



## Criminal Code in Environmental Perspective

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### ABSTRACT

Environmental law in the field of legal science is one of the most strategic fields of legal science because environmental law has many aspects, namely administrative law, criminal law and civil law. The Indonesian Criminal Code (KUHP) does not specifically regulate environmental law explicitly. However, there are several articles in the Criminal Code that can relate to environmental violations. Environmental crimes are regulated in Chapter XV, which consists of 23 articles, starting from Article 97 to Article 120 UUPPLH. In the Criminal Code, there are several articles relating to types of environmental violations that can be discussed, such as air pollution, water pollution, hazardous waste disposal, forest destruction and illegal hunting. Collaboration between government, society and the private sector has an important role in environmental law. Synergy between these three parties is needed to achieve effective and sustainable environmental protection.

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## **INTRODUCTION**

In the midst of increasingly rapid developments, attention to environmental sustainability is becoming increasingly important. Humans as an integral part of this ecosystem have the responsibility to protect and preserve the environment for current and future generations. One of the important foundations that can be used to study and understand the obligations and actions that need to be taken is the Obligation to Be Effortless and Punishable, or what is commonly known as KHUP. KHUP emphasizes that environmental protection is not solely the responsibility of the government or certain groups, but is a collective obligation for every individual and society. From an environmental perspective, KHUP is a relevant guideline in recognizing and carrying out our responsibilities towards nature.

In this approach, we can study various aspects related to the environment, including environmental conservation efforts, individual and community responsibility, environmental law enforcement, cooperation between various stakeholders, and the implementation of sustainable environmental policies. Learning about KHUP from an environmental perspective allows us to understand the importance of maintaining ecosystem balance, protecting limited natural resources, and overcoming the challenges faced by our planet today, such as climate change, habitat destruction, and environmental pollution.

In this context, this introduction will explore various materials that can be learned from KHUP from an environmental perspective, including environmental protection and preservation, individual and community responsibility, environmental law enforcement, cross-sector cooperation, and effective implementation of environmental policies. By deepening our understanding of KHUP from an environmental perspective, we can become responsible agents of change and play an active role in preserving nature, encouraging awareness of environmental issues, and working together in creating a sustainable and harmonious future between humans and the environment.

## **THEORETICAL REVIEW**

In the midst of increasingly rapid developments, attention to environmental sustainability is becoming increasingly important. Humans as an integral part of this ecosystem have the responsibility to protect and preserve the environment for current and future generations. One of the important foundations that can be used to study and understand the obligations and actions that need to be taken is the Obligation to Be Effortless and Punishable, or what is commonly known as KHUP. KHUP emphasizes that environmental protection is not solely the responsibility of the government or certain groups, but is a collective obligation for every individual and society. From an environmental perspective, KHUP is a relevant guideline in recognizing and carrying out our responsibilities towards nature.

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between various stakeholders, and the implementation of sustainable environmental policies. Learning about KHUP from an environmental perspective allows us to understand the importance of maintaining ecosystem balance, protecting limited natural resources, and overcoming the challenges faced by our planet today, such as climate change, habitat destruction, and environmental pollution.

## **METHODOLOGY**

The research method that will be used is normative legal research sourced from library materials with statutory guidelines relating to environmental law and environmental management. The research approach used is to use primary and secondary legal materials, primary legal materials themselves are legal materials contained in statutory regulations, while secondary legal materials that will be used in this writing are books on related law, as well as legal journals. The techniques used in collecting data and legal materials in this writing were obtained by means of literature study by analyzing legal books, statutory regulations and legal journals.

## **RESULTS AND DISCUSSION**

### ***1. Definition of the Criminal Code***

KHUP is an abbreviation of Obligations Must Be Effortless and Punishable. KHUP refers to a concept which emphasizes that every individual has an obligation to try actively and responsibly to safeguard, protect and preserve the environment. This concept emphasizes that environmental protection is not only the responsibility of the government or certain groups, but is a shared responsibility for all individuals and society. In the context of KHUP, non-involvement or violation of environmental obligations can be subject to applicable sanctions or penalties in accordance with applicable regulations. The main objective of KHUP is to encourage active participation of individuals and communities in maintaining environmental sustainability to achieve a better and more sustainable future.

### ***2. Environmental Law***

Environmental law in the field of legal science is one of the most strategic fields of legal science because environmental law has many aspects, namely administrative law, criminal law and civil law. Thus, of course environmental law has more complex aspects. So, studying environmental law is very impossible if you do it alone, because it is very closely related to other aspects of law which also includes environmental law. In a simple sense, environmental law is defined as the law that regulates the environmental order (environment), where the environment includes all objects and conditions, including humans and their actions that exist in the space where humans exist and influence the survival and welfare of humans and other living bodies. In a modern sense, environmental law is more environmentally oriented or Environment-Oriented Law, while classical environmental law places more emphasis on the orientation of environmental use or Use-Oriented Law.

### ***3. Relationship between KHUP and Environmental Law***

KHUP has a close relationship with environmental law. KHUP is a concept or principle in environmental law which stipulates the obligations of individuals and society to actively try to maintain and protect the environment. In many jurisdictions, the KHUP concept is regulated in environmental regulations or laws that regulate individual responsibility towards the environment. The KHUP concept in environmental law emphasizes that every individual has the responsibility to participate in maintaining environmental sustainability and preventing environmental damage. This includes various obligations such as reducing emissions, managing waste, preserving natural resources, and biodiversity conservation efforts.

In addition, the KHUP also indicates that non-involvement or violation of environmental obligations can be subject to sanctions or penalties stipulated by environmental law. This aims to encourage compliance with regulations and maintain environmental sustainability by enforcing applicable rules and laws. Thus, KHUP is an important foundation in environmental law which regulates individual and community responsibility and maintains a balance between environmental protection and the implementation of sanctions for environmental violations.

The Indonesian Criminal Code (KUHP) does not specifically regulate environmental law explicitly. However, there are several articles in the Criminal Code that can relate to environmental violations. Several relevant articles in the Criminal Code that can relate to criminal acts related to the environment include:

1. Article 98 of the Criminal Code: This article regulates crimes against air pollution which can cause harm to human health. Violation of this provision may be subject to criminal sanctions.
2. Article 99 of the Criminal Code: This article regulates the crime of water pollution which can cause harm to human health. Violation of this provision may also be subject to criminal sanctions.
3. Article 98A of the Criminal Code: This article regulates the crime of dumping rubbish or substances that can pollute the air or water. Disposal actions that violate this provision may be subject to criminal sanctions.
4. Article 187 of the Criminal Code: This article regulates criminal damage to forests or protected animals. Environmental destruction such as illegal logging or poaching can be considered a criminal act under this article.

### ***4. Criminal Law Policy in Current Environmental Law Enforcement***

Since the issuance of the 2009 UUPPLH which replaced Law no. 23 of 1997 (hereinafter referred to as UUPPLH 1997), the function as the parent umbrella provisions law is attached to UUPPLH 2009. UUPPLH brings fundamental changes in the regulation of environmental management in Indonesia. If you look closely, there are several regulatory differences between the 1997 UUPPLH and the 2009 UUPPLH. First, the 1997 UUPPLH formulates criminal acts as actions that result in pollution and/or destruction of the environment (as regulated in Article 41), while the 2009 UUPPLH formulates

criminal acts as actions that result in exceeding ambient air quality standards, water quality standards, and water quality standards. sea, or standard criteria for environmental damage (as regulated in Article 98). Second, the 1997 UUPPLH formulates a maximum penalty, while the 2009 UUPPLH formulates a minimum and maximum penalty. Third, the 2009 UUPPLH regulates matters that are not regulated in the 1997 UUPPLH, namely punishment for violations of quality standards (as regulated in Article 100), expansion of evidence, integrated criminal law enforcement, and regulation of corporate criminal acts.

### ***5. Subjects in Environmental Crimes***

The formulation of Environmental Crimes in Law Number 32 of 2009 always begins with the words "whoever". This can be interpreted the same as the meaning of "person". However, in Article 1 point 32 it is emphasized that what is meant by "person" is: Every person is an individual or business entity, whether a legal entity or not a legal entity. On the other hand, articles can be found that regulate the liability of legal entities, companies, associations, foundations or other organizations in accordance with Article 116. Whether based on work relationships or other relationships, those acting in legal entities, companies, associations, foundations or other organizations, claims criminal acts are committed and criminal sanctions are imposed on those who give orders or act as leaders without considering whether these people, whether based on work relationships or other relationships, commit criminal acts individually or together. Thus, it can be concluded that the subjects who can be held responsible for environmental crimes are people and corporations (legal entities) either individually or jointly. This means that criminal charges must include Article 55 of the Criminal Code (Delneming). In the event that a criminal act is committed by a corporation/legal entity and so on, criminal liability can be imposed on: (a) The legal entity, company, association, foundation or other organization or non-legal entity (group); (b) Those who give orders to commit criminal acts or who act as leaders; or (c) Both.

### ***6. Types of Sanctions in Environmental Crimes***

Types of sanctions for environmental crimes in Law Number 23 of 1997 is:

- (1) Only basic punishments in the form of imprisonment and fines are used, because environmental crimes in this law are only qualified as crimes;
- (2) Sanctions for "disciplinary action" that can be imposed on perpetrators/subjects in the form of individuals/legal entities, in the form of:
  - i. Confiscation of profits obtained from criminal acts; and/or;
  - ii. Company closure (completely/partially); and/or;
  - iii. Reparations resulting from criminal acts; and/or;

### ***7. Enforcement of Environmental Criminal Law***

Law functions to regulate, also functions as a provider of certainty, security, protection and balance, whose nature can not only be adaptive, flexible, but also predictive and anticipatory. This legal potential lies in two

main dimensions of the legal function, namely the preventive function and the repressive function. The preventive function is the preventive function, which is expressed in the form of preventive regulations which are basically the design of every action that society wants to take which covers all aspects of human action, including risks and predictive arrangements for forms of risk management. Meanwhile, repressive is a countermeasure function, which is expressed in the form of dispute resolution or restoration of damage to conditions caused by the risk of actions that have previously been determined in the action planning. Environmental crimes can be categorized as administrative penal law or public welfare offenses, which gives the impression of the lightness of these acts. In this case, the function of criminal law is to support administrative sanctions for compliance with administrative law norms. Thus, the existence of environmental crimes actually depends on other laws.

### **8. *Environmental Crimes in Legislation***

Environmental offenses are not only regulated in one statutory regulation, but are regulated in various regulations, namely:

1. Criminal acts in Law Number 32 of 2009 concerning
2. Environmental Management and Protection, regulated in Article 99-115.
3. Criminal acts in Law Number 18 of 2008 concerning Waste Management, regulated in Articles 40-41.
4. Criminal acts in Law Number 18 of 2013 concerning Prevention and Eradication of Forest Destruction, regulated in Article 82-106/
5. Criminal acts in Law Number 18 of 2012 concerning Food, regulated in Articles 133-146
6. Criminal acts in Law Number 4 of 2009 concerning Mineral and Coal Mining, regulated in articles 158-165

### **9. *Weaknesses of Environmental Criminal Law***

Enforcement of environmental criminal law has several weaknesses that can affect the effectiveness and efficiency of law enforcement, including:

1. Regulatory complexity: Regulations relating to the environment are often very complex and difficult for the general public to understand. This can cause difficulties in law enforcement and make it difficult for law enforcers to identify violations that occur.
2. Limited resources: Enforcement of environmental criminal law requires large resources and is sometimes expensive. Limited resources can limit the ability of governments and law enforcement agencies to investigate and prosecute environmental violations.
3. Evidence that is difficult to collect: The evidence needed to prove environmental violations is often difficult to collect, especially if the violations are committed by companies or parties that have greater resources than law enforcement agencies.
4. Jurisdiction issues: Sometimes environmental violations involve multiple jurisdictions, which can make enforcement more difficult and time consuming.

5. Long-term impacts: Environmental impacts caused by violations can occur over a long period of time and are difficult to repair. This can cause difficulties in providing fair compensation and environmental remediation for victims.
6. Inadequate legal sanctions: Legal sanctions provided for environmental violations are often inadequate and do not provide a deterrent effect for the perpetrators. This may lead to a recurrence of the violation in the future.
7. Imbalance of interests: Sometimes environmental criminal law enforcement can face strong economic or political interests, which can cause law enforcement to be ineffective.

The inability to address these weaknesses can result in ineffective environmental criminal law enforcement that does not provide adequate protection for the environment and society. Therefore, more comprehensive and coordinated steps are needed to increase effective and efficient environmental criminal law enforcement.

## **CONCLUSION AND RECOMMENDATION**

In the Criminal Code, there are several articles relating to environmental violations, such as air pollution, water pollution, hazardous waste disposal, forest destruction and illegal hunting. These articles provide a legal basis for dealing with actions that damage the environment and protecting environmental sustainability. Although there are no provisions that specifically regulate environmental recovery and restoration in the Criminal Code, this is regulated in other laws and regulations, such as the PPLH Law.

Here some suggestions:

1. Increasing Environmental Law Awareness: It is important to increase awareness of environmental law provisions, including the relevant articles in the Criminal Code. Education and outreach regarding environmental protection and the legal consequences of environmental violations need to be improved to encourage compliance with the law.
2. Effective Law Enforcement: The government and law enforcement agencies must carry out effective law enforcement against environmental violations. This includes investigations, gathering strong evidence, and prosecuting perpetrators of violations. Strict and fair sanctions must be imposed to prevent actions that damage the environment.
3. Active Environmental Recovery and Restoration: It is important to ensure that environmental recovery and restoration efforts are carried out after an environmental violation occurs. The government, business actors and society must work together to restore and restore damaged environmental conditions. Environmental recovery funds must be allocated wisely to support effective recovery efforts. With these steps, it is hoped that we can increase awareness, effective law enforcement, active environmental restoration, and strong collaboration in efforts to maintain and protect the environment for current and future generations.

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