



RESEARCH ARTICLE

LAPINDO CASE: NATURAL DISASTER OR ENVIRONMENTAL CRIME?

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ABSTRACT

This paper discusses the knowledge of Environmental Crime taught in Criminology. A contemporary crime, which deals with the criminology view of environmental crime, by looking at elements of environmental crime: perpetrators, victims, law and enforcement. By recognizing what is meant by environmental crimes, is expected to realize environmental justice. For more details, Lapindo Case is used, as a trigger of environmental crime, by giving choice to the reader, is it an environmental crime or a natural disaster event.

Key words:

Environmental Crime, Criminology,
Perpetrators, Victims and Community
Reaction.

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INTRODUCTION

Since 2006 until today, the Lapindo mudflow still remains a problem. Yayasan Wahana Lingkungan Hidup Indonesia (WALHI) rolled Lapindo mud case aka Sidoarjo mud into court. The Foundation is very concerned in maintaining environment, demanding Lapindo, plead guilty and apologize to the public. Lapindo must be responsible for restoring environmental damage as required by Law no. 32/2009 on the Environment. Hot mud eruption at Sumur Banjar Panji I occurred on 29 May 2006 at the trigger of exploration without Amdal by PT Lapindo Brantas Incorporated. In addition, Lapindo neglects to consider the sensitivity of the Porong zone that experts already know. On the other hand, Lapindo argued that they were not the originator of the environmental disaster in Sidoarjo. According to Lapindo, the burst is a force majeure, beyond the will of Lapindo. The mudflow that has been happen for more than ten years, experienced by the citizens of Sidoarjo and felt by all Indonesian people. Is it really a natural disaster or even an environmental crime that results in a national natural disaster? Environmental issues are one of the global issues and since the late 1970s, the environment has become one of the global political, economic and business agendas. The environment is defined as the unity of space with all forms, power, circumstances and living things, including human beings and their behavior, which affect the viability of human life and welfare and other living

things (Law No.32 / 2009). This environmental issue, accommodated by the Department of Criminology, by making the environment one of the chosen subjects in the undergraduate program, under the name of Environmental Crime. Environmental crime (Crime, Against Environment) is an action or deed committed by a person or legal entity that is destructive and or pollute the environment ". The basic theory of environmental crime in criminological studies can not be separated from the science of origin, environmental science. Human ecology is the basis of environmental science. Problems faced by both, are: (1) Interaction between man and the environment, that is how humans respond to influence, disturbance or information obtained from their environment; (2) Efficiency in the utilization of human resources, both human and natural resources. Meanwhile, Criminology is the study of human and behavior asocial, violating the law or the norms of society and social reactions. In criminology, what is discussed is ecology, especially human ecology.

Environmental crimes and their elements

Environmental crime defined by Ridha Saleh (Walhi, 2005,97), is the perpetrator or act of depriving or removing the rights to the environment and people's livelihoods directly through the influence of capital forces, political forces and forces within any business entity / government that causes and results the destruction or extermination of the environment continuously and the sources of people's lives and thread against disruption of human life. Another definition, submitted by Yingyi Situ (2000, 84), says that: "An Environmental crime is an unauthorized act or omission that violates the law and is

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therefore subject to criminal prosecution and criminal sanctions. This offense harms or endangers people's physical safety or health as well as the environment itself". Yingyi also mentions three characteristics of environmental crime, namely: (1) Environmental crime is a violation of existing environmental laws; (2) Victims of environmental crimes are two, namely human and environmental; (3) Environmental offenders are not always vandalism, but also other legal entities as well as individuals. Judging from the perspective of criminology, environmental crime is quite unique compared to the type of conventional crime (crimes under the Criminal Code). Several elements of criminology studies, such as the perpetrators element, victims and social reactions that are always the main subject, clarify the uniqueness of these environmental crimes, can be seen in the figure in Table 1. Comparison between Conventional Crimes and Environmental Crime as following:

Table 1. Environmental Crime Elements

Element	Environmental crime	Conventional crime
Perpetrators	COLLECTIVE Legal entity (Corporate Crime). Duration: the behavior is repeated	Individual / collective
Victim	COLLECTIVE / ACUMULATIVE Reversed verification (corporation that must prove it)	Individu / kolekif The victim proves it
Social reaction	INDIRECT AND LIMITED	Direct and immediately
Verification	DIFFICULT AND LONG TERM Known mediators: Community Organizations (NGOs)	Direct, quick and easy

Source : Author, 2017

Eventually environmental crime is "Actions that violate laws and regulations on the protection of the environment, the destruction of the environment or that cause serious pollution to the environment or other serious events that damage the environment which has been established in accordance with environmental criminal law".

Environmental Crime: Pollution and Destruction

The essence of environmental crime is environmental pollution and destruction. What is meant by environmental pollution is the entry or inclusion of living things, substances, energies, and / or other components into the environment by human activities so that their quality falls to a certain extent that causes the environment can not function in accordance with its designation (Article 14, 32,2009). This pollution can be seen everyday in a very busy city. Since people are caught up in consumerism, they throw the rest 'far away', but where is 'far away'? (Gonik: 2004,189). When the population is still small and all that is discarded is organic, then the question above is not a big issue. The world is vast, and our remnants will be destroyed until it is completely gone. But the situation changed with the advent of the industrial revolution, when pollution became a major problem. There are at least three reasons: (1) Industrial processes: the smoke in the air is increasing as well as the waste that flows into the water; (2) Population growth: more and more goods are discarded and narrowing the space to dispose of them; (3) Chemistry; starting in 1828 with urea synthesis, chemists have reached or discovered about 7 million new substances, dyes, explosives, plastics, detergents, solvents and so on. The problem is not just throwing more waste into the environment, but the nature of the goods we throw away (Gonik: 2004,189). While vandalism is an action that causes direct or indirect changes to the physical and / or biological impact of the environment does not work anymore in order to support the sustainable development. Environmental destruction generally occurs in areas affected by development

projects, such as Lapindo Brantas Case, illegal tin excavation, illegal logging, and many more problems that our country has experienced.

Individuals, Groups, Community to Corporations Actors

a. Individuals Collectively

There is a contentious debate between environmental offenders, perpetrated by individuals or conducted by companies or groups only. For further application of the offender may be done personally, but it will be an environmental crime if it happens collectively. According to Yingyi Sittu and David Emmora (2000), there are 5 characteristics of personal misconduct: (1) Leads to individual behavior, unrelated to their work, unrelated to their affiliates in an organization They are part of society in general;

(2) Conducted by the general public who is unaware, and not related to other criminal activity, each person has at least performed one violation of this; (3) The perpetrators do not think that what they do is a crime, even though the law has actually said it; (4) The perpetrator does not get the stigma of a heavy or embedded society; (5) Although the influence of his behavior is not serious, but if accumulated by similar behavior from others, serious influence will surely emerge. Furthermore, there are two types of personal environmental crimes: (1) environmental crime within the household; The most common, usually done for work, take advantage of shortcuts, even if illegal. This type is done by the general public because there are opportunities. Examples of this crime: disposing of household waste indiscriminately, spraying insect poison into the air excessively, dispose of materials or chemicals commonly used household into drains, do not separate organic and non organic waste properly, burning trash, wasteful of water; (2) Recreational environmental crime; This type of crime is common in the context of distractions, during holidays, for hobbies and other recreational activities. For example, nowadays, boat rides, fishing, camping or other outdoor activities, but which is destructive to water, soil and air. Generally done in public places, about public facilities owned by the state but utilized by the general public, such as: beaches, sea, rivers, lakes, national parks, forests, done because of ignorance, negligence, but the impact of damaging the environment.

b. Corporations

Sutherland (1961), says environmental crimes can be categorized as corporate crime. In his book "White Collar Crime", he discusses Crime and Corporation as part of a white-collar crime (Clinard: 1973,188). Environmental crime as a corporate crime has its own problems, especially in terms of law enforcement. Who is responsible? Company or Corporate Leadership? Sutherland was assisted by Geis (1973), trying to

clarify the ambiguity to differentiate between the company, its executives and employees. They, among others, formulate: "Corporation are, of course, legal entities which can be and are subjected to criminal processes. There is today, little restriction on the range of crimes for which a corporation may be held, though it can not, for obvious reason, be imprisoned. "

Furthermore, Sutherland undoubtedly affirms that: "Crimes of corporations are precisely the crimes of their executives and managers": (1) Occupational crime, consisting of violations committed by the individual for his own interests connected with his occupation / position; (2) Corporate Crime, consisting of violations committed by the corporation and its employees for the benefit of the corporation. Clinard and Quiney (1973), developed a corporate crime typology into five aspects:

- 1) **Legal aspects of the crime concerned;** That is, that with the grow and thrive activity in the corporate field, criminal law was created to regulate all corporate activities. Criminal law, especially in respect of administrative provisions in the formation to protect the capitalist economy;
- (2) **Career criminal behavior;** That is, that the violations committed by members of the corporation are an integral part of the business activities of the corporation. The types of activities including the offenses committed have high social status in the eyes of the community. The offense is even considered rational and is a benchmark for the development of corporations;
- (3) **Group support;** That is, that corporate crime always has the support of a fellow corporation. Violation is a common pattern and is very common for many corporations
- (4) **The relationship between the offender and the deemed to be legitimate;** That is, that corporate crime is always consistent with the motto of increasing unlimited production, in order to meet the needs of consumers;
- (5) **Social reactions and legal process;** That is, that social reactions and law enforcement processes of corporate crime are generally administrative sanctions rather than criminal sanctions.

In a definition published by WALHI (May, 2004), an environmental criminal is a person or institution that commits an act of deprivation or omission of the life of the people directly from the influence, capital, political power and power (position) within a business entity / government or TNI - POLRI that cause and lead to the continuous execution or destruction, environment, ecocide and threats to the human security.

This definition is intended to reinforce a number of environmental crimes committed by a number of actors. Many of them have been involved in the practice of environmental crimes but have not been given equal political law sanctions. In fact, the environmental criminals, impressed immune law in this country, because environmental regulations are not so firmly set about environmental criminals.

1. Law and Enforcement

a. Victims, Proofs and Social Reaction of Environmental Crime

The victims of environmental just long enough to know. In general, the victim in the near future or directly, not knowing that he was a victim. After a long period of time, it is only

evident that he is a victim of environmental crime. This is not enough, if the victim is only individual. New victims are included in the category of victims of environmental crimes, if those who suffer or become victims of many, then it is not individual but a group. In the event of an environmental crime victim already exists, then it is deemed to have committed an environmental crime or 'offender; environmental crime must prove that it does not commit an environmental crime (reverse verification). Meanwhile, in terms of enforcement of the law towards environmental crime is very difficult. Almost none of the perpetrators of environmental crimes, including executives and managers of polluting and environmental destructive companies if we visit public institutions or in statistical data. The results of the fieldwork of criminology students, in 2003, found only one police station from many of the existing police in the area of DKI Jakarta, which records, if in the area of environmental crimes, but not processed further. After further investigation, it turned out that his Chief of Police had been one of the students who attended the Environmental Crime course at the Extension Program of the Department of Criminology, Faculty of Social and Political Sciences, University of Indonesia. Many factors are causing the difficult law enforcement of these environmental crimes. Criminal sanctions as stated in chapter XV of RI Law no. 32 of 2009 on criminal provisions is very difficult to be translated even implemented. Law enforcement officers in the field may not be able to embody the meaning of the concept of "Environment". Moreover, if the theoretical study of environmental concepts is defined as an environment consisting of the physical environment, the artificial environment and the socio-cultural environment, then the law enforcement process will be more complicated.

2. Environment as Human Rights (HAM)

The KSentini Document and the Draft Declaration submitted to the UN General Assembly in 1994 clearly show that the potential for permanent environmental damage provides special accountability to prevent vandalism. Because environmental damage is closely related to human rights violations. The draft asserts that all humans have the right to feel safe and sound ecologically. Where the environment can support the needs of the current generation without sacrificing future generations. The rights referred to among others: (1) Free from pollution, environmental degradation and activities that may affect the environment or threaten to affect the environment or life-threatening health or sustainable development; (2) Protection and preservation of air, soil, water, flora, and fauna and essential processes to maintain the integrity of biodiversity and ecosystems; (3) Obtain high standards of health; (4) Obtain food, drink and a healthy and safe environment; (5) Adequate housing, and safe, healthy and well-ordered ecological living conditions; (6) Ecological access to nature, and conservation and sustainable use of nature and resources; (7) Preservation of reserves and landscapes; (8) The right to enjoy traditional life and subsistence to indigenous peoples. The right to the environment, as a preliminary interpretation must include both structural and cultural dimensions. Structurally, the right to the environment stresses the importance of state responsibility to provide guarantees of respect, protection and fulfillment of law enforcement and political will. While culturally, the right to the environment includes important values of sustainability and social justice for the present and future environment (Ridha, 2005).

Lapindo case in criminological glasses

What about the Lapindo Mud case, can it be categorized as an environmental crime? At the moment there is little limit to the range of criminal acts that can be accounted for. Even companies for obvious reasons can not be imprisoned. Indeed for this corporate crime has its own problems, who is the perpetrator? the executives / personnel? or his company?

When traced, which has occurred in Lapindo Mud case can be seen from various aspects, namely:

1. From the point of the perpetrator, the cause of the mudflow is PT Lapindo, the legal entity status. A burst that causes pollution and environmental damage. Violation of Environmental Management Act, No. 23 of 1997.
2. While the victims are extraordinary many. Starting from the social, economic, environmental, infrastructure to psychology. And until now, in the long run, from beginning to this day, the victims are still suffering. Remember, in one of the shows on the TV News Dot Com station, broadcasting Lapindo victims who complained about his fate, all changed his world. They hope Lapindo's 'top brass' will pay attention to their fate. Although not all of their wishes (victims) are fulfilled, now, it has been followed up, where Lapindo bought the land or location where they live.
3. Different social reactions, ranging from victims, experts, bureaucrats, almost all the people come to react and a lot contributed advice. Meanwhile, the verification still continues, as time goes by.

Judging from the perspective of criminology, this horrendous case of Lapindo Mud could be categorized into crime, which the perpetrator is a corporation. As Clinard (193, 206) says, companies can cause environmental crime. Negligence or deliberate in company operations can cause environmental crime. Law enforcement against environmental crimes seems to be far from the fire. But none of the perpetrators of environmental crimes found, including executives and

managers of polluters and environmental degradation. The easiest, maybe it can be proven if we visit the Penitentiary. Are there any environmental criminals who stay there?

Conclusion

After we look at the previous discussion, whether the Lapindo case is included in the category of environmental crime or not, in the perspective of criminology, it has been described. In the case of this Lapindo, whether included in the cause of natural disasters, force majeure, as said by the Attorney of PT Lapindo Brantas Incorporated or included in the category of environmental crime. What is more important is the suffering of this very long Lapindo mudflow victims, because the mudflow has not ended yet. Still predicted to end in about 31 more years. The handling of Lapindo mudflow victims should take precedence, before repairing the damage caused by the bursts caused by drilling by PT Lapindo Brantas Incorporated.

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