

ENVIRONMENTAL PROBLEMS IN INDONESIA: A REVIEW

**Thomas Sunaryo
Universitas Indonesia
Jakarta
Indonesia**

The Scope

THE ENVIRONMENTAL ISSUES OF THIRD WORLD COUNTRIES HAVE BEEN described by a seminar on the problems of environment and natural resources in Asia-Pacific as having reached a critical point. In fact, this crisis is likely to endanger the development programs of these countries unless immediate measures are taken to rectify these ecologically destructive trends (Environmental Crisis in Asia-Pacific 1984). One of the manifestations of this critical situation is environmental pollution in its various forms.

In Indonesia, environmental pollution is defined by Act No. 4 of 1982 on the Basic Provisions for the Management of the Living Environment (henceforth referred to as Act No. 4) as:

the entry or introduction of living organisms, matters, energy, and/or necessary components into the environment, and/or changes in the environmental system due to man's activities or natural processes, resulting in the decline of the environmental quality to such a level which causes the environment to function insufficiently or to lose its proper function.

In the narrow sense, environmental pollution is a criminal act regulated in articles 202 and 203 of the Penal Law, and further in article 22 of Act No. 4/1982, and widely associated with the violation of the rights of the individual to a good and healthy living environment (article 5 of Act No. 4/1982). In this connection, rights can be classified into five different, yet inter-related, levels (Canada 1985, pp. 8-10).

First is the right not to have one's life or health harmed or endangered as a result of environmental pollution, the health effects of which are known, predictable, serious and relatively immediate.

Second is the right to a reasonable level of environmental quality, even when a specific pollutant or pollution source cannot now be identified with certainty as the cause of specific health damage or risk, on the grounds that sooner or later serious pollution of the

environment will threaten human life and health as well. (Here, it is explicitly assumed that there are particular victims, identifiable ones, though the form of the process of victimisation is yet unknown.)

Third is the right to a level of environmental quality which is not violated by pollution depriving one of the use and enjoyment of the environment, even when there are no health effects or dangers.

Fourth is the right of the environment to be protected from serious pollution for its own sake, even if pollution incidents should result in no direct or indirect risk or harm to human health or limitation upon the use or enjoyment of nature.

Fifth is the right to have one's private property protected from damage by pollution caused by others.

Crime against the environment—pollution, in particular—includes acts that may range from carelessness to criminal acts that may endanger the safety of the public (Danusaputro 1981).

A number of issues have arisen in connection with these matters, particularly because of the failure to pinpoint the presence of social injury. An example is the case of water pollution which directly affects the lives of so many Indonesians; a specific definition is needed here to determine whether or not pollution occurs.

So that pollution acts can be defined, says a paper of the Centre for the Study of the Criminal Law and Jurisdiction System of the Faculty of Law of the University of Indonesia (1980), it is necessary to determine all the effects that are detrimental to the public that can be prevented through criminal sanctions. In general the conceivable losses are health hazards, economic and social injury and sanitary hazards. Economic and social injury needs to be given special attention, because usually it is more difficult in such cases to prove a causal relationship.

A Picture of the Occurrence of Environmental Pollution

At present, no comprehensive data are available in Indonesia on environmental pollution and damage. Nevertheless, from a study of environmental pollution that can be harmful to man undertaken by a team from the Institute of Criminology at the University of Indonesia and a team from the National Legal Development Board of the Ministry of Justice, the following picture emerges (Ministry of Justice 1985).

Pollution by Mercury

Some of the cases of pollution by mercury that have led to the victimisation of the public in Indonesia are as follows:

Battery factory in Cimanggis

Water below the plant proved to contain mercury poison. The water had been used for drinking by the factory workers, and this had caused more than half of them to suffer from kidney diseases. The sample showed that the water contained 0.014 PPM, which was three times the permissible limit.

Muara Angke

In the fishing-village of Muara Angke, of five families with a total of 30 children, 15 died before they reached the age of three. The mortality figure for this age group country-wide is 13.7 per cent. The mercury content of the Muara Angke neighbourhood has been shown to be very high.

Muara Karang

Three children in this village who had been suffering from physical disability were discovered to have eaten a lot of 'tongkol' fish, which had high levels of mercury.

From these cases it is apparent that mercury in the water has been victimising the public; it is feared that the number of victims will continue to increase.

Carbon-Monoxide pollution

A number of studies of the carbon monoxide content of the air in Yogyakarta indicated high levels: in the downtown area and the bus-station the CO content was 99 mgr/lt; around the post office it was 56 mgr/lt and near the rail-road crossing it was 78 mgr/lt (Warta Konsumen 1985).

Pollution by pesticides

In Indonesia, records of the Secretariat of the Commission for Pesticides of the Ministry of Agriculture showed that there are now available 352 brands of pesticides with 150 types of formulation; in 1980 there were only 286 brands with 75 types of formulation. The pesticides industry has been growing rapidly because agricultural development is a priority in Indonesia's development program. There are now 50 licence-holders representing pesticides companies abroad, and some of these represent more than one company.

Some cases resulting from pesticides are as follows:

- 12 persons died because the food they ate at a traditional feast held in Plaeng, Klaten (Central Java), contained DDT.
- 3 persons in Bojolali died because the food they ate was contaminated with DDT.
- 18 transmigrants in North Lampung became the victims of rodent poison.
- In both East and West Java, thiodan pesticide killed fish on farms.
- 36 persons died in Tulungagung because the flour and frying oil they used were contaminated by pesticides.

The Execution of Environmental Legislation

The fact that environmental legislation is now being put into effect does not at all mean that cases of environmental pollution and damage have been directly and completely solved. One of the problems faced in the execution of this legislation is the constraints found in the procedural technique for the penal law, particularly as related to such matters as proof that require skill in data analysis. Some of the problems are indicated by the following cases.

The case of the Birds of Paradise (Cendrawasih Bird)

This case concerns the smuggling of 163 Birds of Paradise. This was the first environmental case tried in court, and was adjudicated by the State Court of Sorong in November 1984. The accused was charged with damage to the environment under environmental legislation, known as UULH. He was found guilty of committing a criminal act and was sentenced to 4 years and 6 months imprisonment, and fined twenty million rupiah. However, the High

Court of Irian Jaya later amended the sentence to six months imprisonment and surrender of the birds. Nevertheless, using the UULH as the legal basis for this case represented a breakthrough in the law enforcement of the UULH in court.

The case of the 'Tahu' (soybean cake) waste

This case was brought to trial as an environmental offence, namely the pollution of the Surabaya River. The judge decided that the accused was proven to have committed the offence, but that it was not a criminal act, that is it did not cause environmental pollution. However, the public prosecutor appealed against this verdict. In the meantime, a study of the files of the case revealed that the case did not belong to the environmental offence category based on UULH legislation because violation of the quality of the environment is not identical with environmental pollution; rather, such violations should be subject to administrative sanctions.

The case of Sibatuloting

In October of 1988 the WALHI (Indonesian Environmental Forum), lodged a complaint against the Government of the Republic of Indonesia before the State Court of Central Jakarta on the grounds that it had issued a licence for the establishment of a pulp factory and a concession for the exploitation of forests at Sibatuloting, North Sumatra, without regard to established legislative procedures for environmental management and assessment of environmental impact, resulting in the destruction of the forest at Sibatuloting and landslides around the area.

In response to the charge, the public prosecutor, on behalf of the Government of the Republic of Indonesia, appealed to the court to reject the complaint of the WALHI on the grounds that the WALHI had no legal standing to submit its complaint.

In reply, counsel for WALHI argued that the provisions of Act No. 4 explicitly recognise the environment as a legal subject. The environment with all its elements such as mountains, rivers, lakes and forests, function to provide life and welfare for man; it is, therefore, the right of the environment to be preserved and protected from threats of pollution and damage.

It was further argued that the Government as a public body is obligated to represent the interests of the environment. However, if the Government neglects or intentionally fails to carry out such obligations, then a non-government organisation that has proven itself to have been continuously active in the development and preservation of the environment has the right to represent its interests. Ultimately, the State Court of Central Jakarta accepted the WALHI as the claimant representing the interests of the public.

Conclusion

In Indonesia, the application of Act No. 4 is a new thing. This represents a challenge to law-enforcers—police, public prosecutors, judges and lawyers.

The strategy of development without damage or pollution of the environment, in combination with the efforts to develop organisations protecting the environment, is a theoretically appropriate one for preventing and dealing with criminal acts against the environment.

Nevertheless, the success of this strategy, especially in dealing with corporate crime, lies in taking into account structural and cultural aspects. Clinard & Yeager (1980) state:

in studying crimes that are related to businesses it is necessary to consider the presence of a 'sub-culture of industrial deviance' and a 'sub-culture of violence' that affect the people engaged in the businesses in facing particular situations.

They also state that violations by companies are affected by such factors as the pursuit of profit and weakness in the execution of legislation. In respect to the latter point, they refer to the attitudes of companies and legal bodies which do not look upon violations by companies as 'crimes or criminals', at least from the moral point of view (Clinard & Yeager 1980).

Based on the above description of the nature and the scope of the problems of crime against the environment, it can be said that in principle the determination of the criteria of such crimes must be judged by considering the following aspects: first, the social impact of the offence and second, the physical impact on the environment. Both these aspects can be assessed as crimes.

The process of criminalisation of such actions is bound to proceed amidst difficulties, because violations of rights to a good and healthy living environment cannot in principle be disconnected from the issue of the 'privileges' of the violators, who are usually the ones who enjoy the benefits in the existing power relations.

For success, the following steps are necessary:

- clear formulation of the definition of crime against the environment;
- application of that definition by the authorised apparatus with a juridical basis;
- communication with the public so that it will be possible to expect popular support for the enforcement of the law on crimes against the environment.

References

- Canada, Law Reform Commission of Canada 1985, 'Protection of Life. Crimes Against the Environment', Working Paper 44, Law Reform Commission of Canada, Ottawa.
- Clinard, Marshall B. & Yeager, P. C. 1980, *Corporate Crime*, New York, The Free Press.
- Danusaputro, St. Munadjat 1981, *Environmental Act: Book I*, Jakarta, Bina Cipta.
- Environmental Crisis in Asia-Pacific 1984, Declaration and Resolutions of the Seminar on Problems of Development, Environment and Natural Resource Crisis in Asia-Pacific, Penang, Sahabat Alam Malaysia.
- The Centre for the Study of the System of Criminal Law and Jurisdiction, 1980, 'A Review of the Development of Special Delicts in Modern Society', working paper presented in the Symposium on the development of special offences in a society experiencing modernisation', Surabaya, Faculty of Law of University of Airlangga and the BPHN.
- The National Legal Development Board, Ministry of Justice 1985, *Report on the Study of New Dimensions of Crime in Relation with Modern Technology*, Jakarta.
- Warta Konsumen 1985, Year C No. 113, August.