

The Execution Of Additional Sanction In The Form Of Repair Due To Criminal Acts As An Effort To Restore The Environment Due To Environmental Crimes By Corporations

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Abstract

This research entitled "The execution of additional sanctions in the form of repair due to criminal acts as an effort to restore the environment due to environmental crimes by corporations" contains 2 (two) problem formulations, namely (1) What considerations does the public prosecutor make when filing additional sanctions in the form of repair due to criminal acts in a demand letter? (2) How is the implementation of the execution of additional sanctions in the form of repair due to criminal acts? This research uses empirical legal research methods with normative juridical aspects. The data used is primary data using direct interviews and secondary data through literature studies which are then analyzed descriptively qualitatively with research subjects, namely a Prosecutor at the Prosecutors Office of the Republic of Indonesia. The results of the research show that prosecutors consider additional sanction in the form of repair due to criminal acts important to overcome environmental crimes and support sustainable development, because it directly addresses environmental damage. In contrast, corporate fines are not effective for environmental restoration. The execution of additional punishment in the form of repair due to criminal acts is often not optimal due to the lack of guideline regulation, the absence of time limits and coercive nature as well as the conversion of additional sanctions in the form of repair due to criminal acts into a sum of money.

Keywords: *Additional Sanction, Environmental Crime, Corporate, Repair Due to Criminal Act.*

Introduction

Corporations are essential in driving development across various sectors, including in Indonesia, where their growth contributes to economic progress. However, it's crucial for these corporations to also consider their environmental impact, particularly in the use of natural resources. They must align their operations with principles of sustainability and environmental preservation, minimizing negative impacts and actively working to protect natural resources. Economic development should balance with environmental protection to ensure a sustainable equilibrium, preserving ecosystems and ensuring the survival of living things.³ Nonetheless, corporations can cause significant environmental harm, such as overexploitation, pollution, and degradation. For instance, in 2023, PT XLI, a foreign-invested copper smelting company in Indonesia, was investigated for illegal metal smelting and hazardous waste management, leading to environmental contamination.

This situation highlights the need for environmental justice, where not only human but also non-human victims (the environment) are protected. Green victimology advocates for recognizing the rights of the environment and promoting environmental stewardship in corporate activities.⁴ Restoration of damaged environments is crucial but often insufficient as natural recovery is slow and incomplete. Legal measures, including environmental laws and regulations, are essential for effective enforcement and recovery.

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³ Article 3 Law Number 32 of 2009 concerning Environmental Protection and Management

⁴ Hario Danang Pambudhi & Ega Ramadayanti, "Menilai Kembali Politik Hukum Perlindungan Lingkungan Dalam UU Cipta Kerja Untuk Mendukung Keberlanjutan Ekologis," *Jurnal Hukum Lingkungan Indonesia* 7, no. 2 (2021): 297–322, <https://doi.org/10.38011/jhli.v7i2.313>

Law enforcement must be proactive and effective, using legal regulations, enforcement officers, and public awareness to achieve environmental protection goals.⁵

In Indonesia, environmental enforcement is regulated under Law number 32 of 2009 concerning Environmental Management and Protection. If environmental pollution or damage is committed by a corporation, based on the provisions of Article 116 of the Law on Environmental Management and Protection, the corporation can be held accountable as the perpetrator of environmental crimes.⁶ As for, The types of sanctions that can be imposed on corporations are principal criminal sanctions in the form of fines, and may be subject to additional sanctions or sanctions of disciplinary action.

Additional sanctions or disciplinary actions in the Environmental Management and Protection law include, forfeiture of profits obtained from criminal acts, closure of all or part of the place of business and/or activities, repair due to criminal acts, obligation to do what is neglected without right, and placement of the company under guardianship for a maximum of three years.⁷ Of the five types of additional sanction, the one that focuses on restoring the environment is the additional sanction in the form of restitution for criminal offenses.

According to the author's preliminary research, there are cases in which prosecutors address environmental crimes by proposing additional sanctions in their demand letter, including demands to repair due to criminal acts. The final verdict of the court granted the prosecutor's request to impose additional sanctions in the form of repair due to criminal acts against the corporation. Therefore, the author wants to examine what is the consideration of the public prosecutor to impose additional sanctions in the form of repair due to criminal acts. In addition, the prosecutor, as the executor of the court's decision, will certainly implement the decision. So, how is the execution of additional sanctions in the form of repair due to criminal acts, given the lack of transparency of information related to the implementation of additional sanctions carried out by the prosecutor's office.

Problem Formulation

- 1) What considerations does the public prosecutor make when filing additional sanctions in the form of repair due to criminal acts in a demand letter?
- 2) How does the implementation of the execution of additional sanction in the form of repair due to criminal acts?

Methodology

In this study, the author uses empirical legal research with normative juridical aspects. The empirical legal research method is carried out by collecting primary data (the main source of authority) through interviews in the field or related institutions, and secondary data through literature studies which are then analyzed descriptively qualitatively.

⁵ Baharuddin M. Syukri AKUB, *Wawasan Due Process of Law Dalam Sistem Peradilan Pidana* (Yogyakarta: Rangkang Education, 2012). p.23.

⁶ Article 116 Law Number 32 of 2009 concerning Environmental Protection and Management.

⁷ Article 119 Law Number 32 of 2009 concerning Environmental Protection and Management

The research subject in this thesis is a Civil Servant who provides information related to the problem being studied, namely a Prosecutor at the Prosecutors Office of the Republic of Indonesia named Dr. R. Narendra Jatna, S.H., LL.M. The research location is at the Prosecutors Office of the Republic of Indonesia located at Jl. Panglima Polim No.11, RT.11/RW.7, Kramat Pela, Kec. Kby. Baru, South Jakarta City, Special Capital Region of Jakarta.

Discussion and Results

The The Considerations of the Public Prosecutor Makes When Filing Additional Sanctions in the Form of Repair Due to Criminal Act in A Demand Letter

The authority of the public prosecutor in conducting prosecutions is delineated in Article 1, number 6, letters a and b of the Criminal Procedure Code. This article also underscores that only prosecutors are empowered to serve as public prosecutors and to oversee the prosecution of criminal cases, thereby simultaneously positioning them as parties with a genuine stake in the outcome of the proceedings. This is also addressed in Article 139 of the Criminal Procedure Code, which essentially states that "the public prosecutor determines whether a criminal case can/not be submitted to the court based on valid evidence in accordance with the criminal procedure law." An examination of the wording of the various articles reveals that the Criminal Procedure Code, as the operational foundation of the criminal justice system, positions the public prosecutor as the primary decision-maker in each case.

With regard to the prosecution of environmental cases, it is notable that there is no public prosecutor whose exclusive responsibility is to handle such cases. It can be seen that there is no stipulation in Law Number 32 of Year 2009 on Environmental Protection and Management that the prosecution of environmental cases must be handled by a special public prosecutor, in a manner similar to that which occurs in criminal cases with minor defendants, fisheries criminal cases, and corruption criminal cases.⁸ Nevertheless, it would be optimal for the prosecution of environmental cases to be conducted by a public prosecutor who has a comprehensive understanding of and expertise in environmental law. This approach would facilitate the smooth processing of cases in accordance with the relevant legal framework and ensure the attainment of the most favorable prosecution outcomes in court.⁹

Law Number 32 of Year 2009 on Environmental Protection and Management represents one of the legal instruments utilized to ensure accountability for environmental violations. This legislation employs a dual-track system for the enforcement of environmental violations, comprising two distinct avenues for legal action. The primary track entails the imposition of criminal sanctions, which may include fines or imprisonment. The secondary track encompasses disciplinary action or additional sanctions. Furthermore, the criminal sanctions also stipulate special minimum and special maximum penalties, both in terms of imprisonment and fines.

⁸ Muhammad Akib. *Hukum Lingkungan*. (Jakarta : Rajagrafindo Persada : 2014) p. 224

⁹ Gatot Supramono. *Penyelesaian Sengketa Lingkungan Hidup di Indonesia*. (Jakarta : Rineka Cipta : 2013) p. 132

The sentencing system for environmental crimes does not permit the imposition of the death penalty as a criminal sanction. No criminal sanctions are imposed on corporations. In contrast, criminal sanctions are imposed on individuals who give orders or lead criminal acts. Such individuals may be subject to criminal sanctions in the form of imprisonment and fines, which are increased by one-third of the principal criminal sanction for each violation of the article. Corporations are not exempt from criminal liability for acts that qualify as environmental crimes. Nevertheless, the sanctions imposed on corporations take the form of additional sanctions or disciplinary actions, not primary sanctions.¹⁰

Additional sanctions that can be imposed on corporations that commit environmental crime include, forfeiture of profits obtained from criminal acts, closure of all or part of the place of business and/or activity, repair due to criminal acts, obligation to do what is neglected without right, and placement of the company under guardianship for a maximum of 3 years.¹¹

Since the enactment of Law No. 32 of 2009 on Environmental Protection and Management, it would appear that only a small number of public prosecutors have elected to pursue additional sanctions in the form of repair due to criminal acts is still unclear. This is due to the discretionary nature of the provision of additional sanctions to corporations that commit environmental violations, as stipulated in Article 119 of the Environmental Protection and Management Law. The article employs the term "may," which indicates that the imposition of additional sanctions against corporations is a decision that can be taken or not.¹² Furthermore, as an additional sanction, this sanction is a complement to the primary sanction. This implies that additional sanctions, in principle, cannot be applied without the existence of the primary sanction. Additional sanctions are inherently imposed in addition to the primary sanction, thus, it is impossible to apply them separately without the primary sanction.¹³

As for the interview with Dr. R. Narendra Jatna, S.H., LL.M., it was explained that the explanation provided in the Law on Environmental Protection and Management regarding additional sanctions in the form of repair due to criminal acts is still unclear. The legislation does not provide clarification regarding the types of actions that can be subject to this additional sanction, nor does it offer a clear description of the concrete form of the intended corrective action. This lack of explanation presents a challenge for public prosecutors, who may be hesitant to file charges related to this additional sanction in the form of repair due to criminal acts.¹⁴

¹⁰ Mahrus Ali, *Hukum Pidana Lingkungan*, 1st ed. (Depok: Raja Grafindo Persada: 2020). p 78 – 83.

¹¹ Article 119 Law Number 32 of 2009 concerning Environmental Protection and Management

¹² S. Suryati. *Penegakan Hukum Terhadap Korporasi Dalam Tindak Pidana Lingkungan Di Wilayah Provinsi Jawa Barat Dibutuhkan Dengan Upaya Pemulihan Lingkungan Hidup*. Syiar Hukum: Jurnal Ilmu Hukum, 16(2), 2018, p. 207–232. <https://doi.org/10.29313/sh.v16i2.5355>

¹³ R. Soesilo. *Kitab Undang-Undang Hukum Pidana (KUHP): Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal*. (Bogor : Politeia : 1995)

¹⁴ Interview with Dr. R. Narendra Jatna, S.H. LL.M, Expert Staff of the Prosecutor's Office of the Republic of Indonesia, May 22, 2024, in Prosecutor's Office of the Republic of Indonesia

A data search conducted on the Supreme Court Decision Directory website revealed several instances where the public prosecutor proposed the imposition of additional sanctions in the form of repair due to criminal acts.

Table. 1

The following is a list of decisions that require the imposition of additional sanctions in the form of repair due to criminal acts

NO	Register Number	Criminal Offenses	Requisitoir for Additional Sanction
1	PT Adei Plantation <ul style="list-style-type: none"> • 228/Pid.Sus/2013/P N.Plw, September 9, 2014 • 286/PID.SUS/2014/P PT. PBR, January 9, 2015 • 2042 K/Pid.Sus/2015, March 14, 2016 	Article 99 Environmental Protection and Management Law.	The repair due to criminal acts includes the restoration of 40 hectares of land damaged by fire through composting, at a cost of IDR 15,141,826,779.325
2	PT Indo Bharat Rayon <ul style="list-style-type: none"> • 113/Pid.B/LH/2016/PN. Pwk, June 23, 2016 • 574 K/ Pid.Sus LH/ 2017, July 18, 2017 	Article 103 jo. Article 104 jo. Article 116 paragraph (1) point a jo. Article 119 Environmental Protection and Management Law and Article 64 paragraph (1) Criminal Code	The recovery of hazardous waste around the incident site
3	PT Triomas Forestry Development Indonesia <ul style="list-style-type: none"> • 37/Pid.B/LH/2018/PN. Sak, December 27, 2018 	Article 99 paragraph (1) jo. Article 104 jo. Article 116 paragraph (1) point a Environmental Protection and Management Law.	Repair due to criminal acts to restore land damaged by 251 hectares of land fires at a cost of IDR 18,825,000,000.
4	PT Prima Indo Persada <ul style="list-style-type: none"> • 25/Pid.B/LH/2019/PN. Nla, September 12, 2019 	Article 104 jo Article 116 paragraph (1) point a. Environmental Protection and Management Law.	Environmental improvement by cleaning up Sludge / Tailings (LB3) waste from processing and refining gold metal minerals.
5	PT Sumber Sawit Sejahtera <ul style="list-style-type: none"> • 349/Pid.B/LH/2019/PN. Plw, May 19, 2020 	Article 99 paragraph (1) point a jo. Article 118 jo. Article 119 Environmental Protection and Management Law and Article 109 jo. Article 68 jo. Article 113 paragraph (1) Plantation Law	Repair due to criminal acts to restore 115.2 hectares of fire-damaged land, at a cost of IDR 55,212,592,890.

Source : Supreme Court Decision Directory Website

There are three main considerations why the public prosecutor proposes an additional charge of additional sanctions in the form of repair due to criminal acts:¹⁵

1) Environment legal enforcement

In the contemporary era, there is a growing awareness of the importance of environmental conservation. Consequently, law enforcement against environmental damage has become a fundamental obligation. One crucial aspect of this enforcement is the implementation of effective and educational sanctions for those who violate environmental regulations, including corporations.

From the perspective of green victimology, the environment itself is regarded as a victim of environmental crimes.¹⁶ In this context, environmental damage affects not only humans and communities but also the ecological systems that support life. The environment, as an entity that is frequently unable to articulate the losses it suffers, requires particular attention from the legal system to ensure adequate protection.¹⁷

When a corporation commits an environmental crime, such as air pollution, water pollution, or deforestation that damages the ecosystem, the impact extends not only to humans but also to the entire ecological system. Therefore, the sanctions imposed cannot only be in the form of fines where the environment which is the victim of corporate actions does not feel the impact directly. The application of additional sanctions in the form of repair due to criminal acts against corporations, although still half-heartedly reflecting the principle of ecocentrism, can be considered as an adequate step to protect the rights of the environment as a victim in environmental crimes by corporations.¹⁸

Additional sanctions in the form of repair due to criminal acts involve concrete actions to try to restore environmental conditions such as habitat restoration, soil and water rehabilitation, and sustainable waste management. By making significant improvements, corporations are not only responsible for the damage caused, but also contribute to environmental recovery and preservation efforts.

2) Recovery effort

When the environment is damaged, the balance of the ecosystem is disturbed, which has an impact on the life system as a whole. In the event of severe damage, naturally living things in the environment will find it very difficult or even impossible to restore the environment to its original condition. This is due to the fact that the physical and biological conditions are no longer conducive to the

¹⁵ Interview with Dr. R. Narendra Jatna, S.H. LL.M, Expert Staff of the Prosecutor's Office of the Republic of Indonesia, May 22, 2024, in Prosecutor's Office of the Republic of Indonesia

¹⁶ Rob White. *Green victimology and non-human victims*. International Review of Victimology, vol. 24 no.2 (2018): p.239 - 255. <https://doi.org/10.1177/0269758017745615>

¹⁷ Rob White. *Environmental Crime and Social Conflict : Contemporary and Emerging Issues*. 1st Edition. (London : Routledge : 2016) p. 45

¹⁸ Shane Evelina & Diah Ayu Ma'rifatul, *Rekonstruksi Sanksi Pidana Korporasi Dalam Tindak Pidana Lingkungan Hidup Berparadigma Green Victimology*, Jurnal Hukum Lex Generalis 2, no. 12 (2021): 1276–1296.

restoration process.¹⁹ Each environmental ecosystem has its own environmental quality standards or environmental damage criteria, as well as its own recovery period, each of which has a different time. According to the Annex of the Regulation, the required recovery time is 100 years for nature reserves, 15 to 50 years for forest areas, 5 to 10 years for garden areas, and 1 to 5 years for community land or other use areas.²⁰

Therefore, humans must take various steps to accelerate the process of environmental recovery. This shows that human intervention is very important in the effort to restore the function of ecosystems that have suffered severe damage. The process of environmental recovery cannot be fully dependent on natural mechanisms alone, but requires active and planned human actions to accelerate and ensure the success of repairing damaged ecosystems.²¹ Consequently, the entity that is responsible for the pollution and/or environmental damage (in this case, a corporation) is obliged to restore the environmental conditions that have been adversely affected. With the restoration of environmental conditions, it is expected that the environmental functions that existed before the damage can return to their original state. Therefore, if no recovery of the polluted environment is carried out, it can cause more serious environmental damage so that it will cause wider losses.²²

Public Prosecutors tend to favor additional sanctions in the form of repair due to criminal acts over the other four types of additional sanctions. This is because repair due to criminal acts focuses on efforts to restore the consequences of criminal acts. The objective of repair due to criminal acts is to restore or repair losses resulting from criminal offenses, including environmental damage caused by environmental crimes. This encompasses a range of measures aimed at restoring environmental functions. Consequently, repair due to criminal acts serve not only as an additional sanction for corporations but also as a means of rectifying environmental damage caused by criminal activities.

3) Fixing deficiency fines

Considering that Indonesia has ratified the 1992 Rio Declaration on Environment and Development on August 23, 1994. In this declaration states that basically people are central to sustainable development, where people have the right to a healthy and productive life, which is in harmony with the environment,²³ as well as the right to fulfill sustainable development must be fulfilled to meet development and environmental needs equally, both for present and future generations.²⁴ The right to a healthy environment is also enshrined in Law No. 32

¹⁹ Khalatbari, Yalda, & Poorhashemi Abbas, *Environmental Damage : Challenges and opportunities in International Environmental Law*, CFILE Journal of International Law (CJIL), Vol. 1, No. 1, 2019, p.21-28.

²⁰ CHAPTER IV Annex to Minister of Environment Regulation No. 7 of 2014 on Environmental Losses Due to Pollution and/or Environmental Damage

²¹ Walter V. Reid, et al. *Ecosystems and Human Well-being*, (Kuala Lumpur: Millenium Ecosystem Assessment : 2005) p. 26.

²² Valenzuela, *The Damage to the Environment: A View from Law*, Athens Journal of Law, Volume 1, Issue 2, 2015, p. 127-140, <https://doi.org/10.30958/ajl.1-2-3>

²³ Principle 1 of the 1992 Rio Declaration

²⁴ Principle 2 of the 1992 Rio Declaration

of 2009 on Environmental Protection and Management, where a good and healthy environment is the right of every Indonesian citizen.²⁵

Therefore, the sanctions for corporations involved in environmental pollution or damage is insufficient if it is only in the form of fines. In this case, the fine is the primary sanction paid by the corporation to the government and the funds derived from these fines must be allocated as non-tax state revenue from the prosecutor's office, subsequently deposited into the state treasury.²⁶ This is problematic because there are no clear rules governing the use of the fines that are allocated to the State Treasury. There is no legal basis governing the allocation of criminal fines and the use of criminal fines to restore the environment damaged by criminal acts. In addition, Presidential Decree No. 77 of 2018 on the management of environmental funds does not address the management of funds allocated for the mitigation of pollution and damage and the restoration of the environment, which are derived from criminal fines paid by convicted offenders.

If the sole consideration is the imposition of fines as a form of sanction for corporations, it is evident that the objective of the Environmental Protection and Management Law, namely the provision of a healthy and conducive environment for citizens, will not be met.²⁷ Consequently, public prosecutors view the implementation of additional sanction in the form of repair due to criminal acts as a pivotal advancement in the domain of legal enforcement. This approach guarantees that corporations are held to account for their actions and facilitates environmental restoration.

However, based on the research conducted by the author,²⁸ Some public prosecutors in filing additional sanction charges in the form of repair due to criminal acts convert them into a sum of money. The author considers that the additional sanction in the form of payment of money proposed by the prosecutor is not in accordance with the intended purpose of environmental remediation. As stipulated in Article 8 paragraph (1) and (2) of the Minister of Environment and Forestry Regulation No. 7 of 2014. The article states that the payment of environmental losses becomes non-tax state revenue that must be deposited into the state treasury. So that the initial goal of fixing deficiency fines is not fulfilled.

Additionally, Dr. R. Narendra Jatna stated that the Attorney General's Office has issued Attorney General Guidelines Number 8 of 2022 on the Handling of Criminal Cases in the Field of Environmental Protection and Management. In these guidelines, it is explained that additional criminal charges or disciplinary

²⁵Consideration letter (a) of Law Number 32 of 2009 on Environmental Protection and Management

²⁶ Deni Daniel, Azam Hawari, & Marsya Mutmainah Handayani, "Reorientasi Penegakan Hukum Pidana Lingkungan Hidup Melalui Perjanjian Penanggungan Penuntutan," Jurnal Hukum Lingkungan Indonesia 6, no. 1 (2019): 72–96, <https://doi.org/10.38011/jhli.v6i1.148>.

²⁷ Consideration letter (a) of Law Number 32 of 2009 on Environmental Protection and Management

²⁸ List Table 1. The following is a list of decisions that require the imposition of additional sanctions in the form of repair due to criminal acts

actions may be submitted by the public prosecutor, based on considerations including:²⁹

- a) threats to human survival and the environment;
- b) the impact of criminal offenses in the field of environmental protection and management;
- c) the length of time required for environmental function restoration; and
- d) the right to a good and healthy environment.

In order for demands for repair due to criminal acts to be considered, they must be supported by a recommendation for an Environmental Function Restoration Plan. Recommendations an Environmental Function Restoration Plan is a document that suggests concrete steps to restore environmental functions impaired by environmental crimes. This plan usually includes, A comprehensive assessment of the damage incurred, Methods and techniques to be used to repair the damage, Time required for each stage of restoration, Allocation of budget, labor, and materials, and Mechanisms to monitor the progress and effectiveness of restoration. This plan aims to ensure that the restoration process is carried out effectively and in accordance with applicable environmental standards.

The Implementation of the Execution of Additional Sanction in the Form of Repair Due to Criminal Acts

Execution is one of the main tasks and functions of the Prosecutor's Office of the Republic of Indonesia as mandated in Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Prosecutors have an obligation to execute court decisions. Prosecutors as executors must immediately execute court decisions, but the implementation can only be done after the decision has permanent legal force (*in kracht van gewijsde*).³⁰ By obtaining a court decision that has permanent legal force, the prosecution function ends and the function of the public prosecutor ends.³¹

Likewise in the case of court decisions related to environmental crimes, the Environmental Protection and Management Law authorizes the execution to the prosecutor's office. Likewise, in the case of decisions related to additional sanctions against corporations, it is carried out based on court decisions. Later, the prosecutor coordinates with the Ministry of Environment and Forestry to carry out the execution.³²

The adjudication of environmental crimes cases, particularly those that result in the imposition of additional sanctions in the form of repair due to criminal acts, has been

²⁹ Chapter IX of the Guidelines of the Attorney General Number 8 of 2022 on the Handling of Criminal Cases in the Field of Environmental Protection and Management

³⁰ Article 270 Law Number 8 of 1981 concerning Criminal Procedure Law

³¹ Hamrat Hamid & Harum Husein. *Pembahasan Permasalahan KUHAP Bidang Penuntutan dan Eksekusi (Dalam Bentuk Tanya Jawab)*, (Jakarta : Sinar Grafika, 1992), p. 312.

³² Article 120 Law Number 32 of 2009 concerning Environmental Protection and Management

a feature of the legal landscape since 2013. The following are several court decisions that have permanent legal force and impose additional sanctions in the form of repair due to criminal acts against the convicted, in this case a corporation.

Table 2

The following is a list of court decisions that impose additional sanctions in the form of repair due to criminal acts.

N	Register Number	Criminal Offenses	Verdict
1	PT Adei Plantation <ul style="list-style-type: none"> • 228/Pid.Sus/2013 /PN.Plw, September 9, 2014 • 286/PID.SUS/2014 /PPT. PBR, January 9, 2015 • 2042 K/Pid.Sus/2015, March 14, 2016 	Article 99 Environmental Protection and Management Law.	The repair due to criminal acts includes the restoration of 40 hectares of land damaged by fire through composting, at a cost of IDR 15,141,826,779.325.
2	PT Gorda Duma Sari <ul style="list-style-type: none"> • 28/Pid.Sus/2015/ PN. Blg, August 19, 2015 	Article 99 paragraph 1 jo. Article 116 paragraph (1) point b Environmental Protection and Management Law.	Repairing damage in the location permit area of approximately 400 hectares through planting perennials and building retaining walls on the cliffs that have been cut.
3	PT Indo Bharat Rayon <ul style="list-style-type: none"> • 113/Pid.B/LH/2016/PN. Pwk, June 23, 2016 • 574 K/ Pid.Sus LH/ 2017, July 18, 2017 	Article 103 jo. Article 104 jo Article 116 paragraph (1) point a jo. Article 119 Environmental Protection and Management Law and Article 64 paragraph (1) Criminal Code	Repair due to criminal acts with clean up and reporting to the Environment Agency
4	PT Triomas Forestry Development Indonesia <ul style="list-style-type: none"> • 37/Pid.B/LH/2018/PN. Sak, December 27, 2018 	Article 99 paragraph (1) jo. Article 104 jo Article 116 paragraph (1) point a Environmental Protection and Management Law.	Repair due to criminal acts to restore land damaged by 140 hectares of land fires at a cost of IDR IDR 13,000,000,000.
5	PT Prima Indo Persada <ul style="list-style-type: none"> • 25/Pid.B/LH/2019/PN. Nla, September 12, 2019 	Article 104 jo Article 116 paragraph (1) point a. Environmental	Repair due to criminal acts

		Protection and Management Law.	
6	PT Sumber Sawit Sejahtera • 349/Pid.B/LH/2019/PN. Plw, May 19, 2020	Article 99 paragraph (1) point a jo. Article 118 jo. Article 119 Environmental Protection and Management Law and Article 109 jo. Article 68 jo. Article 113 paragraph (1) Plantation Law	Repair due to criminal acts at a cost of Rp.38,652,262,000.

Source : Supreme Court Decision Directory Website

Of the six court decisions that have been mentioned, related to the implementation of additional sanctions in the form of repair due to criminal acts, two of these decisions have been executed by:

- 1) The Pelalawan District Attorney's Office executed additional sanctions against PT Adei Plantation based on the Supreme Court's decision No. 2042 K/Pid.Sus/2015, dated March 14, 2016. The payment for repairing damage due to land fires amounting to IDR 15,141,826,779.325. was submitted by PT Adei Plantation to the Pelalawan District Attorney's Office on August 12, 2020.³³
- 2) The Purwakarta District Attorney's Office carried out an additional criminal execution against PT Indo Bharat Rayon based on the Supreme Court's decision No. 574 K / Pid.Sus LH / 2017, dated July 18, 2017. PT Indo Bharat Rayon has been cleaning up Kalimati Swamp in stages for almost two years, starting from October 2019. This process was not done all at once, mainly due to the Covid-19 pandemic. Public Prosecutors from the Purwakarta District Attorney's Office actively oversaw the process until November 2021 with a team from the Ministry of Environment. The Ministry of Environment declared that PT Indo Bharat Rayon has passed verification and confirmed that Kalimati Swamp has recovered and returned to its original condition. This decision is documented in the Decree of the Minister of Environment and Forestry of the Republic of Indonesia Number Sk. 887 / MENLHK-PSLB3 / PLB.4 / 12 / 2021 concerning Determination of the Status of Completed Recovery of Land Contaminated with B3 Waste in Cilangkap Village, Babakancikao District, Purwakarta Regency, West Java Province by PT Indo Bharat Rayon.³⁴

Meanwhile, four other decisions have not yet completed the execution of additional sanctions in the form of repair due to criminal acts.

³³ Farikhin, *Kejari Pelalawan Eksekusi Uang Perbaikan Karhutla PT Adei Plantation Rp15 Miliar Lebih*, GoRiau.Com, 13 Agustus 2020, diakses pada 10 Juni 2024. <https://m.goriau.com/berita/baca/kejari-pelalawan-eksekusi-uang-perbaikan-karhutla-pt-adei-plantation-rp15-miliar-lebih.html>.

³⁴ M. Rizal, *Kejari Purwakarta Lakukan Eksekusi Pidana Tambahan PT Indo Bharat Rayon*, SinarJabar.com, 7 Februari 2022, diakses pada 10 Juni 2024. <https://www.sinarjabar.com/daerah/amp/pr-2912617781/kejari-purwakarta-lakukan-eksekusi-pidana-tambahan-pt-indo-bharat-rayon>.

Dr. R. Narendra Jatna mentioned that there are several factors that become obstacles why the implementation of the execution of additional sanctions in the form of repair due to criminal acts is not optimal, among others:³⁵

- 1) Arrangements and guidelines for the implementation of additional punishment in the form of repair due to criminal acts that are not yet clear

A significant challenge in the implementation of execution is the lack of clear guidelines governing the procedure for the execution of additional sanctions in the form of repair due to criminal acts. Despite the stipulation in Article 120 of the Environmental Protection and Management Law that the Prosecutor is to collaborate with the Ministry of Environment and Forestry in the enforcement of additional sanctions, this regulation does not elucidate the precise roles and responsibilities of the respective institutions. In practice, the role of the Prosecutor in the implementation of repair due to criminal acts is largely confined to monitoring the process conducted by the Ministry of Environment and Forestry.³⁶

In 2014, the Attorney General's Office issued Attorney General Regulation No. PER-028/A/JA/10/2014, which provides guidelines for handling cases involving corporate legal subjects. This Attorney General Regulation was issued a year after the PT Adei Plantation case. However, it is unfortunate that the Regulation does not provide sufficient details regarding the implementation of additional sanctions in the form of repair due to criminal acts. This is contrary to the main objective of the Attorney General's Regulation, which is to optimize additional sanctions against corporate legal subjects in accordance with applicable legal provisions. In addition, this Attorney General Regulation does not include the necessary execution mechanism.

The absence of regulations governing the procedures for implementing additional sanctions in the form of repair due to criminal acts represents a significant obstacle in the execution process. To illustrate, PT Triomas declined to commence the execution of its cost recovery, citing the necessity for technical guidelines pertaining to environmental restoration as a prerequisite for its willingness to proceed.³⁷

In fact, there are environmental quality standards and environmental damage criteria, and in practice, the government makes reference to these standards when conducting restoration. While these standards can provide general directions for environmental restoration, they are not comprehensive guidelines because the environmental quality standards and environmental damage criteria are incomplete and inadequate. This is due to the existence of differences in environmental media, ecosystems, and various pollutant or nuisance sources. The level of environmental damage or pollution will be indicated by different factors

³⁵ Interview with Dr. R. Narendra Jatna, S.H. LL.M, Expert Staff of the Prosecutor's Office of the Republic of Indonesia, May 22, 2024, in Prosecutor's Office of the Republic of Indonesia

³⁶ Ibid

³⁷ Ibid

depending on the characteristics of the unique environmental media and ecosystem.

The absence of regulations governing the procedures for implementing additional sanctions in the form of repair due to criminal acts results in a legal vacuum. In the absence of regulations governing the procedures for implementing additional sanctions in the form of repair due to criminal acts, legal uncertainty may arise with regard to matters or circumstances that are not or have not been regulated. The existence of a legal vacuum may also result in a lack of legal certainty, which is contingent upon the availability of a set of laws and regulations that are operational and support their implementation.³⁸

In order to address the absence of implementation guidelines, the Attorney General's Office subsequently issued Attorney General's Guideline Number 8 of 2022 on Handling Criminal Cases in the Field of Environmental Protection and Management. This guideline specifies that the implementation of repair due to criminal acts is conducted in collaboration with the Ministry or Center for Law Enforcement and Security of Environment and Forestry, in accordance with their operational areas. The convicted may perform the reparations themselves or through a third party. The implementation of additional sanctions or disciplinary measures in the form of repair due to criminal acts is deemed complete upon issuance of a stipulation confirming the completion of environmental function restoration. This conclusion is articulated in a decision that attests to the successful completion of Environmental Function Restoration activities. Such a stipulation is issued by the Ministry or an authorized institution. The Court Decision Implementation Order (P-48) and the Minutes of Court Decision Implementation (BA-17) are modified to guarantee the fulfillment and completion of the court decision implementation process. The completion of the implementation of the court decision is duly recorded in the minutes of the court decision.³⁹

It is regrettable that, despite the existence of established guidelines, shortcomings remain in the provisions governing the handling of conditions such as (1) the implementation of procedures in the event that the corporation is closed, renamed, or undergoes a change in its business structure; (2) the identification of potential compensation recipients; and (3) the implementation process in the event that the corporation is unable to fulfill the decision.

- 2) The absence of time limit and coercive nature in the execution of additional punishment in the form of repair due to criminal acts

Another obstacle that needs to be considered is the time limit for the execution of additional sanctions. An important question that needs to be answered is whether execution against corporations can expire, especially in the context of

³⁸ Maria S.W. Sumardjono, *Hukum Yang Jelas dan Kepastian Hukum dalam Pendaftaran Tanah dan Manfaatnya Bagi Bisnis Perbankan dan Properti*, cited by Daniel Mulia Djati, et al, *Penafsiran Asas Kepastian Hukum Dan Kekosongan Hukum Dalam Keputusan Mahkamah Konstitusi Terhadap Undang-Undang Nomor 11 Tentang Cipta Kerja (Kajian Keputusan Nomor 91/PUU-XVIII/2020)*, JURNAL IKAMAKUM, Volume 2, No. 1, 2022. p. 587-600.

³⁹ The Guidelines of the Attorney General Number 8 of 2022 on the Handling of Criminal Cases in the Field of Environmental Protection and Management

additional sanctions. Do additional sanctions have a different time limit from primary sanctions? This issue arises because Article 84 of the Criminal Code only regulates primary sanctions for individuals and does not cover additional sanctions or sanctions against corporations. The absence of a time limit on execution is directly related to the absence of consequences in the Environmental Protection and Management Law regarding the obligations of repair due to criminal acts that have not been fulfilled despite having obtained permanent legal force.

In the process of formulating obligations, it is of paramount importance to include threats that will guarantee their implementation. As is the case with additional sanctions in the form of restitution payments in corruption cases, if the convicted person fails to pay the restitution within one month of the court decision that has obtained permanent legal force, the Prosecutor may confiscate his property and auction it to cover the restitution.⁴⁰ It is regrettable that this perspective is not reflected in the Environmental Protection and Management Law.

A comparable methodology may be employed in the imposition of additional sanctions in the form of repair due to criminal acts, provided that there is an assessment of the potential sanctions that can force the corporation to fulfill its obligations. Such obligations may be formalized as a mechanism that must be implemented in the event of a change in corporate status, including a change in ownership, a change of name, or bankruptcy proceedings. Moreover, particular indicators must be met with regard to the parties involved, including executors and third parties, in the process of implementing repair due to criminal acts.

- 3) The conversion of additional sanctions in the form of repair due to criminal acts into a sum of money

If we understand the wording of article 119 letter c), which refers to "repair due to criminal acts", it means that the additional criminal sanction provided for in the provisions of the article is the remedial measures to be taken by companies that have been found guilty of environmental crimes in a court decision. However, due to the lack of implementing regulations for the provisions of Article 119 letter (c), there are inconsistencies in its implementation, namely the existence of court decisions convert remedial measures for criminal acts into a sum of money

There is a judge's decision that determines the amount of cost recovery as in decision number 37/Pid.B/LH/2018/PN. Sak. In that decision, the judge ordered repair due to criminal acts to restore 140 hectares of fire-damaged land at a cost of IDR 13,000,000,000⁴¹. This decision uses the instrument of the Minister of Environment Regulation No. 7 of 2014 on Environmental Losses Due to Pollution and/or Environmental Damage as a legal basis. This regulation becomes the legal basis for the amount of money that needs to be spent by corporations as a form of additional criminal implementation. The consideration of making this regulation the legal basis illustrates that it can be clearly said that if an act occurs that causes

⁴⁰ I.H. Rahman, Agna Susila, & J.Krisnan. *Pelaksanaan Pembayaran Uang Pengganti dalam Tindak Pidana Korupsi*. Varia Justicia, Vol.12 No.1, 2016. p. 87-99.

⁴¹ Siak Sri Indrapura District Court Decision No. 37/Pid.B/LH/2018/PN. Sak

pollution or damage to the environment, in order to restore the environment, it is carried out by depositing a sum of money to the government as referred to in article 8 :⁴²

- (1) *"Payment of environmental losses is a non-tax state revenue."*
- (2) *"All non-tax state revenues from payment of environmental losses must be deposited into the State treasury."*

However, Minister of Environment Regulation No. 7 of 2014 is a derivative regulation that is a follow-up to Article 90 paragraph (2) of the Environmental Protection and Management Law. This article regulates the government's right to sue for compensation for environmental pollution or damage.⁴³ Therefore, this regulatory measure is not consistent with the stipulations set forth in Article 119, paragraph (c), of the Environmental Protection and Management Law, which requires that implementing regulations align with the overarching principles and standards established at the higher level.

With regard to its substance, the Minister of Environment Regulation No. 7 of 2014 is situated within the domain of civil law, whereas article 119, letter (c) of the Law on Environmental Protection and Management is situated within the domain of criminal law. In the context of the Minister of Environment Regulation No. 7/2014, the term "compensation" refers to a financial payment made by the perpetrator of an environmental offense to the victim as a form of redress for damages caused to the environment.⁴⁴ In contrast, the repair due to criminal acts as outlined in Article 119, letter c of the Environmental Protection and Management Law places greater emphasis on the process of restoring the condition and function of the environment to its original state.⁴⁵

It is imperative that additional penalties in the form of reparative measures should be imposed aimed at rectifying the consequences of criminal actions. These penalties should not involve financial contributions to the government, but rather encompass tangible forms of recovery and restoration. This additional sanction constitutes a form of corporate obligation pertaining to the actions in question. If the funds designated for recovery are remitted to the government, the obligation to facilitate recovery is effectively transferred to the government, which is then responsible for implementing the requisite recovery measures. The process of depositing additional sanction proceeds as non-tax state revenue is subject to lengthy procedures and a protracted timeframe. Meanwhile, environmental

⁴² Article 8 Minister of Environment Regulation No. 7 of 2014 on Environmental Losses Due to Pollution and/or Environmental Damage

⁴³ Consideration of Minister of Environment Regulation No. 7 of 2014 on Environmental Losses Due to Pollution and/or Environmental Damage

⁴⁴ J. Rawung. *Ganti Kerugian Dan Pemulihan Lingkungan Akibat Pencemaran Dan Perusakan Lingkungan Hidup*. Jurnal Lex Crimen Volume 2 Nomor 5, 2013, p. 83

⁴⁵ B. Marbun. *Konsep Pemulihan Dalam Pencemaran Lingkungan Hidup (Studi Pada Putusan Pengadilan Negeri Jakarta Utara Nomor 735/PDT.GLH/2018/PN.Jkt.)*, Jurnal LITRA: Jurnal Hukum Lingkungan, Tata Ruang, dan Agraria, Volume 1 Nomor 1, 2021, p. 92.

restoration must be carried out without delay, as the situation cannot be allowed to persist.

The implementation of the recovery obligation is the responsibility of the government, yet there is no assurance that recovery will occur. This is because, from the procedural perspective, the Ministry of Environment and Forestry, in carrying out environmental recovery whose source of funds originates from corporate deposits in the state treasury, is required to obtain approval for the utilization of non-tax state revenue from the Ministry of Finance prior to proceeding.⁴⁶ Subsequently, the submission in question can be accepted or rejected, with due consideration of pertinent state financial considerations, fiscal policy, and the funding requirements of non-tax state revenue management agencies.⁴⁷ It should be noted that even if the proposed approval is accepted, the Ministry of Finance may evaluate the approval at periodic intervals.⁴⁸ Thus, it can be said that there is no definite guarantee whether environmental recovery due to corporate environmental crimes is carried out by the government or not.

Conclusion and Recommendation

Conclusion

Based on the research conducted and the discussions outlined earlier, the following conclusions can be drawn:

1. The consideration of the Public prosecutor to propose additional sanctions in the form of repair due to criminal acts in the demand letter is because it is considered as a form of legal enforcement against the environment considering that the environment is a victim of environmental crimes committed by corporations, then as a form of recovery effort for the environment because the repair due to criminal acts on the recovery of losses due to criminal acts, including environmental damage, and is prioritized over other types of additional sanctions because it directly touches the environmental impact. On the other hand, criminal fines against corporations cannot be used for environmental recovery and only become state revenues whose allocation of use does not go into environmental recovery. Therefore, the application of additional sanctions in the form of repairs due to criminal acts is considered a crucial step in law enforcement to ensure corporate accountability and environmental recovery.
2. The execution of additional punishment in the form of repair due to criminal acts is carried out by the prosecutor's office as the executor with the coordination of related agencies, after the court decision is legally binding. However, even though the decision has received permanent legal force, its execution is still not optimal. The non-optimal

⁴⁶ Article 53 paragraph (1) of Government Regulation Number 58 of 2020 concerning Management of Non-Tax State Revenue

⁴⁷ Article 53 paragraph (2) of Government Regulation Number 58 of 2020 concerning Management of Non-Tax State Revenue

⁴⁸ Article 55 paragraph (1) of Government Regulation Number 58 of 2020 concerning Management of Non-Tax State Revenue

execution is caused by several factors, namely: the absence of regulation related to guidelines regarding the implementation of additional punishment in the form of correction of criminal offense, the absence of time limit and coercive nature in the implementation of additional sanction in the form of repair due to criminal acts, as well as the conversion of additional punishment in the form of repair due to criminal acts with a sum of money make it difficult to carry out environmental restoration.

Recommendation

In light of the research findings, it is recommended that a review of the provisions of Article 119 of Law Number 32 of 2009 on Environmental Protection and Management be carried out with a view to providing a more in-depth explanation of additional punishment in the form of repairs due to criminal acts. Furthermore, it is essential to develop regulatory frameworks or implementation guidelines that accommodate the types of remedial actions required, establish time limits, and include mandatory efforts if the remediation, either in part or in full, is not carried out.

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