



Implementation Of Restorative Justice As a Solution To Environmental Pollution Due To Hazardous And Toxic Waste Metal Industry In Pesarean Village, Adiwerna District, Tegal Regency

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Abstract

Environmental pollution is stated in Article 1 point 14 of Law Number 32 of 2009 concerning Environmental Protection and Management. In Indonesia, research on environmental pollution has received much attention in recent years, considering its impact. Mainly if this environmental pollution contains hazardous waste such as hazardous and toxic waste materials that cause several kinds of diseases. Pollution and destruction of the environment are detrimental to the people living around it. Of course, the perpetrators of pollution or environmental destruction must account for every act that harms other people. One way of accountability that can be done regarding the environment is by using the Restorative Justice model. Therefore, this paper aims to find out what form of application of restorative justice is as a solution to environmental pollution due to toxic and hazardous waste and what the obstacles are to its implementation. The research method uses a normative juridical approach with secondary data and literature studies and uses qualitative data analysis. Settlement using restorative justice, which is possible, can be applied in law enforcement to tackle environmental crimes, namely resolving conflicts between the parties through kinship

Keywords: Environmental Pollution, Restorative Justice and Hazardous, and Toxic Was

Abstrak

Pencemaran lingkungan tercantum dalam Pasal 1 butir 14 Undang – Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup. Di Indonesia, penelitian yang terkait dengan pencemaran lingkungan telah menjadi perhatian di beberapa tahun terakhir dengan mengingat dampak yang ditimbulkannya. Apalagi jika pencemaran lingkungan ini mengandung limbah yang berbahaya seperti limbah bahan berbahaya dan beracun yang menyebabkan beberapa macam penyakit. Pencemaran dan kerusakan lingkungan tentu sangat merugikan masyarakat yang tinggal disekitarnya. Tentunya setiap perbuatan yang merugikan orang lain haruslah dipertanggungjawabkan oleh pelaku pencemaran atau kerusakan lingkungan. Salah satu cara pertanggungjawaban yang dapat dilakukan mengenai lingkungan hidup adalah dengan penyelesaian menggunakan model Restorative Justice. Oleh karena itu, tulisan ini bertujuan menemukan seperti apa bentuk penerapan restorative justice sebagai solusi pencemaran lingkungan akibat limbah B3 serta apa saja hambatan dalam penerapannya. Metode penelitian yang menggunakan pendekatan yuridis normative dengan data sekunder dan studi kepustakaan serta menggunakan analisis data secara kualitatif. Penyelesaian menggunakan restorative justice yang dimungkinkan dapat diterapkan dalam penegakan hukum untuk menanggulangi tindak pidana lingkungan hidup yaitu penyelesaian konflik para pihak melalui jalan kekeluargaan

Kata kunci: Pencemaran lingkungan, Restorative Justice dan Limbah Bahan Berbahaya

I. Introduction

In Indonesia, research on environmental pollution has become a concern recently. Therefore, pollution and environmental destruction are certainly very detrimental to the people who live around the area.¹ Waste pollution can also be avoided if each party can preserve nature. So, if an activity has exceeded the environmental quality standard, it must be reprocessed through thermology so that it can be returned to the environment, and the

¹ Elizabeth Mewengkang, "Prinsip Tanggung Jawab Perusahaan Terhadap Pencemaran Lingkungan," *Lex Crimen Vol. III, Nomor. 2*, (2014): 55.

rehabilitation process can be carried out immediately to prevent further damage.² In addition, the surrounding community also needs to pay attention to the cleanliness of the environment. The implementation of regulations regarding industrial waste disposal should also be monitored, and the violators should be punished.³ This regulation regarding disposal or dumping already exists in Article 69 paragraph (1) letters a, e, and f in Law Number 32 of 2009 concerning PPLH. Waste dumping activity is one of the environmental problems that has not been appropriately handled. The main problems faced are laws and regulations, low compliance or law enforcement and enforcement, financing problems, and low awareness of responsibility.⁴ The entrepreneur's liability can be civil, criminal, or administrative and must be under the provisions of the applicable legislation. One way to solve environmental problems is to use the Restorative Justice model. Restorative Justice is an approach to incidents of harm involving a high level of support and accountability for people who cause harm.⁵ According to the Circular Letter of the National Police Chief Number 8 of 2018 concerning the Application of Restorative Justice in terms of resolving criminal cases, it can be used as a legal basis and guidelines for investigators/investigations who are carrying out investigations/investigations, including can also be used as a guarantee of legal protection and control supervision. Investigation and investigation of criminal acts in the public interest and a sense of justice for the community to create a uniform understanding and application of restorative justice within the Police. Efforts to resolve criminal cases in environmental crimes have no rules that explicitly regulate, so it can be suggested to take a restorative justice model as a solution.⁶

Tegal Regency has an area of about 879 km² and is known as one of the most densely populated areas in Central Java Province, with business potential that is starting to develop into a home industry.⁷ The community runs some potential home industries; one of the industries being developed is Pesarean Village, Adiwerna District, a metal-making industrial area.⁸ The metal manufacturing process includes the production of metal smelting and metal casting industries in Pesarean Village, which is a dry process and does not use water, so the waste produced is solid waste and gas/smoke. The solid waste produced is in the form of powder or particles and the residue from combustion that contains chemical elements. Raw material powders that settle in the body can cause various diseases. It can be seen from the results of testing blood samples of people living around the area. Based on the results of a blood sample test conducted by the Central Java Provincial Government in 2011 on 50 residents of Pesarean Village, 46 people were recorded as having been contaminated with lead. Based on this number, 12 people are in dangerous conditions. The data obtained by the Environment Agency also states that five children in the area were born with disabilities (paralyzed and mentally retarded).⁹ Referring to UUPLH Number 32 of 2009, every activity with a significant impact must manage the environment through an environmental impact analysis.¹⁰

From the explanation above, the authors are interested in researching the application of Restorative Justice in Environmental Law. So the author took the title "**Implementation Of**

² Jessy Adack, "Dampak Pencemaran Limbah Pabrik Tahu Terhadap Lingkungan Hidup," *Lex Administratum*, Vol. 1 Nomor. 3, (2013):49.

³ *Ibid*, 81

⁴ Ganda Martunas Sihite, "Analisis Yuridis Strict Liability Sebagai Pertanggung Jawaban Pidana Korporasi Terhadap Dumping Limbah TOXIC AND HAZARDOUS Ke Media Lingkungan Berdasarkan Undang - Undang Nomor 32 Tahun 2009 Tentang Pengelolaan Dan Perlindungan Lingkungan Hidup", *Fakultas Hukum Universitas Riau* Vol. VI Nomor. 2, (2019):3.

⁵ Sheila M. McMahon, David R. Karp dan Hayley Mulhern, "Addressing Individual and Community Needs in The Aftermath of Campus Sexual Misconduct: Restorative Justice as A Way Forward in The Re-Entry Process", *Journal of Sexual Aggression* Vol. 25 (2018): 49.

⁶ Iman Imanuddin, "Pendekatan Restorative Justice Dalam Menanggulangi Tindak Pidana Lingkungan Hidup," *Siyar Hukum Jurnal Ilmu Hukum*, Vol. 17, Nomor 2: 145.

⁷ Data from the Central Bureau of Statistics of Tegal Regency, 2018

⁸ Alia Fajarwati dan Dwi Nuswantoro, "Sebaran Sentra Unggulan Industri Kecil Dan Rumah Tangga (IKRT) Di Kabupaten Tegal", *Jurnal Bumi Indonesia*, Vol. 2, Nomor.2, (2013): 212.

⁹ According to data from the Tegal Regency Environmental Service, 2011

¹⁰ *Op. Cit*

Restorative Justice As a Solution To Environmental Pollution Due To Hazardous And Toxic Waste Metal Industry In Pesarean Village, Adiwerna District, Tegal Regency."

II. Research Problems

1. How to Apply Restorative Justice as a solution to environmental pollution due to hazardous and toxic waste) Metal Industry in Pesarean Village, Tegal Regency?
2. What are the obstacles to implementing Restorative Justice as a solution to environmental pollution due to hazardous and toxic metal industry in Pesarean Village, Tegal Regency?

III. Research Methods

This research method uses a normative juridical method. The normative juridical method is carried out through a literature study which examines mainly secondary data in the form of laws and regulations, research results, study results, and other references. The normative juridical method can be supplemented with interviews.¹¹ This study uses descriptive-analytical research specifications because it will describe a reality and facts related to the application of Restorative Justice as a solution to environmental pollution. The data collection method in this study was carried out through library research. The analytical method used is qualitative, a research method that produces analytical descriptive data because it does not use formulas and numbers using deductive thinking methods.

IV. Hasil dan Pembahasan

1. **The application of Restorative Justice as a solution to environmental pollution due to Hazardous and Toxic Waste Metal Industry in Pesarean Village, Adiwerna District, Tegal Regency, based on Article 90 of the Criminal Code and Circular Letter of Chief of Police Number 8 of 2018 concerning the Application of Restorative Justice).**

The restorative meeting model (restorative conferencing) can be a means of bringing together the interests of perpetrators, victims (society and the environment) as well as relevant authorities such as the Ministry of Environment, Provincial/Regency/City environmental services, and law enforcement to form a consensus forum (restorative meeting) to find a way out. On environmental pollution caused by the perpetrator's actions. Applying this model makes environmental law enforcement more time efficient because it can be carried out without taking a long time and being protracted. However, to avoid differences of opinion in the application of this model, a mediator is needed to minimize failures in making agreements and calculate how much damage to the ecology is damaged and polluted as a result of these actions.¹² Restorative Justice is a new method of resolving criminal cases, while environmental crimes have been regulated in Law Number 32 of 2009 concerning Environmental Protection and Management, which is listed in Chapter XV, articles 97 to 120. Based on these rules, entrepreneurs may be subject to criminal sanctions because it is clear that their actions have resulted in environmental pollution and serious injuries. Severe injuries are defined in Article 90 of the Criminal Code.

Information obtained from the Environment Agency stated that based on data from the results of blood sample tests conducted in 2011, it was clear that several residents were poisoned by toxic and hazardous waste, namely those containing lead, and based on data from the Environment Agency, several children were born with disabilities and mental retardation. It can be interpreted as a severe injury because it is included in Article 90 of the Criminal Code, letters

¹¹ Salim HS, *Penerapan Hukum Pada Penelitian Tesis dan Disertasi*, Jakarta: PT Raja Grafindo: 2013, 26.

¹² Siti Sundari Rangkuti, *Hukum Lingkungan dan Kebijakan Lingkungan Nasional*, Airlangga Press, Surabaya (1996), 74.

a, d, and e. However, until now, no criminal action has been taken because the entrepreneurs do not feel guilty that they have carried out activities that cause environmental pollution and incredibly toxic and hazardous waste, so people prefer the peaceful way. Therefore, the application of the appropriate restorative meeting model in the Circular Letter of the Chief of Police Number 8 of 2018 concerning Guidelines for handling case settlements with a restorative justice approach provides a reference for how the legal consequences of cases that are resolved by restorative justice are by fulfilling material and formal requirements.

In the case of environmental pollution in Pesarean Village, Adiwarna District, Tegal Regency, there has never been any legal action in resolving environmental pollution due to toxic and hazardous waste because these metal craftsmen are in the form of MSMEs (Micro, Small, and Medium Enterprises) in Pesarean Village. In addition, these craftsmen do not want to compensate communities affected by toxic and hazardous waste. So that the community ultimately asked the Tegal Regency Government to take responsibility for resolving this case, namely by making industrial relocations by moving metal entrepreneurs to the Small Industrial Village in Kebasen, namely from 30 entrepreneurs in 2011, around 27 entrepreneurs were willing to move. In 2011 In 2021, there will be no more metal entrepreneurs in Pesarean Village. The local government, namely the Tegal Regency Environmental Service, is collaborating with the Ministry of Environment and Forestry to undertake environmental restoration by removing soils contaminated with toxic and hazardous waste.

According to Khaerudin as an employee of the Tegal Regency Environmental Service, one of the applications of Restorative Justice in overcoming environmental pollution due to hazardous and toxic waste in Pesarean Village is restoring the damaged/polluted environment. The form of environmental recovery is carried out by lifting waste as deep as the waste mixed with the soil so that it can be processed into new goods, such as paving for buildings. The vacant land is given new healthy land so that people no longer need to worry about the polluted environment and can enjoy clean water.¹³

According to Tasripin as a sub-district employee in Pesarean Village, in implementing Restorative Justice as a solution to pollution due to toxic and hazardous waste in Pesarean Village, he also said the same as Khaerudin, namely that environmental restoration was being carried out, which was polluted by toxic and hazardous waste by lifting all toxic and hazardous waste and then taking it to a paving company. In Purwakarta, West Java, to become new and more valuable goods. Furthermore, the vacant land will be replaced with healthy soil and later be made a religious tourist place because the location coincides next to the tomb of Sunan Amangkurat I.¹⁴

So it is difficult to fulfill the material requirements stipulated in the Circular of the Chief of Police because the victims of environmental crimes are not individuals but the community. Criminal threats for certain criminal cases allow mediation, but often environmental cases require responsibility in the form of compensation and restoration of the environment contaminated by waste. So, in this case, applying restorative justice in Pesarean Village has not been successful because only the government is responsible for restoring the environment affected by waste. Entrepreneurs are not responsible because they do not feel guilty about the waste. Meanwhile, the application of restorative justice can be successful if the entrepreneur is willing to be responsible for the victims affected by the toxic and hazardous waste.

2. Obstacles to implementing Restorative Justice as a solution to environmental pollution due to Hazardous and Toxic Waste in the Metal Industry in Pesarean Village based on identification and clarification of legal facts.

The application of Restorative Justice as a solution to environmental pollution due to toxic and hazardous waste in Pesarean is not as smooth as expected. There are several obstacles to its application, namely:

¹³ Results of interviews conducted on June 21, 2021

¹⁴ Results of interviews conducted on June 24, 2021

- a. The education of entrepreneurs is still low, so their mindset is low, and their nature is still not modern (too old-fashioned), so if there is a warning from the government, they tend to be ignored.
- b. Lack of firm action by the government against entrepreneurs who dispose of toxic and hazardous waste in densely populated areas because the government only puts up warning boards when disposing of waste will be given fines and sanctions, but the entrepreneurs always ignore,
- c. This toxic and hazardous waste is rampant, about 1 hectare, where the waste powder exposed to rainwater seeps into the ground with a depth of approximately 4 meters, and the height of the waste soil mound is about 3 meters.
- d. There is a limited budget to restore contaminated land

V. Conclusions

1. In the case of environmental pollution in Pesarean Village, Adiwerna District, Tegal Regency, there has never been any legal action in resolving environmental pollution due to toxic and hazardous waste because this metal entrepreneur is in the form of UMKM (Micro, Small, and Medium Enterprises) in Pesarean Village. In addition, these entrepreneurs do not want to pay compensation to communities affected by toxic and hazardous waste. So that the community ultimately asked the Tegal Regency Government to take responsibility for resolving this case, namely by making industrial relocations to the Small Industrial Village in Kebasen and the Regional Government, in this case, the Tegal Regency Environmental Service, in collaboration with the Ministry of Environment and Forestry to carry out the environmental restoration. Namely by lifting soils contaminated with toxic and hazardous waste and then giving the empty lands new healthy soil. The land that has been given healthy land is planned to be made a religious tourism place because it is located next to Sunan Amangkurat I's tomb. So it is challenging to meet the material requirements stipulated in the Circular Letter of the Chief of Police because the victims of environmental crimes are not individuals but the community. So, in this case, the application of restorative justice in Pesarean Village is still not successful because only the government is responsible for restoring the environment affected by waste, for the entrepreneurs themselves are free from responsibility for the victims affected by the waste. After all, they do not feel guilty about the waste. Meanwhile, applying restorative justice can only be successful if the entrepreneur is willing to be responsible for toxic and hazardous waste victims.
2. The obstacles to implementing Restorative Justice as a solution to environmental pollution due to Hazardous and Toxic Waste in the Metal Industry in Pesarean Village are:
 - a. The education of entrepreneurs also affects their mindset so that they are still not modern (too old-fashioned), so if there is a warning from the government, they tend to be ignored.
 - b. Lack of firm action by the government against entrepreneurs who dispose of toxic and hazardous waste in densely populated areas,
 - c. This toxic and hazardous waste is rampant, about 1 hectare; the waste powder exposed to rainwater seeps into the ground at a depth of approximately 4 meters, and the height of the waste soil mound is about 3 meters.
 - d. Lack of budget to restore land contaminated by toxic and hazardous waste.

VI. Suggestions

1. The application of restorative justice as one of the settlement models for criminal acts outside the court should be the primary choice for law enforcers to provide accountability

- to the perpetrators. However, strict action should be taken for entrepreneurs who are not responsible for compensating the victims' losses. If necessary, by giving sanctions, namely by revoking the permit or stopping the business
2. Entrepreneurs need to attend training first so that they understand that if they want to set up a business, they must also think about the disposal of their waste so that environmental pollution does not occur, and if the government gives a warning to the business, the entrepreneur must be able to comply with the warning.
 3. The government should be more strict with entrepreneurs, such as more often supervising in the area and giving strict sanctions if there are entrepreneurs whose waste causes environmental pollution, namely by paying a fine or closing the business. Immediately land restoration is carried out by removing soil contaminated by toxic and hazardous waste and then replacing it with healthy soil.
 4. It is necessary to increase the budget to complete the restoration of the polluted environment in Pesarean Village, Adiwerna District, Tegal Regency.

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