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Financing environmental rehabilitation through the imposition of payments in substitute of money in corruption cases

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Abstract
There are several cases of corruption that cause environmental damage, which then result in significant state financial losses. Compensation payments as additional penalties should be used for environmental restoration, however, in practice, the compensation paid will go into the state treasury, and is not necessarily used for environmental restoration. The purpose of this study is to determine the regulation of the polluter pays principle in international and national law, and the environmental restoration costs derived from the payment of compensatory penalties as a fulfillment of the polluter pays principle. The research method used in this study is a normative juridical research method, using a statutory approach. The results of this study indicate that regulatory updates are needed regarding the allocation of costs related to environmental restoration through compensatory payments in corruption cases.

Keywords: Polluter pays principle, environmental damage, corruption

Introduction

Constitutionally, every citizen has the right to a good and healthy environment, as stipulated in Article 28H of the 1945 Constitution. Indonesia is a developing country, where development and economic growth are still being pushed by the Indonesian government. Development often conflicts with environmental sustainability, therefore sustainable development must be pursued so that citizens receive protection for their right to a good environment. The development process often also causes environmental damage. Several cases of corruption include environmental damage in state financial losses, one example is the case of tin trade and the case of forest conversion into oil palm plantations. In these cases, environmental damage is the basis for the state's financial losses, which are fantastic because the consequences of the corruption committed by the perpetrators cause massive environmental damage, so that the damage must be restored by the state.

The tin trade corruption case has many parties involved, one of the parties who had a major role in the case was the President Director of PT Timah Tbk at that time, namely Mochtar Riza Pahlevi Tabrani, who in his decision, namely decision Number 80 / Pid.Sus-TPK / 2024 / PN.Jkt.Pst was sentenced to 7 years in prison and a fine of Rp. 750,000,000, - which was then in his appeal decision, namely decision Number 3 / Pid.Sus-TPK / 2025 / PT DKI, which in the appeal decision was heavier than the first level decision where Mochtar Riza Pahlevi Tabrani was sentenced to 12 years in prison and a fine of Rp. 1,000,000,000.- (One billion rupiah) and an additional penalty in the form of payment of replacement money of Rp. 493,399,704,345.00. Furthermore, in the corruption case of forest conversion into oil palm plantations with the defendant Surya Darmadi, in decision Number 62/Pid.Sus-TPK/2022/PN.Jkt.Pst, he was sentenced to 15 years in prison and a fine of Rp. 1,000,000,000.00,- and payment of compensation of Rp. 2,238,274,248,234.00 and also to pay state economic losses of Rp. 39,751,177,520,000.00.

Law Number 31 of 1999, as amended by Law Number 20 of 2001, which regulates the eradication of criminal acts of corruption (hereinafter referred to as the Corruption Eradication Law), has a mechanism intended to return or restore financial losses suffered by the state due to a criminal act of corruption, namely by imposing a penalty of payment of a sum of compensation. In its execution, the compensation paid by the convict will go into the state treasury. [1] If the money is to be used, it must go through a lengthy process.

Additional penalties in the form of restitution are intended to recoup state financial losses, which can then be used for the public good. In cases of corruption that cause environmental damage, the proceeds from the restitution payments made by the convict should be used to repair or restore the environmental damage caused by the perpetrator's actions. However, in practice, restitution proceeds are rarely used to repair environmental damage caused by corruption in the natural resources sector.

One concept in the environmental damage accountability system is the polluter pays principle, which states that any person or legal entity that pollutes the environment, whether intentionally or not, is obligated to pay for any losses incurred and is obligated to restore the polluted environment. [2] Based on this principle, compensation payments from those convicted of corruption crimes that cause environmental damage should be directly used to fund environmental restoration.

Research methods

This article is compiled using a normative juridical research method, which is a study method that aims to analyze a legal rule using a legislative approach method used to study related laws and regulations such as Law Number 32 of 2009 concerning Environmental Protection and Management, Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, and other relevant laws and regulations.

Results and Discussion

Polluter Pays Principle Regulation in International Law and National Law

The Polluter Pays Principle is a principle of responsibility in environmental law, first proposed by the Organization for Economic Cooperation and Development (OECD), an international organization with considerable influence in the field of environmental law. The main point of this principle is that every person or legal entity that pollutes the environment is obliged to see the losses caused by the activities that cause environmental pollution, this makes the party that causes environmental pollution responsible for paying for the restoration or recovery of the environment that has been polluted.[3]

In 1920, the Polluter Pays Principle was developed, stemming from a problem related to the financing of environmental restoration. At that time, the cost of restoring polluted environments was not considered an integral part of production costs, resulting in the costs of restoring polluted environments not being borne by the polluting parties. Communities affected by environmental pollution bore the costs of restoration, even though they did not cause the pollution. Furthermore, in 1972, the Polluter Pays Principle was seriously formulated by the OECD, and the provisions of European Community (EC) law also included this principle. [4] However, Indonesia itself is not bound by the OECD convention because Indonesia is not a member of the OECD convention.

The Polluter Pays Principle was further implemented in the 1992 Rio Declaration, which in Principle 16 of Rio 1992 states that parties causing environmental pollution have an obligation to bear the costs of restoration of environmental pollution by taking into account the public interest and not deviating from international trade and investment, which is based on environmental cost standards that have been developed and determined by the competent government. These costs include prevention and restoration of the polluted environment.

In addition to the Rio Declaration of 1992, international legal instruments that regulate the Polluter Pays Principle are the UNECE Convention on the Protection and Use of Transboundary Waters (1992) in Article 2 point 5, then in the OSPAR Convention (OSPAR Convention, 1992) in Article 2 point 2 (b), the Helsinki Convention (Baltic Sea Convention, 1992) in Article 3 (4), and the ASEAN Agreement on the Conservation of Nature (1985) in Article 10 (d). The ASEAN Agreement on the Conservation of Nature (1985) then approved through Presidential Decree Number 26 of 1986. Apart from the Rio Declaration of 1992 and the ASEAN Agreement on the Conservation of Nature (1985), Indonesia is not is bound parties into the conventions said, because No is member convention said. Indonesia only bound by the 1992 Rio Declaration and the ASEAN Agreement on the Conservation of Nature (1985), because Indonesia ratified convention the.

Countries in implementing the Polluter Pays Principle do so by internalizing it through tax instruments, fines, and regulations regarding accountability carried out through civil or public law by imposing penalties such as revoking licenses or permits from parties causing pollution, fines, criminal penalties, compensation payments and environmental restoration.[5]

The main instrument for environmental protection in Indonesian legislation is Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH). The Polluter Pays Principle is also implemented in UUPPLH, namely in Article 54 paragraph (1) which stipulates that any party that pollutes or damages the environment is obliged to restore environmental functions. This restoration is carried out in several stages, namely stopping the source of pollution, cleaning pollutants, remediation, rehabilitation, and restoration. Then in Article 87 paragraph (1) it also stipulates that any person responsible for a business or activity that causes environmental pollution or damage is obliged to pay for losses or take certain actions. Then in Article 88 UUPPLH also regulates strict liability for parties who in their business use or produce hazardous waste. In Article 90 paragraph (1) UUPPLH also stipulates that government agencies, both central and regional, have the authority to sue for compensation or take certain actions against businesses or activities that cause environmental pollution or damage. This means that the UUPPLH stipulates that parties who cause environmental pollution or environmental damage are required to pay compensation for the pollution or environmental damage caused by their activities or businesses.

Outside of the UUPPLH, there are also various implementing regulations related to the Polluter Pays Principle, such as in Government Regulation (PP) Number 22 of 2021, which in this PP contains a mechanism regarding environmental approval which is a requirement for business permits, where business actors are required to meet environmental standards and have a waste management plan, including pollution prevention efforts. [6].In addition, there is also an obligation to restore if pollution occurs, then the business actor or polluter is fully responsible for restoring the environment according to the recovery costs, and there is integration with business licensing where compliance with obligations is assessed before the permit is issued. Furthermore, in the Regulation of the Minister of Environment Number 7 of 2014 which regulates the procedures for calculating compensation for environmental pollution, which in practice is used by the Ministry of Environment as a guideline for calculating environmental losses due to pollution or environmental damage when suing for compensation.

In addition to being regulated in the UUPPLH, the Polluter Pays Principle is also implicitly regulated in Law Number 32 of 2014, where Article 52 paragraph (3) states that in the context of resolving disputes and implementing sanctions for marine pollution, it is based on the Polluter Pays Principle and the precautionary principle. Furthermore, Law Number 27 of 2007 regulates the existence of the Polluter Pays Principle in the marine and fisheries sector. This means that the Polluter Pays Principle is not only adopted in the UUPPLH but also various legal instruments related to the environment.

The Polluter Pays Principle is an accountability instrument in environmental law regulated by both international and national law. The Polluter Pays Principle in international environmental law is regulated by various conventions, and in Indonesian national law, namely the UUPPLH and its derivative regulations. Several environmental laws, such as Law Number 32 of 2014 and Law Number 27 of 2007, also adhere to this principle. Under this principle, any party whose activities or business cause environmental pollution or damage is obligated to pay or finance both the prevention

and mitigation of pollution or environmental damage caused by their activities or business.

Environmental Recovery Costs Originating from Criminal Payments of Compensatory Money as Fulfillment of the Polluter Pays Principle

In several corruption cases, prosecutors used environmental damage as a justification for state financial losses in their indictments. However, not all cases were ruled by judges that environmental damage fulfills the element of state financial loss. Examples of decisions that use environmental damage as a justification for state financial losses include decisions numbered 80/Pid.Sus-TPK/2024/PN.Jkt.Pst and 62/Pid.Sus-TPK/2022/PN.Jkt.Pst. Therefore, it can be concluded that not all pollution or environmental damage can fulfill the element of state financial loss.

The relationship between environmental damage as one of the fulfillments of the elements of state losses is that in Article 33 paragraph (3) of the 1945 Constitution which regulates state control over natural resources, which are then used for the greatest prosperity of the people. In order for environmental losses to be transformed into state losses, the environmental losses must be actual losses, eliminating state revenues, causing the state to finance environmental restoration, eliminating the economic value of forests as state assets. Environmental losses that are purely ecological in nature cannot be the basis for state losses in corruption cases. [7] Environmental damage and the costs of its restoration in order to be categorized as state financial losses must be directed at violations of the Corruption Eradication Law, and make environmental losses, state assets and state finances into one inseparable unit.

The basis for imposing additional penalties is Article 17 of the Corruption Eradication Law, in which article it is stated that in addition to the main penalties as mentioned in the formulation of the article regarding corruption, bribery and gratification, additional penalties can also be imposed. Furthermore, the types of additional penalties are regulated in Article 18 paragraph (1) namely in the form of confiscation of goods, payment of replacement money, closure of all or part of the company, and revocation of all or part of certain rights. Based on these provisions, it can be interpreted that all formulations of articles regarding corruption, bribery and gratification can also be subject to replacement penalties in addition to the main penalties. The imposition of additional penalties in the form of replacement payments is not absolutely imposed by the judge, but this penalty is a form of effort from the law makers as well as providing a deterrent effect as well as an effort to impoverish the perpetrators of corruption. Then also from the replacement money so that it can be used for the benefit of society.

After the verdict has permanent legal force (inkracht), if the convict is sentenced to pay compensation, then in the payment process a time period is set for payment, which is a maximum of 1 (one) month. If the convict is unable to pay compensation within the said time period, then the prosecutor as executor is authorized to confiscate his/her property to be auctioned to cover the payment of compensation that cannot be paid. The proceeds from the payment of compensation and the proceeds from the auction of the property confiscated by the prosecutor will then go into the state treasury and be deposited in the State Revenue and Expenditure Budget (APBN).

Additional punishment in the form of substitute payments provides results in the form of income for the state treasury. [8] Article 16 paragraph (2) of the State Treasury Law stipulates that all state revenue must be deposited in full into the state treasury, meaning that the substitute money that has been paid by the convict or the proceeds from the auction of the convict's assets to cover the payment of the substitute money will all go into the state treasury. Furthermore, as regulated in Article 22 of the State Treasury Law, the Minister of Finance as the manager of general cash opens the State General Cash Account (RKUN), so that all state revenue, in this case also including the results of substitute money payments, will end up in the state treasury before being recorded in the APBN. In the APBN, the results of substitute money payments are included in Non-Tax State Revenue (PNBP) which is then included in the realization of the APBN for the relevant budget year.

After the replacement money becomes PNBP, its use cannot be immediately used. To use the results of the replacement money payment that has become PNBP, it must first be budgeted in the APBN. This is as regulated in Law No. 9 of 2018 in Articles 20 and 21 which states that all PNBP management consisting of planning, implementation, accountability and supervision is managed in the APBN system. The mechanism for the use of PNBP funds as regulated in Articles 33 to 34 of Law No. 9 of 2018, begins with the PNBP managing agency, namely the Ministry/Institution and the Ministry that carries out the function as the State Treasurer proposes the use of the PNBP it manages to the Minister, then the proposal will be considered by the Minister by considering several things such as the state financial condition, fiscal policy and the needs of the managing agency. Furthermore, the Minister will include the approved proposals in the work and budget plan (RKA) which will then be used as material for compiling the State Budget Bill which will be discussed with the DPR and then ratified as the State Budget, as regulated in Articles 11 to 14 of Law No. 17 of 2003.[9]

The APBN that has been determined in one budget year, namely from January 1 to December 31 consists of the rights and obligations of the central government that are recognized as additions and deductions from the value of the state's net assets, receipts that need to be repaid or expenses that will be received back, as well as all state receipts and expenses through RKUN, meaning that the results of the payment of replacement money by convicts or the results of the auction of assets to cover the replacement money that has been recorded in the RKUN become state revenues in one APBN budget year. [9] This is as regulated in Articles 11 and 12 of the State Treasury Law.

For the implementation of the APBN that has been set, the Minister of Finance then gives direction to the ministers/heads of institutions to submit budget implementation documents or what is usually called DIPA. [10] Next, the ministers/heads of institutions make budget implementation documents that contain the targets to be achieved, functions, programs, and details of activities, the budget provided to achieve these targets, fund withdrawal plans, and estimated revenues based on the budget allocation determined by the President. Then for the implementation of the budget, the revenue of state ministries/institutions/regional work units may not be used directly to finance expenditures because revenue in any

form is the right of the state/region, this is as regulated in Articles 14 to 16 of the State Treasury Law.

Based on the above description, it can be seen that the proceeds from the replacement payments must go through a long process to be used. Replacement money paid for corruption crimes that cause environmental damage cannot be used immediately, even for environmental restoration efforts, because, as explained, the replacement money must be funded through the state budget. This will undoubtedly cause losses to surrounding communities affected by the pollution or environmental damage.

Based on the judge's considerations in decisions number 80/Pid.Sus-TPK/2024/PN.Jkt.Pst and 62/Pid.Sus-TPK/2022/PN.Jkt.Pst environmental damage is used as one of the elements of state financial losses. In decision number 80/Pid.Sus-TPK/2024/PN.Jkt.Pst the judge is of the opinion that illegal mining by illegal miners in the PT Timah IUP area which was then not followed up by the PT Timah Directors, instead it was allowed and used to fulfill the PT Timah RKAB causing ecological losses, environmental economic losses, and incurring recovery costs that must be borne by the state, this causes losses due to environmental damage with a fantastic value. Then in decision number 62/Pid.Sus-TPK/2022/PN.Jkt.Pst, forests that have been illegally converted into oil palm plantations are one of the supporting components of the country's economy, and a series of plantation activities and oil palm processing in forest areas cause damage to the forest environment so that the forest cannot be used for the prosperity of the community. In addition, the absence of a community oil palm system means that the oil palm plantation business does not provide benefits to the surrounding community, which is the goal of making policies in the state's economic sector, so that the country experiences economic losses.

These two decisions demonstrate the extent of state financial losses in corruption, specifically losses resulting from environmental damage. This is not to say that losses resulting from environmental damage are not isolated and also result in lost state revenue, increased state expenditures for restoration costs, and a decrease or loss of the environment's economic value as a state asset, all of which can be used as a basis for determining state losses.

There is no clear regulation that stipulates that the compensation money obtained from the verdict in a corruption case can be used directly as costs for efforts to restore pollution or environmental damage caused by the corruption. This has also been sued by PT Timah Tbk to the Constitutional Court. In its application, PT Timah Tbk felt that its constitutional rights were violated based on Article 28C paragraph (1), Article 28D paragraph (1), and Article 28H paragraph (1) of the 1945 Constitution, because in the case that the costs of restoring environmental damage were not borne by the perpetrator of corruption, it can be certain or potentially be borne by PT Timah Tbk. In the application for material review of Article 18 paragraph (1) letter b of the Corruption Eradication Law, PT Timah Tbk requested that the burden of compensation money not only be calculated from the assets enjoyed by the perpetrator, but also calculated from the losses caused by the perpetrator of the corruption, especially losses to the state economy.

However, the judge in his ruling rejected PT Timah Tbk's request because in his consideration that because in criminal law there is a principle of proportionality and justice, additional punishment in the form of compensation cannot exceed the actions and consequences caused by the convict, this is done to maintain the stability and security of society. Then in the case of corruption, not all convicts enjoy all the proceeds of corruption, especially in cases of corruption that are jointly

As explained, the use of the compensation paid by the convict has a long way to go. According to the Polluter Pays Principle, compensation paid by the convict can be used to fund environmental restoration efforts that have been polluted or damaged by corruption. However, in practice, the compensation must go through the State Budget. This is not necessarily used for restoration. Furthermore, in the case of corruption committed collectively, such as in the case of tin trade corruption, the convicts were sentenced to varying amounts of compensation according to their roles and the assets obtained from the proceeds of the corruption. Therefore, the compensation payments should be collected and then accumulated as costs for environmental restoration that has been polluted or damaged by the corruption.

Naturally, in the case of corruption, the loss is the state's finances or economy, so that compensation paid by the convict or the proceeds from the auction of assets to cover the compensation awarded by the court are deposited into the state treasury. However, along with the development of the legal system in Indonesia, environmental damage has now become an instrument in fulfilling the element of state financial loss in corruption crimes, provided that it must still meet certain criteria so that environmental losses due to pollution or environmental damage can be categorized as state financial losses. Thus, the regulations regarding Corruption and the UUPPLH overlap, and should synergize to restore state financial losses and also restore the environment damaged by corruption.

To date, compensation for corruption crimes that result in pollution or environmental damage is still considered the same as for corruption crimes that do not involve environmental damage as an instrument of state losses. Because corruption crimes that cause pollution or environmental damage are subject to environmental law, the application of criminal penalties and sanctions should also follow the principles stipulated in the UUPPLH, one of which is the Polluter Pays Principle. This is so that compensation not only reimburses state losses but also can be used appropriately, especially in the environmental sector. This means that compensation paid by convicts, either voluntarily or from the auction of assets resulting from corruption crimes that cause pollution or environmental damage, must be used to restore the environmental damage that occurred.

Conclusion

The Polluter Pays Principle applies to corruption crimes that cause pollution or environmental damage. This compensation can be obtained through the payment of compensation stipulated in a legally binding court decision. However, in practice, compensation from corruption crimes is rarely used to fund restoration of pollution or environmental damage caused by the alleged corruption. The compensation paid must go through a series of processes within the state budget and cannot be directly used to fund restoration of the polluted or damaged environment. This undoubtedly harms the community, especially those directly affected.

Suggestion

A clear regulation is needed regarding the accountability system for corruption that causes environmental damage. This regulation must synergize the Corruption Law and the Environmental Management Law. A special institution is also needed to collect and accumulate environmental restoration costs paid by parties in accordance with the Polluter Pays Principle, whether from compensation payments for corruption or other mechanisms, so that these costs are appropriately targeted and can be used directly for the restoration of damaged or polluted environments.

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