



# FULLPAPERS NIGRC2016

The National and International Graduate Research Conference 2016  
Graduate School, Khon Kaen University, Thailand and  
Universitas Muhammadiyah Yogyakarta, Indonesia

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January 15, 2016

Venue: Pote Sarasin Building, Khon Kaen University



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## Model Application of Legal Protection Toward Society as A Victim of Pollution or Environmental Destruction by the Corporation with the Restorative Justice Principle

Yeni Widowaty\* Fadia Fitriyanti\*

### ABSTRACT

The use of natural resources must be harmonious and balanced with environmental functions. The biggest challenge will be facing this country is environmental destruction. For the victims of pollution and or destruction of the environment, are not easy to sue for damages to the perpetrators. In such case, efforts to provide legal protection for the victim would be more meaningful if the victim involve in the process of the case settlement. An evolving concept that involves the victim in it is called Restorative Justice The purpose of this research is to applicate a model of legal protection for the victims of pollution and or the environmental destruction by the corporation according to the Restorative Justice principles. Then conduct an evaluation of the application of the model. This research is **socio-legal**. The type of data used in this research is primary data and secondary data, The results of the research showed that the program of the Environment Agency is currently a higher priority on prevention so it routinely do counseling to various companies. In the case of the environment, will be settled according to the procedure. If the case is easy then simply done the coaching course. For the model application of legal protection for the victims of pollution and or the environmental destruction by the corporation according to the Restorative Justice principles not easy to applied. Considering that the application of the restorative justice principle is difficult and is not grounded, and then it needs to be evaluated by way of Environmental legislation must be reformulated, made changes primarily related to sanctions against the perpetrators of the corporation. In the alternative dispute resolution should be included restorative justice principle where interest between offenders and victims is accommodated and takes into account the impact of the settlement of the criminal cases in the community. The second way applied strict liability (absolute responsibility) for corporations so without waiting to see if there is a mistake or not for companies that pollute and or environmental harm society if it liable.

Keywords: Legal protection, Victims of pollution and or of the environmental destruction, Restorative justice principle

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\* Lecturer, Master of Law Program in Magister Ilmu Hukum, Universitas Muhammadiyah Yogyakarta, Indonesia



## Introduction

Along with the rapid development of economic and industrial development, the need for mining resources is increasing. On the other hand, the problem of environmental damage caused by mining activities is also increasing.

Adelaide University published the results of his latest research about the environment. Four countries, namely Brazil, USA, China, and Indonesia declared as the countries most contribute to environmental destruction on Earth. So Indonesia is the fourth state environmental destruction. (Elin Yunita Kristanti, 2015)

Due to pollution and or the environmental destruction that most feel is the victim. The Victim also the most losses, both material and immaterial losses even result in lifelong disability victim. Suffering also is experienced by the victim's family. Therefore, it is natural that the victims should receive protection.

Results of research conducted by Widowati (Yeni Widowaty, 2011: 282) showed that among the seven companies were found guilty and sentenced to environmental pollution, namely PT. Gladiatex Lestari Parahyangan (PT.Gladiatex), CV COS - 50 Lampung, PT Kahatex in Garut, PT Dongwoo Environmental Indonesia in Jakarta, PT Sekar Bengawan, CV Suburtex and PT Dunia Setia Sandang Asli Textile (DSSA) none of them provide compensation to the victim.

For the victims of pollution and or the environmental destruction, it is not easy to be able to sue for damages to the perpetrators. When they filed a civil lawsuit takes a long time, and the cost is not balanced with the results obtained. That is because in addition to the mechanism has not been set, the

compensation has not been set too. In such case, efforts to provide legal protection for the victim would be more meaningful if the victim is involved in the process of settlement. An evolving concept that involves the victim in it is called Restorative Justice. If the settlement of environmental disputes involving the two parties is expected to be satisfactory and ensure justice for the victims and perpetrators of environmental crime.

## Objective of Study

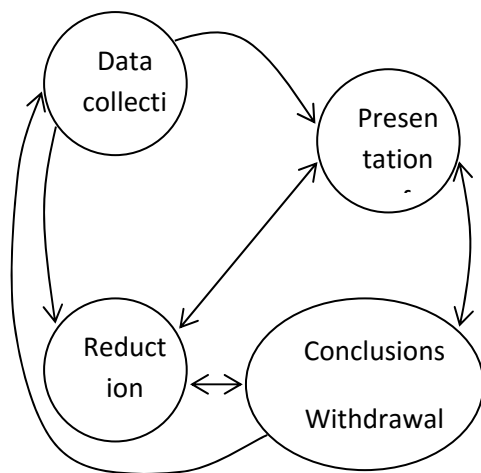
To apply the ideal model of legal protection for the victims of pollution and or the environmental destruction by the corporation according to the Restorative Justice principles.

An evaluation of it for the victims of pollution and / or the environmental destruction

## Material and Methods

This research is **socio-legal**. The type of data used in this research is primary data and secondary data,

Research is done in the city where ever a case of pollution and or the environmental destruction in connection with the activities of the corporation that is in the district of Karanganyar and Pekalongan Central Java. In this research, the data were analyzed using flow models of analysis. (A Matthew B Miles and Michael Huberman, 1992: 19)



In more detail the data obtained from the research, either library or field research, processed and analyzed critically and analytically presented descriptive qualitative.

#### Results And Discussion

##### 1. The Model Application of Legal Protection Toward Victims of Pollution and or Environmental Destruction by Corporate accordance with Restorative Justice Principles

From the results of previous research (Yeni Widowaty and Fadia Fitriyanti, 2014) is generated that in general this time for sanctions to offender immediately imposed from the State. So in the process of court proceedings in which there is a relationship between the state and the offender. In this context, as if to impose sanctions on violators of the problem is over, the victims lack legal protection. In the concept of Restorative Justice, between the perpetrator and the victim there is communication and the State as a facilitator. In the case of there is communication between the perpetrator and the victim are expected to give fairness to both parties.

The approach concept of Restorative Justice is an approach that is more emphasis on the creation of

fairness and balance condition for the criminal perpetrators and the victim herself. Mechanisms procedure and criminal justice focus on punishment transformed into a process of dialogue and mediation to create an agreement on the settlement of criminal cases more fair and equitable for the victim and the perpetrator.

Former Chief Justice of Supreme Court Bagir Manan (Jecky Tengens, 2014) once wrote that the obstacles in implementing the peace between the victim and the perpetrator often been based on the attitude of law enforcer that is very formalistic. In saying the legal process will continue even if there has been peace, the nature against the law will not remove because of peace

Based on interviews with the Head of Control Environment Agency Karang Anyar (BLH) Nunung Kusumawati Retno said that the current programs strengthened on prevention ,so it routinely does counseling to various companies or cooperation with other agencies. In the event of the environmental cases in Karanganyar, will be resolved according to the procedure, so the case settlement is in stages. If there is a case that is filed to the BLH , then it will be carried out field survey. If it is still the mild case then simply done the coaching only. Then, if it can not, it will be settled by the applicable legislation, which is based on the principle of subsidiarity. The coaching that is done by BLH a way of mediating between the community and company which as a mediator of BLH. If it can not be done the coaching, then the first step is administratively resolved once and then the other way. The result is now rare the environmental case done by the company. Most environmental cases occurred in 2007 and 2008 that is in 2007 there were 11 (eleven) companies and in 2008 there were 7

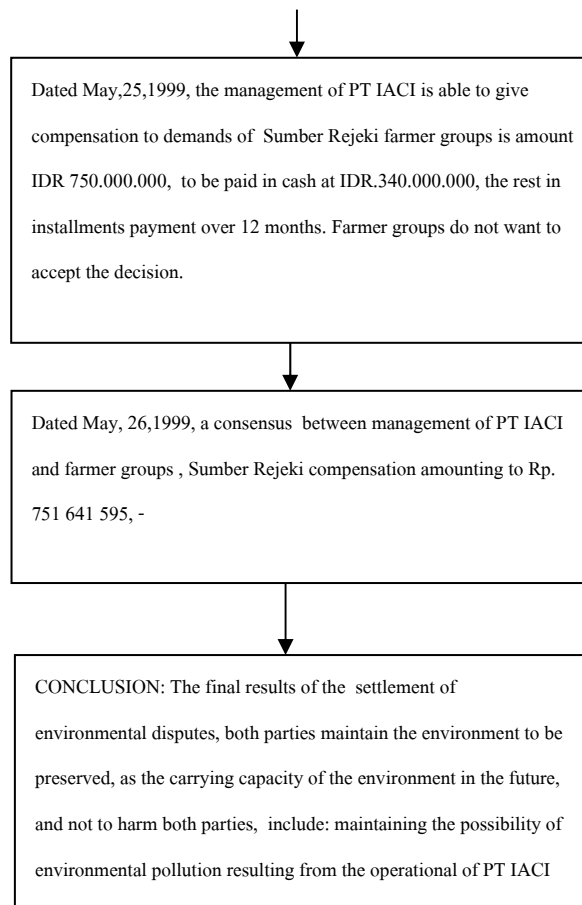
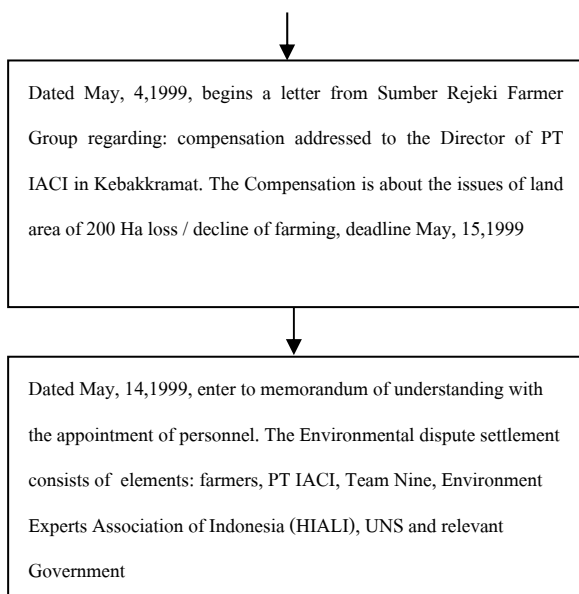


(seven) companies in Karanganyar that require technical assistance from the Karang Anyar Department of Environment. One of the cases was settled by mediation is the case of environmental pollution that occurred between PT Acidatama Chemical Industries (IACI) with farmer groups Sumber Rejeki Kanten, Sroyo Village, Jaten Subdistrict, in Karangnyar District resolved by agreement between the two parties, as in the diagram below.

Diagram 1: Diagram Process

Efforts of The Environmental Dispute Resolution between PT Acidatama Chemical Industries (IACI) with farmer groups Sumber Rejeki Kanten, Sroyo Village Subdistrict of Jaten, Karanganyar<sup>1</sup>

This data does not include cases of "PT Palur Kingdom" that occurred in year



When the both parties reach the consensus, then there is mutual satisfaction between the perpetrator and the victim. As a mediator, in this case, is the Department of Environment in Karanganyar district.

To apply the theory of restorative justice in Karanganyar can not be implemented because people already feel there is no problem anymore with the company. The case settlement did in 1999 is considered sufficient. For a more convincing researchers then conducted research to PT Sekar Bengawan ever convicted of criminal violate environmental laws.

The interview with the Director of PT Sekar Bengawan Mr. Martono in Karanganyar Solo says: PT Sekar Bengawan already convicted and found guilty, but the company does not have problems with

<sup>1</sup> Data sources of Environment Department Karanganyar district, May 2015

local residents. There is not a claim of citizens to sue for damages because the company routinely provide compensation to citizens in the form of water distribution and funds for village activities.

Similarly Karanganyar, Pekalongan is an industrial city. From observations of researchers in the field, in fact, there are some places polluted, but not many environmental cases to court proceeding process. According to the Head of Pollution Control and Environmental Damage Environment Agency Pekalongan, Mr. Endarwanto said that it is difficult to bring an action against any environmental pollution to court because it involves the lives of citizens. Some companies have their business licenses revoked, but there are remains operational which it deliver to citizens around as if it were a home industry. Thus, the pollution that is caused by its citizens and the citizens are be the victims also.

The only environmental cases that occurred is water pollution around Kali Banger. The case is long, but after the case was no longer environmental dispute settlement. The emergence of this case to the Court because it is based on a lawsuit from the community around Kali Banger.

The way that has done by waste pollution victims Kali Banger, Pekalongan are different with the environmental crime victims in the above case. Three companies suspected of committing the environmental crime by District Court ultimately found guilty, and sentenced to criminal sanctions. In such decision, the victim did not get their rights then they later filed in other ways that it is sued civilly.

Cases of environmental pollution at Kali Banger Pekalongan that occurred in 1995 has brought three big companies that time to the court. The three companies are:

- a. CV Ezritex address A. Yani No. 9  
Pekalongan
- b. PT Kesmatex address A. Yani 16  
Pekalongan
- c. PT Tri Star prutatex address A Yani No. 18  
Pekalongan

Administrative sanctions imposed in the form of revoke the business license / HO-owned the corporation. On the basis of: the defendant did not carry out waste pollution control efforts, especially in Kali Banger based on the decree of the Mayor.

When it viewed from the sanctions imposed on corporations as criminals already sanctioned, but it is forgotten that the victims of waste pollution in Kali Banger due to these companies. It is caused pollution that it occurred along Kali Banger as a result of three corporate activities, namely CV Ezritex, PT Kesmatex and PT Tri Star Putratex. Impacts arising from industrial waste discharged into Kali Banger, and it contaminated wells of residents. Then many people live around the river suffer from skin diseases and the ecosystems such as fish and plants die. (Suara Merdeka, October 31, 2000). Even Kali Banger that had been used as a source of water for daily activities become unusable because the water becomes black, the farm also died. It is also proved by the results of laboratory research at BPPI April 29, 1998, shows the liquid waste produced from UPL together with the defendant concluded: Not Meeting Standards Quality in accordance to Kep.51.Menlh / 10/1995,

Even though the company has been sentenced to criminal sanctions and the administration sanctions, the victim of environmental pollution still suffer losses and have not received protection because

in criminal law has been no provision that govern it, and then it filed a civil lawsuit.

Plaintiff amounted to 78 people with address Kelurahan Gamer Kecamatan Pekalongan Timur Kodya Pekalongan and one person address Kelurahan Pocol Kecamatan Pekalongan Timur Kodya Pekalongan (as well as victims). Lawsuit addressed to three textile companies are based on Environmental Law 1997 and Article 1365 of the Civil Code. Article 1365 Civil Code specifies that any unlawful acts that bring harm to others, requires that the person causing the loss was due to his fault, must replace these losses.

The District Court's Decision no. 50 / Pdt.G / 1998 / PNPKL Monday, July,19,1999 is:

- a. Granted part of the plaintiff's lawsuit
- b. Declare the defendant has committed an unlawful act
- c. Punish the defendants jointly and severally to pay the plaintiff damages amounting to IDR 49.184.000, - (to the 38 victims, the amount of compensation seen verdict).
- d. Pay the court fees amounting to IDR 110,000, -

Reviewing the decision of the District Court, it will seem less legal protection to the victim. The Environmental Law 1997 Article 34 merely stipulates that if polluting or damaging the environment shall compensate, but the way how to implement it not specified so that reference to the provisions of Article 1365 of the Civil Code. Lawsuit of Plaintiff totaling 78 people only granted 38 people. Therefore, the plaintiff's failed to get legal protection, and they eventually appealed to the High Court. Based on High Court decision dated December

8, 1999, number 539 / Pdt. Semarang, victims, get legal protection more.

What would be the decision of the High Court is to provide more protection to the victim than the district court decision, but the defendant still files the case to cassation in the Supreme Court.

The Supreme Court decision confirm the District Court Decision indicates that in fact there are no clear rules about what kind of protection should be given to the victim. Implementation of legal protection in Law No. 4 of 1982 and Law No. 23 of 1997 there have been no clear regulation.

According to Barda Nawawi Arief, (Barda Nawawi Arief, 2009) that the judiciary or law enforcement is, in essence, a unitary system of substantial, structural, and cultural systems.

In substance, the decisions of the judges in some cases of environmental crime are on average. They are in conformity with the applicable legislation. In a sense refers to the environmental legislation and its regulations. But they have no sense of justice for victims. The imposition of criminal sanctions to the offender should not absolve the responsibility of the perpetrator to the victim because after all the victims still suffer losses.

Environmental Law does not regulate the rights possessed by the victim of environmental crime. In terms of the substance of the legislation has not been regulated yet, in the implementation also has been no compensation or restitution, or whatever it is given corporation as the perpetrator to the victim, so that the law enforcer into practice also depends on the laws to the material.

## 2. Evaluation of Model Application of Legal Protection Toward Victims of Pollution or and Environmental Destruction

It is not easy to do an evaluation of model application of the legal protection of victims of pollution and or environmental destruction by restorative justice principle. This was due in practice has not been applied.

In the first year of research results have been presented models of environmental dispute settlement between PT Palur Raya with residents of the surrounding communities. A Little bit of repeated that PT Palur Raya sued citizens represented by Konsorsium Korban Limbah (KKL) for alleged environmental pollution.

Both parties agreed to resolve the dispute through **Alternative Dispute Resolution (ADR)** by way of mediation. The settlement model by way of mediation is indeed similar construction to the concept of settlement proposed restorative justice.

The Good faith of the government in combating pollution and or environmental destruction is also a measure of the country will be free from environmental cases.

To evaluate the implementation in the field, ideally formulations also evaluated the positive law in force today, in other words, made development of the law.

Legal development is often interpreted as limited as the law making. According to Satjipto Rahardjo legal development has two meanings, namely: Firstly to renew the positive law (modernize the law), secondly, in an effort to enable the law by conducting social change according to the needs of people who are developing. (Satjipto Rahardjo, 1979)

In doing law, reform could restructure existing law or enact a new one altogether. So in this case concerning "law reform" and "law development" especially concerning the renewal and development of the criminal justice system.

According to Soetandyo, (Soetandyo Wignjosoebroto, 2007: 95) that legal reform is often only discussed it, Literally **legal reform** is meaningful reform in the system of legislation alone.

Legal development policy and national development goals required a synergistic approach that maintained the life of the community in the unity of the country based on Pancasila.

Legal Development National is directed to realize the ideals of National Law, National Law ideals of Pancasila as a measure of value is the idea of Indonesian culture itself and the demands of the reality of Indonesian society. With legal ideals of Pancasila, it became the country destination, that is as substantive values afforded by the state to make it happen. Principles of Pancasila as the basic philosophy the nation is based on the existence of God, man, one, people and fair. This implies the absolute nature that it is anything related to state, then it must be by the nature of God, man, one, people and the fair. (Notonegoro: 1)

Regarding the environmental regulation, In Constitution 1945 article 28H (1) provides that: Everyone has the right to live physical and spiritual prosperity, reside, and get a good environment and healthy and receive medical care. Further elaboration contained in the preamble of Environmental Law 2009 which states: that the environment is good and healthy is a fundamental right of every citizen of Indonesia as mandated in Article 28H 1945.

Meanwhile, then this is close to the Restorative Justice theory where interest between offenders and victims are accommodated and takes into account the impact of the settlement of the criminal cases in the community.

Mahfud MD insists that Pancasila outlined four guiding rules of National Law, **Firstly**, the laws in Indonesia should ensure integration or the integrity of the nation, both territorial and ideological, **Secondly**, The law must be enacted democratically based on wisdom. **Thirdly**, The law should encourage the creation of social justice. **Fourthly**, There should be no public law based on the teachings of a particular religion because Pancasila as state law requires that the appearance of law guaranteeing religious tolerance civilized life. (Mahfud, MD, 2010: 20)

However according to Jeremy Bentham's opinion (Muchsan, 2002: 2-3) that the law is said to be good if it has three characteristics, namely: a). Philosophically valid, b) sociologically valid and c). Legally valid. If it is not easy to implement restorative justice, so that the protection of the victims remain the way then applied a model of corporate responsibility is strict liability.

Rüdiger Lummert argued that with the development of industrialization resulted in large increases and the increasing complexity of a causal relationship, and then the law theory has left the concept of "fault" and turned to the concept of "risk". (Koesnadi Hardjasoemantri, 2000: 386). The development of modern industry has brought along some risks that occur every day, which can not be avoided from the economic angle. He has caused suffering and to the sufferer it can not be borne without any compensation.

## Conclusion

1. Of research in the field that cases of pollution or environmental destruction occurs is solved by several methods through the courts and outside the courts. At the time, researchers will apply the principles of restorative justice is not easy because there are several reasons.

a. The companies that have been found guilty and director sentenced to prison, the respondents argue that the problem is over. Besides, between the company and the community around is no problem because the company routinely donated water distribution and compensation for village activities.

b. There are several companies that pollute the environment has been revoked the business license that can not be reached so that the researchers could only communicate with the victim.

2. Considering the difficulty of the restorative justice principles application that has not been grounded this then needs to be evaluated is;

a. Environmental legislation must be reformulated, made changes primarily related to sanctions against the perpetrators of the corporation. In the alternative dispute resolution should be included the settlement of restorative justice principle where interest between offenders and victims are accommodated and takes into account the impact of the settlement of the criminal cases in the community. In the reform of the law should still refer to the values of Pancasila

b. The second alternative is applied strict liability (absolute responsibility) criminally for the corporations so without waiting to see if there is



an error or not for companies that pollute and or environmental harm society if it liable.

#### Acknowledgments

This research was supported by DIKTI through Hibah Bersaing Grant. We would like to thank DIKTI for funding support.

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