 2 letter (s)., because it cannot be fully implemented and there are no repressive efforts (eradication) and only carried out through preventive efforts such as monitoring, prevention, prevention, recovery according to the authority of each agency. Factors that influence the application of criminal law policies to environmental pollution cases based on Annex 5 Marine Pollution 73/78 in Boom Baru Port and Surroundings of Palembang City, namely First, the legal factor itself (law). The difference in authority possessed by each stakeholder agency in the sea requires that each agency coordinate between agencies to increase synergy. Limiting the application of the *ultimum remedium* principle to only certain formal offenses, namely crimes against environmental pollution cases based on Annex 5 Marine Pollution 73/78, there is no further explanation. Second, law enforcement factors, police and prosecutors prioritize cases of theft, murder rather than environmental pollution cases and in each case it is sometimes difficult to provide very strong evidence such as it is difficult to prove the investigation of environmental pollution cases as well as the commitment of local governments and law enforcement officials in environmental pollution at ports which results in environmental pollution and destruction. Third, the factor of facilities or facilities that support law enforcement, especially laboratory facilities. Environmental cases are included in the settlement of high-cost cases in connection with the involvement of expert witnesses and laboratories which are very expensive, while the operational budget for handling cases is quite limited. Fourth, the community factor is the lack of public legal awareness and lack of concern for the environment. Fifth. This research provides a better understanding of the challenges faced in the application of criminal law policy to protect the environment in Boom Baru Port and its surroundings in Palembang City. As a recommendation, the expansion of legal explanations, increasing public awareness, improving facilities, and expanding repressive actions in handling environmental pollution cases are recommended steps in order to improve the effectiveness of criminal law policy in this area.

#### ACKNOWLEDGEMENTS

To the government, it requires policies and regulations to avoid environmental pollution regarding criminal provisions, with the threat of criminal sanctions commensurate with the actions and the resulting impact

To the community, it is necessary to have the commitment of the local government and law enforcement officials and outreach to the community around the port regarding environmental pollution which results in environmental pollution and destruction.

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