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# Pancasila Philosophy As A Basis For The Implementation Of Restorative Justice In The Settlement Of Environmental Criminal Cases

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***Abstract.****This study aims to examine the potential of restorative justice to resolve environmental criminal violations from the perspective of Pancasila philosophy, exploring relevant concepts so that they can be applied in the process of resolving environmental criminal cases. The type of research used is normative or doctrinal legal research. Normative research is research that usually uses documents as sources of legal materials such as laws and regulations, court decisions, legal theories, and opinions of legal scholars. The restorative justice approach in resolving environmental criminal cases can only be applied to formal offenses in Article 100. The concept of Restorative Justice is in accordance with the 4th Principle, namely deliberation which contains the principles of conferencing, search solutions, reconciliation, repair and circles (mutual support).*

***Keywords****: Pancasila, Restorative justice, Environment*

## I. INTRODUCTION

Indonesia as a country with abundant natural resource base is the main target for excessive exploitation of nature. The exploration of natural resources that occurs cannot be separated from the influence of environmental damage that occurs. The environment must be viewed as a whole and have a regular system and all elements in it are placed equally. Renewal and development have brought many disasters to the environment and humanity, in this case, the environment is interpreted conventionally. The environment is considered an object. This perspective views and places the environment as an object that also means wealth and can be utilized solely to support development, as a result the current state of nature and the environment has become increasingly severe from time to time. (Hamid, 2016)

Large-scale exploration of natural resources and industrial factory activities by corporations have a negative impact on the quality of the environment without considering the impacts felt by the surrounding community. Corporations in the context of UUPPLH law are legal subjects that can carry out legal acts like humans, corporations are legal entities that have inherent rights and obligations. The corporate teaching as a legal subject in the context of the UUPPLH is contained in Article 1 number 32 of the UUPPLH which states that, "every individual or business entity, whether a legal entity or not". The article implies that not only individuals but also organizations can be subject to environmental criminal sanctions, including

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corporations, companies, organizations, both government and private organizations. The doctrine that determines that corporations can be made perpetrators of environmental crimes is contained in Article 116 paragraph 1 of the UUPPLH which states that "if an environmental crime is committed by, for, or on behalf of a business entity, criminal charges and criminal sanctions are imposed on the business entity and/or the person who gave the order to commit the crime or the person who acted as the leader of the activities in the crime". then related to the formulation of criminal sanctions against corporations, it is stated in Article 118 of the UUPPLH which states that "For criminal acts as referred to in Article 116 paragraph (1) letter a, criminal sanctions are imposed on business entities represented by managers who are authorized to represent inside and outside the court in accordance with laws and regulations as functional actors".

The criminal penalties that can be imposed on corporations as subjects of environmental crimes are imprisonment and fines as stated in Articles 98-120 of the UUPPLH. In addition to criminal sanctions of imprisonment and fines, corporations as perpetrators of environmental crimes can be subject to additional criminal penalties/disciplinary measures, the formulation of additional criminal penalties is regulated in Article 119 of the UUPPLH which states: against business entities can be subject to additional criminal penalties or disciplinary measures in the form of:

a. confiscation of profits obtained from criminal acts;
b. closure of all or part of the business premises and/or activities;
c. repairs due to criminal acts;
d. obligation to do what was neglected without rights; and/or
e. placement of the company under guardianship for a maximum of 3 (three) years.

Regarding additional sanctions in environmental crimes, additional sanctions a is a sanction imposed together with the main criminal offense, in environmental crimes additional sanctions are usually imposed to restore the environment that has been damaged due to corporate activities. The nature of this additional sanction is optional, so that the judge can choose to impose the additional sanction or not in his decision. In addition, the environmental law does not provide provisions regarding substitute sanctions or consequences borne by the perpetrator if the additional sanction is not implemented so that the environmental restoration sanction or is only a tiger on paper. Several cases involving corporations as perpetrators, in the verdict did not contain or add additional criminal penalties in the form of improvements due to the crime. including, PT Ibara Lioho Indonesia, CV. Laju Surya Abadi, PT. Satya Sumba Cemerlang, CV Sumber Sari Indah. the four corporations have been legally and convincingly

proven to have committed the crime of dumping waste and/or materials into the environment without a permit. For their actions, each corporation was found guilty of committing an environmental crime. The judge found each corporation guilty with Article 104 of Law No. 32 of 2009 UUPPLH. In the verdict, the judge only imposed a fine without additional penalties, the corporations were fined with a nominal amount for PT Ibara Lioho Indonesia and CV. Laju Surya Abadi amounting to Rp. 75,000,000, then against PT. Satya Sumba Cemerlang and CV Sumber Sari Indah were fined with a nominal amount of Rp. 500,000,000 and 60,000,000 respectively. From the case above, it shows that related to additional penalties that are not applied in several decisions of environmental crimes above, even though additional penalties are instruments that can realize the process of environmental recovery due to the crime committed. Environmental improvement can be carried out if the order is always included in the verdict, however, additional penalties are optional in nature, where the application is only optional, that the judge can choose to impose additional penalties or not. In addition, there is no clarity about what forms of improvement must be carried out, as a result, improvements due to criminal acts have not been effective so that environmental damage recovery is not accommodated. Then related to the nominal amount based on the nominal fine verdict in the case above, the fine imposed is very low. This happens because there is no minimum criminal fine limit in articles 104 and 100. The absence of a minimum criminal fine limit will open up profitable opportunities for corporate actors because the fines given can be very small. So this becomes an issue whether a fine system like that will have a deterrent effect on corporations not to do their actions again. The decisions in cases of environmental crimes committed by corporations show a retributive side to the perpetrators, that the focus of punishment is only on the process of completing retaliation against the perpetrators. A more important concern should be the fate of the community affected by environmental pollution and destruction. The impact of environmental pollution is very broad on society and the environment. The victims are not only individuals, but also communities and future generations, but their position as victims of environmental crimes is ignored simply because the paradigm of legal punishment still focuses on retaliation against the perpetrators. Restorative justice is a holistic response to crime that seeks to develop alternative solutions to traditional retributive and utilitarian criminal law sanctions. This encourages a relational approach to justice, based on dialogue between the parties involved in the crime, with the aim of collectively understanding the wrongs committed, correcting the violations and restoring social relationships. The Restorative justice process involves the parties in the case together discussing the resolution of their problems and resolving their impacts in the future. So restorative justice emphasizes the process of the role

of victims and community members to encourage perpetrators to be responsible to the victim, restore emotional and material losses to the victim, encourage dialogue or negotiation to resolve problems that have occurred so that they can save the community from prolonged conflict. (Satria, 2018)

The application of restorative justice in environmental crimes can only be applied in formal crimes, namely in Article 100 concerning violations of wastewater quality standards or emission quality standards or disturbance standards. This formal crime adheres to the principle of ultimum remidium where punishment is the last resort if other legal efforts are unable to resolve the problem. However, apart from formal crimes, the potential for the application of restorative justice ustice in environmental crimes has not been implemented optimally. Settlement of environmental criminal cases using restorative justice is hampered by the environmental law itself. Article 85 paragraph (2) of the Environmental Management Law which reads: "Dispute settlement outside the court does not apply to environmental crimes as regulated in this Law", which actually closes the space for resolving environmental criminal cases outside the court, so that the settlement is absolutely through the courts. In fact, if the provisions of Article 85 paragraph (2) are removed, then there is a possibility of combining the settlement of civil and criminal cases outside the courts (in civil cases it is called non-litigation).

The inability of criminal law to handle the restoration of environmental damage and victims must be used as a reflection that the Indonesian legal paradigm must begin to improve to become a more progressive law. That law enforcement is carried out with full dedication, empathy, determination, commitment to the suffering of the nation and accompanied by the courage to find other ways to get out of the legal establishment. that the law does not only contain a rigid normative system, but the law must also be built on a complex social response so that the resolution of environmental problems does not only focus on retaliating the perpetrators but also pays attention to the environment and the community that is harmed to be restored immediately. the law is not only based on the principle of legality but must also be based on the philosophy that is the reference for the birth of a law, Pancasila as the state philosophy and the source of all sources of law must be contained in every legal instrument that is made, therefore it is necessary to study the application of restorative justice as an instrument for resolving environmental cases by referring to the Pancasila philosophy approach, to find out the strong philosophical basis in implementing restorative justice and its potential in resolving environmental criminal cases

## 2. METHOD

The type of research used is normative or doctrinal legal research. Normative research is research that usually uses documents as a source of legal material. The characteristics used in this study are prescriptive. Prescriptive means providing arguments for the results of the research conducted. Argumentation is done to provide a prescription or assessment of right or wrong or what should or should be according to law, legal norms, legal principles and principles, doctrines, or legal theories regarding the facts or legal events being studied. The legal material analysis technique used by researchers in this study is the deduction method. The approach used in this legal research is a conceptual approach.

## 3. RESULTS AND DISCUSSION

### A. Regulation of Formal and Material Offenses in the UUPPLH

Environmental offenses in the UUPPLH are categorized into two types of offenses, namely material offenses and formal offenses, material offenses are offenses or acts prohibited by law which are considered perfect or fulfilled if the act has caused a consequence, environmental material offenses consist of articles 98, 99 and 112.Article 98 states:

1. Any person who intentionally commits an act that results in exceeding ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah).
2. If the act as referred to in paragraph (1) results in injury and/or harm to human health, the perpetrator shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least IDR 4,000,000,000.00 (four billion rupiah) and a maximum of IDR 12,000,000,000.00 (twelve billion rupiah) (3) If the act as referred to in paragraph (1) 3. results in serious injury or death, the perpetrator shall be punished with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years and a fine of at least IDR 5,000,000,000.00 (five billion rupiah) and a maximum of IDR 15,000,000,000.00 (fifteen billion rupiah).

Article 99 states:

1. Any person who due to his negligence causes the ambient air quality standards, water quality standards, sea water quality standards, or environmental damage criteria to be exceeded, shall be punished with imprisonment for a minimum of 1 (one) year and a

maximum of 3 (three) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp3,000,000,000.00 (three billion rupiah). (2) If the act as referred to in paragraph (1)

2. results in injury and/or harm to human health, shall be punished with imprisonment for a minimum of 2 (two) years and a maximum of Rp6,000,000,000.00 (six billion rupiah). (3) If the act as referred to in paragraph (1) 3. results in serious injury or death, the perpetrator shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 9 (nine) years and a fine of a minimum of Rp3,000,000,000.00 (three billion rupiah) and a maximum of Rp9,000,000,000.00 (nine billion rupiah).

From the provisions of the two articles above, articles 98 and 99 both regulate the same act, namely exceeding ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria, article 98 regulates the form of deliberate acts (dolus) while article 99 the form of the act is negligence (culpa). From the provisions above, the UUPPLH adopts material crimes with two categories of aggravation: First, from the provisions of paragraph (1) of the article above, the aggravation is related to causing injury and/or harm to human health. Second, from the provisions of paragraph (2), (3) of the article above, the aggravation is in the form of causing serious injury or death. Then formal environmental crimes, formal crimes are crimes or acts prohibited by law that are considered perfect or fulfilled once the act is carried out without requiring any consequences from the act. Formal environmental crimes consist of Article 100, Article 101, Article 102, Article 103, Article 104, Article 105, Article 106, Article 107, Article 108, Article 109, Article 110, Article 111, Article 112, Article 113, Article 114, and Article 115. The principle of ultimum remedium in the context of the UUPPLH only applies to formal crimes. Based on the general explanation number 6 of the UUPPLH, the application of the principle of ultimum remedium only applies to certain formal crimes, namely criminal sanctions for violations of wastewater quality standards, emissions, and disturbances. violations of wastewater quality standards, emissions, and disturbances are stated in the formulation of Article 100 of the UUPPLH which states:

1. Any person who violates wastewater quality standards, emission quality standards, or disturbance quality standards shall be punished with imprisonment for a maximum of 3 (three) years and a maximum fine of Rp3,000,000,000.00 (three billion rupiah).
2. Criminal acts as referred to in paragraph (1) may only be imposed if the administrative sanctions that have been imposed are not complied with or the violation is committed more than once.

Criminal charges based on Article 100 paragraph (1) may only be carried out if the administrative sanctions that have been imposed are not complied with or the perpetrator has more than once violated wastewater quality standards or emission quality standards or disturbance standards. This provision is the only one that adheres to the principle of ultimum remedium which requires the application of criminal law enforcement as a last resort after administrative law enforcement is deemed unsuccessful, because violations of wastewater quality standards, emission quality standards, disturbance quality standards constitute violations of administrative environmental law.

If Violation of wastewater quality standards, emission quality standards, disturbance quality standards constitutes a violation of administrative environmental law, then Article 100 is the only criminal offense whose resolution can be carried out through alternative dispute resolution with a restorative justice approach. Alternative dispute resolution is stated in Article 84 which provides a choice of possible environmental dispute resolution through two models, namely court and out-of-court channels. Regarding the out-of-court channel, the disputing parties can choose the form of settlement that is considered to be able to accommodate the needs of the parties. Then Article 85 paragraph 1 explains that out-of-court settlement is carried out to reach an agreement on compensation, recovery due to environmental pollution and destruction, certain actions and preventive measures so that pollution and destruction do not recur. Basically, alternative dispute resolution only applies to environmental civil cases, the limitation that environmental crimes cannot be resolved out-of-court is based on Article 85 paragraph (2) which states "Out-of-court dispute settlement does not apply to environmental crimes as regulated in this Law". The provisions of Article 85 paragraph (2) are not in accordance with the general explanation of the UUPPLH which states that the enforcement of environmental criminal law still pays attention to the principle of ultimum remedium which requires the application of criminal law enforcement as a last resort after the application of administrative law enforcement is deemed unsuccessful. Criminal law should only be applied if other means (efforts) are inadequate, so it is also said that criminal law has a subsidiary function (subsidiarity principle). Criminal law as ultimum remedium, related to what was stated by Sudarto, that the factors causing crime are very complex and are beyond the scope of criminal law. It is only natural that criminal law has limited ability to overcome it . The use of criminal law is a way to overcome a symptom and not a solution by eliminating the causes. The limitations of criminal law's ability are caused by the nature/essence and function of criminal law itself. Criminal law sanctions are not a cure (remedium) to overcome the causes (sources) of the disease, but merely to overcome the symptoms/effects of the disease. In other

words, criminal (legal) sanctions are not "causative treatment", but merely "symptomatic treatment. (Sudarto, 1998)

The principle of ultimum remidium in criminal law is seen as the last legal means if other legal means cannot resolve environmental cases, if Article 85 paragraph (2) does not apply environmental dispute resolution to environmental crimes regulated in the UPPLH, it means that every environmental crime must be resolved through criminal justice and closes the possibility of being resolved in other ways such as alternative dispute resolution. This is contrary to the principle of ultimum remidium which demands that criminal law should be used at the end if the negotiation process (administration, alternative civil dispute resolution) is unsuccessful. (Imanuddin, 2020) The application of the ultimum remidium principle should not only be limited to violations of wastewater quality standards, emission quality standards, disturbance quality standards listed in Article 100 of the UUPPLH, the ultimum remidium principle should also be applied to all formal crimes such as dumping waste and/or materials into environmental media without a permit listed in Article 104 of the UUPPLH. The urgency of applying the ultimum remidium principle in formal crimes is based on dissatisfaction with the settlement with criminal law which does not touch on aspects of environmental improvement and restoration. This phenomenon can be seen from several judges' decisions which in their decisions do not contain or add additional criminal penalties in the form of improvements due to criminal acts. namely, PT Ibara Lioho Indonesia, CV. Laju Surya Abadi, PT. Satya Sumba Cemerlang, CV Sumber Sari Indah. The four corporations have been proven legally and convincingly to have committed the crime of dumping waste and/or materials into the environment without a permit. For their actions, each corporation was found guilty of committing an environmental crime. The judge found each corporation guilty under Article 104 of Law No. 32 of 2009 UUPPLH. In his verdict, the judge only imposed a fine without any additional penalties, the corporations were fined with a nominal amount for PT Ibara Lioho Indonesia and CV. Laju Surya Abadi of Rp. 75,000,000, then against PT. Satya Sumba Cemerlang and CV Sumber Sari Indah were each fined with a nominal amount of Rp. 500,000,000 and 60,000,000.

From the several decisions above, several points can be taken, the first is related to additional penalties that are not applied in several decisions on environmental crimes above, even though additional penalties are an instrument that can realize the process of environmental recovery due to the crime committed. Environmental improvement can be done if the order is always included in the verdict, however, the additional punishment is optional, which means that the application is only optional, that the judge can choose to impose the additional

punishment or not. In addition, there is no clarity about what forms of improvement must be carried out, as a result, improvements due to criminal acts have not been effective so that the restoration of environmental damage is not accommodated. In addition to the absence of additional punishment related to criminal fines, the nominal value of which is very low, it cannot create a deterrent effect for corporate actors, so that the potential for repeating criminal acts can easily occur, as a result, the imposition of such punishment has no relevance to environmental improvement and sustainability. Criminal fines under 100 million for corporations are very low. This kind of corporate punishment model tends to benefit perpetrators of criminal acts so that it is considered ineffective, does not produce significant benefits for the environment and society. Based on the case above, the impact of losses from the imposition of criminal penalties in environmental cases carried out by corporations brings more losses than the acts they violate. Specifically, the intended punishment aims to prevent crimes and undesirable acts or wrong acts and impose suffering or appropriate retribution on the offender. (Husin, 2009)

Based on the description of the facts above, the application of the ultimum remidium principle should be implemented in all formal environmental crimes. The implication of the application of the ultimum remidium principle will open up opportunities for formal crimes to be resolved with a restorative justice approach so that environmental improvement and restoration can be realized.

**B. Pancasila Philosophy as the Basis for the Implementation of Restorative Justice in the Settlement of Environmental Criminal Cases**

The position of Pancasila in the Indonesian state system as a fundamental basic norm or statsfundamentalnorm. So naturally in state life, Pancasila is a philosophical system (philosofische gronslag). The meaning of the philosophical system is the parts that have a unity, are interrelated, contribute to each other to achieve one goal, as a whole are a complete entity. Pancasila as the basis of Indonesian legal philosophy according to Radbruch has the consequence of determining a basis for obeying the law that gives meaning and significance to the law itself, and in this connection the philosophical basis of the state has a constitutive function. In addition, Pancasila, which is a staatsfundamentalnorm, also determines whether a positive law is fair or unfair, namely in the regulative function. Barda Nawawi stated that the national legal system is essentially the Pancasila Legal System (Ismawayati, 2018). If explained further, this idea identifies the Pancasila legal system as a national legal system that is based on/or oriented towards 3 (three) pillars of Pancasila's balanced values: (i) oriented

towards Godly values (religious morals); (ii) oriented towards humanitarian values (humanistic); and (iii) (oriented towards social values (nationalist, democratic, social justice). Thus, the internalization of law must be adjusted to the character of Pancasila. (Prasetyo, 2023)

In essence, the contents of the Pancasila principles are a single compound unity (organic relationship), that each principle cannot be separated from the other principles, then between one principle and another there is no conflict. Pancasila also has a complementary and qualifying character, that each principle in Pancasila contains the other four principles, each principle is always qualified by the other four principles. such as the principle of the Almighty God is just and civilized humanity, the unity of Indonesia, democracy led by the wisdom of deliberation/representation and social justice for all Indonesian people. (Pelawi, 2020)

The life of society in almost all regions of Indonesia has communal characteristics, where mutual cooperation royong, mutual assistance, serasa and semalu have a big role. With such characteristics, the people in Indonesia try to create harmony in their social system and community life. Therefore, efforts to resolve disputes that occur in community life are always attempted to maintain peace. This shows that philosophically the implementation of the Restorative Justice paradigm in the criminal justice system is in accordance with the values that live and develop in society inherited from the ancestors of the Indonesian nation. (Waluyo, 2015) In the 4th principle of Pancasila which reads "people led by the wisdom of deliberation/representation". This precept contains the philosophy of deliberation or deliberation, the meaning contained in it is, prioritizing deliberation in making decisions for the common good, and respecting every deliberative decision, the decisions taken must be morally accountable to the Almighty God, upholding human dignity, the values of truth and justice prioritizing unity and oneness for the common good. (Prayitno, 2012) The teachings contained in the 4th precept provide guidance and to us in determining a choice through deliberation. Prioritize deliberation in making decisions for the common good. Deliberation to reach a consensus is filled with a spirit of kinship, so that if the essence of the philosophy of "deliberation" is squeezed, it contains 5 principles, including, first, conferencing (meeting to listen to each other and express desires), second, search solutions (finding solutions or common ground for the problems being faced), third, reconciliation (making peace with each other's responsibilities), fourth, repair (fixing all the consequences that arise), and fifth, circles (supporting each other). (Prayitno, 2012) These principles are exactly what is needed and are the keywords in Restorative Justice, so that in terms of state administration Restorative Justice finds its basis in the philosophy of the 4th principle of Pancasila. This basis, when applied in the process of resolving criminal cases, contains a principle called victim offender confercing.

The target in victim offender confercing is mediation, which is the opportunity to make peace and mutually agree on improvements. The aim is to treat crime as a conflict to be resolved between the people directly affected rather than as a conflict between the state and defendant.

The application of Restorative Justice in environmental pollution cases has been carried out by the Aceh government in Aceh Regional Regulation Number 9 of 2008 concerning the Development of Customary Life and Customs, Article 13 paragraph 1, numbers 14 and 16, states that the resolution of forest burning and environmental pollution can be carried out using the Restorative Justice approach. This Aceh Regional Regulation shows a progressive legal face, where crimes of burning and environmental pollution are not merely to punish the perpetrators but the aspect of the victim's losses is also considered. Although the provisions for forest burning and environmental pollution referred to in the regulation are on a small scale, this must be appreciated that awareness of the response to environmental crimes is no longer about punishing the perpetrators but also how to restore the losses felt by the indigenous community. In this regulation, victims have begun to be actively involved in the Restorative Justice justice process, in this process victims or indigenous communities who are harmed are given space to participate in conveying the losses that must be restored and play a role as supervisors of the things that have been agreed upon. If law enforcers have a perspective awareness of the characteristics of environmental crimes and victims of environmental crimes, it is possible that in the future in higher regulations, especially in the Environmental Management and Protection Law, Restorative Justice can be used as a solution.

## 4. CONCLUSION

The restorative justice approach in resolving environmental criminal cases can only be applied to formal crimes, namely violations of wastewater quality standards, emission quality standards, and disturbance quality standards listed in Article 100. Which can be resolved outside the court. Restorative Justice has a basis in the essence of the Pancasila philosophy, namely, "deliberation" which contains 5 principles, including, first, conferencing (meeting to listen to each other and express desires), second, search solutions (finding solutions or common ground for the problems being faced), third, reconciliation (making peace with each other's responsibilities), fourth, repair (fixing all the consequences that arise), and fifth, circles (supporting each other).

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