



**ANALYSIS OF THE VICTIMOLOGY APPROACH THROUGH THE CONCEPT
OF RESTORATIVE JUSTICE ON THE DETERMINATION OF SANCTIONS AND
THEIR BENEFITS FOR THE RECOVERY OF VICTIMS OF ENVIRONMENTAL
CRIMES IN INDONESIA**

Diyo Darnady¹, Muhammad Rizky Ramadhan², Reyindra Mahkota Andeka³, Sudirman Sitepu⁴, Dwi Putri Lestatika⁵

Faculty of Law, University of Bengkulu, Indonesia¹²³

Corresponding Author: diyodarnady02@gmail.com

ABSTRACT

The focus of restorative justice is the empowerment, participation, and healing of victims of crime. Until now, restorative justice has only been used for conventional crimes and misdemeanors. The approach and the benefits of restorative justice actually have great potential to deal with environmental crimes. Environmental dispute resolution and criminal law enforcement are not the first priority, but countermeasures and loss recovery. This study explores the types of restorative justice outcomes, including reparations, restitution, and compensation for environmental damage. Through the application of the restorative process to environmental crimes, legal settlement can be transformative for victims, perpetrators, communities, the environment, and the criminal justice system as a whole.

Keywords: Restorative Justice, Victimology, Environmental Crimes, Sanctions, Victim Recovery.

I. INTRODUCTION

Pollution of the marine environment is closely related to human activities and technological advances. One of the sources of marine pollution is offshore oil drilling activities. In Indonesia, various large-scale oil companies own and operate offshore oil drilling facilities. The occurrence of oil spills into the sea often begins when hydrocarbon oil liquids are released into the water environment uncontrollably. This deadly spill can come from the process of repairing ships, cleaning oil tanks, cutting the hull, tanker accidents, or due to sewage lines resulting from the engine process.¹

¹ Ali, Chidir, 1992. Legal Entities, Alumni, Bandung. p. 10



Offshore oil waste generally comes from oil production exploration, maintenance of production facilities, along with poor storage facilities. One of the biggest incidents related to marine pollution by oil spills occurred when a giant ship crashed into a coral cluster off the coast of the Americas in the past. As a result, millions of gallons of oil pollute the ocean, which has a bad effect on the survival of marine life. Because of its nature in the form of toxic hazardous materials, oil waste in a certain concentration can become a pollutant while endangering the environment of coastal communities. Waste oil can cause respiratory infections along with digestive poisoning for humans. For the environmental ecosystem, this material can cause corrosive properties, are highly flammable, and even very explosive.²

This pollution risk also increases in line with the decline in world oil prices. Budget savings made by oil companies for expensive valve maintenance components are often carried out by the company to get around various expenses. In order to anticipate the adverse impact of oil pollution in the sea due to oil spills, countries in the world hold international conventions which are subsequently promulgated in domestic law rules in each country. In Indonesia, the rules related to nature protection are outlined in Law Number 32 of 2009 concerning Environmental Protection and Management. Sudarto, 1990. Criminal Law I, Faculty of Law, Diponegoro University, Semarang.³

But in reality, the archipelago's sea area is still often polluted due to oil spills by large companies. Unfortunately, official information about the chronology of this pollution event is often not conveyed quickly to the public. The government and law enforcement agencies should ensure that the responsible party immediately takes complete countermeasures. If efforts to overcome and restore the environment as the first priority have been carried out but there are still community losses that have not been compensated, then steps to resolve environmental disputes must be taken.

The resolution of environmental disputes can be done through the courtroom or outside the courtroom. Criminal law enforcement must be used for different purposes, where criminal sanctions should function as a punitive instrument to provide a deterrent effect. Restorative justice exists as a way of dealing with crime by balancing the needs of the community, victims,

² Amsyari, Fuad, 1997. Principles of Environmental Pollution Problem, Ghalia Indonesia, Jakarta. p. 37

³ Sudarto, 1990. Criminal Law I, Faculty of Law, Diponegoro University, Semarang. p. 54



and perpetrators. The focus of restorative justice is the empowerment, participation, and healing of victims of crime. Until now, restorative justice has only been used for minor crimes, even though this approach has tremendous potential to be implemented in handling environmental crime cases.

Departing from the background of these environmental problems, this paper is compiled to dissect more deeply about recovery-based legal settlement. This research is focused on answering two main problem formulations, namely:

1. How does the victimology approach examine the position of victims due to environmental pollution crimes?
2. How does the determination of criminal sanctions based on restorative justice provide real benefits for the recovery of victims of environmental crimes?

II. RESEARCH METHODS

This research was prepared using normative legal research methods. The normative legal research method is a series of procedural actions to find laws caused by legal vacancies, norm ambiguities, and conflicts between rules. This research focuses on the study of official rules, scientific theories, and applicable legal principles.

The approach applied includes a legislative approach along with a legal concept approach. Through a legislative approach, the researcher directly examined the text of the document of Law Number 32 of 2009 concerning Environmental Protection and Management. The legal concept approach is used to decipher various special terms such as restorative justice, victimology, and ecological loss.

Primary legal materials are obtained directly from the official regulatory text issued by the state. Meanwhile, secondary legal materials were obtained through criminology textbooks, journal articles, court records, and various writings by legal experts. All of the reading materials are collected, sorted, and then explained in an easy-to-understand official language to provide a complete picture of environmental protection at the national level.

III. RESULTS AND DISCUSSION



3.1. Victimology Perspective in Examining the Position of Victims of Environmental Crime

The perspective of victimology in studying victims provides orientation for community welfare and humanitarian development. This approach makes every effort to ensure that members of society do not become victims of exploitation in a broad sense. As Mendelsohn put it, victimology should be a separate, independent science, have its own institutions, and be allowed to develop for the advancement of civilization.⁴

The study of casualties in the discipline of victimology provides some ideas of special exploration areas that deserve attention. The first region refers to the values of cultural traditions and power structures that affect differences in position, individual status, and social pressure in society. The second area focuses on the adverse consequences of victim incidents that can have a negative effect on certain individuals, indigenous groups, the wider community, and humanity in general. These adverse consequences can be studied in medicine, criminology, along with other societal implications.⁵

The development of victimology as the study of victims and all their aspects was initially the domain of criminology. However, in its current development, victimology has been widely recognized as a science that stands on its own. In formulating environmental crimes, legal experts always remind that natural losses are not only real at this time, but also a threat of potential damage in the future. The damage often does not arise instantly, making it very difficult to prove directly.⁶

Environmental crimes take a much wider toll than conventional crimes. Victims of environmental crimes include fishermen who have lost their catch, coastal residents who have skin diseases, tourism communities who have lost income, and future generations who inherit the damaged earth. Therefore, modern victimology demands that the state pay primary attention to the healing process of these silent victims, rather than simply concentrating the

⁴ Silalahi, David, 1992. *Environmental Law in the Indonesian Environmental Law Enforcement System*, Alumni, Bandung. p. 529

⁵ Muladi, 1997. *Human Rights, Politics and the Criminal Justice System*, Diponegoro University Publishing Agency, Semarang. p. 45

⁶ Scott, Paul E., 1993. *Environmental Law Enforcement by Civil Judge*, Citra Aditya Bakti, Bandung. p. 44



budget on punishing the perpetrators to prison cells.⁷

3.2. The Concept of Restorative Justice as a New Approach to Handling Environmental Crimes

Restorative justice is a concept of thought that responds to the development of the criminal justice system by focusing on the need for community involvement and victims who feel left out. This concept is a new frame of mind that can be used by law enforcement to respond to corporate crimes. The handling of criminal cases with a restorative justice approach offers a different view in understanding a criminal act of destruction of nature.⁸

Tonny Marshal stated that restorative justice is a process in which the parties involved in crime jointly solve problems related to how to deal with the consequences of crime in the future. Meanwhile, Tom Cavanagh emphasized that restorative justice is a systematic response to wrongdoing that emphasizes redressing for losses suffered by victims and the general public. Mark Umbreit also states that recovery for emotional loss and material loss due to crime is far more important than simply focusing energy on the physical punishment of the perpetrator.⁹

Howard Zehr defines restorative justice as a process that involves those with a specific interest in order to heal things to get things back in place. It is not easy to provide a single definition for this approach, given the many variations of settlement models that are developing in their application in different countries. In the view of restorative justice, the meaning of criminal acts is basically an attack on the harmony of society. Therefore, crime creates a binding obligation for the perpetrator to fix the damage to the social order in a real way.¹⁰

Justice is interpreted as a process of finding solutions to problems where the involvement of victims, community leaders, and perpetrators is very important in efforts to improve the environment. This concept intends to find a way to enforce a more fair and balanced penal system. Restorative justice shifts the ancient philosophy from mere revenge

⁷ Muladi and Priyanto, Dwija, 1991. Corporate Accountability in Criminal Law, STH, Bandung.. p. 90

⁸ Kristian, 2014. Corporate Law Reviewed in The United Nations Global Compact (An Introduction), Nuansa Aulia, Bandung. p. 33

⁹ Koeswadji, Hermin Hadiati, 1993. Environmental Criminal Law, Citra Aditya Bakti, Bandung.P. 42

¹⁰ Hardjasoemantri, Koesnadi, 1999. Environmental Law, Gajah Madaniversity Press, Yogyakarta. Page 20



punishment to constructive reconciliation of forgiveness.

3.3. Determination of Restorative Justice-Based Sanctions and Their Benefits for the Recovery of Victims of Environmental Crimes

Sanctions are a method of reacting to imbalances caused by acts that violate norms in society. Sanctions are a limiting factor in a person's actions in the prevailing social system. Sanctions are categorically often intended to prevent others from committing similar crimes. However, the current concept of sanctions is evolving towards efforts to restore the balance that has been disturbed by the violation of the law.¹¹

The form of criminal liability for perpetrators of marine pollution crimes for legal entities (corporations) has been expressly regulated in Law of the Republic of Indonesia Number 32 of 2009. As for individual subjects, the perpetrators are threatened with a minimum prison sentence of three years along with fines of billions of rupiah. To find out whether a criminal law rule has provided complete protection for the victim, we cannot exclude it from the analysis of the form of criminal sanctions imposed by the judge.

Based on the classical legal system, the existing sanctions are still dominated by prison sentences and fines whose money is deposited into the state treasury. This situation is considered very unfair, because fishermen whose boats were destroyed by the oil spill do not enjoy the fine money at all. Therefore, the determination of sanctions based on restorative justice offers a new obligation for the guilty corporation. Corporations are required to carry out ecological reparations, pay restitution money directly to the victim's pocket, and provide social compensation for the community around the mine.¹²

The addition of restitution sanctions along with compensation is very necessary to apply to environmental laws in a more binding manner. Restorative sanctions will force companies to spend unlimited funds to replant dead coral reefs, suck toxic waste from the sea, and finance the survival of fishers' children who have lost their livelihoods. Only through a comprehensive mechanism of imposition of compensation can the victims of environmental crimes in

¹¹ Hamdan, M., 2000. Environmental Pollution Crime, Mandar Maju, Bandung. Page 77

¹² Fuady, Munir, 2013. Grand Theories in Law, Kencana, Jakarta. p. 101



Indonesia truly enjoy true legal justice.

IV. CONCLUSION

A. Conclusion

First, the victimology study opens the eyes of law enforcement that victims of environmental crimes have an extraordinarily wide dimension of suffering, including health losses, economic losses, and inheritance damage for future generations. The criminal law system that is only busy imprisoning perpetrators without caring about the fate of fishermen and the affected coastal communities, is a legal system that fails to provide a sense of justice.

Second, the determination of restorative justice-based sanctions is the best way out to overcome the legal impasse so far. Criminal sanctions should not be just in the form of body confinement or fines for the state treasury, but must include restitution orders, natural reparations, along with financial compensation that are paid directly to the aggrieved community. The application of this concept forces environmental destroying companies to be responsible for cleaning up their own waste while restoring the balance of the marine ecosystem as it was.

B. Suggestions

In order to maximize the protection of human rights and natural rights in the future, it is highly recommended to the government to immediately revise the environmental law to include an article on mandatory restorative compensation for every corporation that is proven to pollute the sea. To law enforcement officials and judges, it is recommended to continue to increase court decisions that order direct ecological restoration. Finally, for law students in college, it is highly recommended to continue to deepen the knowledge of victimology, so that the understanding of the protection of the human rights of small communities is deepened and at the same time able to be applied to help people who are oppressed by the crimes of multinational corporations.

BIBLIOGRAPHY

Ali, Chidir, 1992. *Legal Entity*. Alumni, Bandung.

Diyo Darnady..... Analysis Of The Victimology.....



- Amsyari, Fuad, 1997. *Principles of Environmental Pollution*. Ghalia Indonesia, Jakarta.
- Fuady, Munir, 2013. *Grand Theories in Law*. Kencana, Jakarta.
- Hamdan, M., 2000. *Environmental Pollution Crimes*. Mandar Maju, Bandung.
- Hardjasoemantri, Koesnadi, 1999. *Environmental Law*. Gadjah Mada University Press, Yogyakarta.
- Koeswadji, Hermin Hadiati, 1993. *Environmental Criminal Law*. Citra Aditya Bakti, Bandung.
- Kristian, 2014. *Corporate Law Reviewed in The United Nations Global Compact (An Introduction)*. Nuansa Aulia, Bandung.
- Scott, Paul E., 1993. *Environmental Law Enforcement by Civil Judges*. Citra Aditya Bakti, Bandung.
- Muladi and Priyanto, Dwija, 1991. *Corporate Accountability in Criminal Law*. STH, Bandung.
- Muladi, 1997. *Human Rights, Politics and the Criminal Justice System*. Publishing Agency of Diponegoro University, Semarang.
- Silalahi, David, 1992. *Environmental Law in the Indonesian Environmental Law Enforcement System*. Alumni, Bandung.
- Sudarto, 1990. *Criminal Law I*. Faculty of Law, Diponegoro University, Semarang.