

## Procedure for Giving Compensation to Victims of Environmental Pollution in the Sidoarjo bio Industrial Area

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### Abstract

Pollution not only affects people's lives today, but also threatens their survival in the future. If one of the parties who are harmed or harmed feels harmed by an activity that pollutes or damages the environment so that the occurrence of this can turn into an environmental conflict. Requirements for compensation for parties harmed by environmental factors were previously regulated in the elucidation of the Regulation of the State Minister for the Environment Number 13 of 2011, but implementation was not carried out. So that every citizen or community has the right to a healthy and good environment that is bound to protect the environment and also to prevent and mitigate environmental pollution and damage, protect and manage the environment as a form of human endeavor in carrying out its interactions with the environment in order to sustain life to achieve prosperity and environmental sustainability. The criteria for compensation for victims of pollution are regulated by changes in the value of property before and after pollution and/or environmental damage, how to value community assets, how to calculate additional costs and cost prevention, loss of income, changes in operations, and money generated by pollution and/or environmental damage, as well as medical costs. If the polluter is required to include costs of pollution and/or environmental damage into the calculation of production costs, operational and/or operational costs, in addition to paying the agreed compensation, then the compensation is considered reasonable. An obstacle to paying proper compensation to victims of pollution is the lack of human resources in the area, such as experts in calculating environmental compensation. Compensation must be carried out according to the procedures of the Environmental Agency and special laws, so that the person concerned bears legal responsibility for losses paid to victims of environmental damage. For this reason, the formulation of the problem can be found, namely what is the procedure for providing compensation for environmental pollution in the bio-industrial area.

**Keywords:** Compensation; Environmental Pollution; Accountability;

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### Introduction

Sidoarjo regency is located in Indonesia's East Java province, whose main city is Sidoarjo. This area is limited to the north by the City of Surabaya and Gresik Regency, to the east by the Madura Strait, to the south by Pasuruan Regency, and to the west by Mojokerto Regency. The city of Surabaya views Sidoarjo as a pillar. Sidoarjo Regency is located in the lowlands according to its geographical location. Because it is located between the Brantas and Porong rivers, two important rivers, Sidoarjo is also known as the City of Delta. There are 18 sub-districts in Sidoarjo Regency, each of which has been split into several villages. Sidoarjo Regency is an industrial area that is growing rapidly and is one of the pillars of the city of Surabaya in addition to the superior goods produced by the city, such as milkfish and shrimp. Sidoarjo Regency has geographical conditions and a strategic position in terms of industrial development. This Regency area is an area with great potential to build a factory. Obviously, because of the large number of industrial factories in Sidoarjo Regency, the people in this area do not have a healthy environment, which is partly due to the air pollution generated by these industrial factories.

As stated in the preamble of the 1945 Constitution, the main objective of the health sector is to develop the knowledge, will, and ability to live a healthy life in order to achieve an ideal degree of health, which is one of the components of well-being. Health as a Human Right (HAM) must be fulfilled by offering various health initiatives to the whole society by implementing health development that has adequate quality and funding (Abdullah Yazid, 2007). The growth of a nation depends on the health of its people. The basic human need is good health. Regardless of how important it is, saying that health is everything is useless. The growth of Indonesia's human resources, national defense and competitiveness depend on non-discriminatory, participatory, protective and sustainable principles, which underpin every initiative and measure to improve public health to the greatest extent (Taba & Husni, 2007).

Therefore, in the 1945 Constitution of the Republic of Indonesia it is written "Every person has the right to live in physical and spiritual prosperity, to have a home, to enjoy a good and healthy environment, and to obtain health services." "Every person has the right to receive facilities and special treatment to obtain equal opportunities and benefits in order to achieve equality and justice," paragraph (2) reads. recognized" set forth in paragraph (3). Article 34 paragraph 2 of the 1945 Constitution reads as follows: "The state administers a social security system for the most vulnerable people. According to paragraph (3), "everyone has the right to social security which enables his full development as a dignified human beings". According to paragraph 2 of Article 34 of the 1945 Constitution, "the state develops a social security system for all people and makes use of people who are weak and incapable in accordance with human dignity". It is stated in paragraph (3) that "the state is responsible for providing facilities decent public services". The following is the information stated in paragraph (4): "Further provisions regarding the implementation of this article are regulated in law."

According to Law Number 36 of 2009 concerning Health, every person, family and community has the right to receive protection for their health. It is the duty of the state to enforce laws to ensure that everyone in its population, especially the disadvantaged and poor, has access to a healthy life. According to Levey Loomba, health services are efforts made by an organization either individually or jointly to maintain and improve health, prevent and cure disease and restore individuals, groups and or society (Levey & Loomba, 1973). For this reason, the formulation of the problem can be found, namely what is the procedure for providing compensation for environmental pollution in the bio-industrial area.

## **Materials and Methods**

Research methodology is a process or system used by researchers to collect and evaluate legal data that will be used. According to Johnny Ibrahim, normative legal research is a scientific research procedure to find the truth based on scientific logic from the normative side, the normative side here is not limited to laws and regulations (Lili Rasjidi & I.B Wisa Putra, 1993). Normative legal research, or legal research to identify legal norms, legal principles, and legal doctrines to answer the legal challenges put forward by the author. To find answers to legal problems, normative legal research is used. Normative legal studies do not consider actual legal practice (law in action), only legal norms. The conclusion of this study offers recommendations on how to frame the issues that have been raised. Research from the perspective of environmental protection and management laws and related human rights laws is needed to answer the legal questions that have been generated by researchers. This is known as the statute law method.

Then the conceptual approach is a variety of theoretical approaches and beliefs that are dominant in the field of law. A contextual approach that provides an analytical perspective in solving legal research problems from a legal research perspective is also a form of legal research. Legal words that support or can be inferred from the values in the standard guidelines with respect to the terms used. The researcher concentrates on the notion of environmental rights as human rights in this study.

## Results and Discussion

### Procedures for Providing Compensation to Victims of Environmental Pollution in Bio-Industrial Areas

The idea that everyone has certain rights cannot be separated from the idea of human rights (*HAM*). From a human rights perspective, fulfillment of the right to the economy and management of natural resources is guaranteed in the Universal Declaration of Human Rights in Article 22 which states that: "everyone as a member of society has the right to social security and the realization of economic, social and cultural rights which are indispensable for dignity and the free development of his personality, through national efforts and international cooperation, and in accordance with the arrangements and resources available in each country", the category of human rights includes environmental rights. The balance that allows individual dwellings is influenced by ecosystem elements that produce a microcosm of nature. Without the sustainability of natural ecosystems, the continued existence of humans is in jeopardy; therefore, threats to the environment are also challenges to human rights such as the right to life. From a human rights perspective, Article 22 of the Universal Declaration of Human Rights guarantees the fulfillment of economic and natural resource management rights. It is said that various methods, approaches, theories and beliefs are dominant in the field of law. A contextual approach that provides an analytical perspective in solving legal research problems from a legal research perspective is also a form of legal research (Budiarsih, 2021). Legal words that support or can be inferred from the values in the standard guidelines with respect to the terms used. The researcher concentrates on the notion of environmental rights as human rights in this research.

Although the right to the environment is enshrined in law stating that "Everyone has the right to a good and healthy environment as part of human rights", according to Article 65 of Law No. 32 of 2009 on Environmental Protection and Management (*UUPPLH*). According to Article 68 of Law No. 41 of 2004 on Forestry, "People have the right to enjoy a good and healthy quality of environment". In addition, Law No. 7 of 2004 Article 5 states that "The state guarantees the right of every person to obtain water in accordance with the minimum daily basic needs to fulfill a healthy, clean and productive life" in accordance with the constitution. However, this recognition is still limited to written statements that may not be followed up. Although the wording of the pair of articles is problematic, Satya Arinanto asserts that with the inclusion of human rights provisions in the second amendment of the 1945 Constitution, at least we have a more significant basis in the field of human rights. However, this does not mean that issues relating to human rights will immediately disappear from Indonesian politics and public administration (Muladi, 2002).

People's desire to design their own lives without considering the implications is the root cause of environmental problems including pollution and environmental degradation. Since this goal is based on the right to development, environmental problems are equally a human rights issue. According to Otto Soemarwotto, environmental problems resulting from development may have reduced or perhaps completely erased their beneficial effects

(Abdullah Yazid, 2007). The right to life protection also known as the "right to life" as well as the "right to a healthy life" also known as the "right to a healthy environment" have been violated and ignored.

One of the best ways to protect the environment is through the legal protection of human rights (Rudy Sapoelete et al., 2021). This is how human rights and the environment relate to each other, both are interdependent. As a result of the interdependence between human rights and the environment, Law No. 39/1999 on Human Rights has environmental protection measures that also safeguard human rights, especially those relating to the right to life, right to health, and property damage. This demonstrates the need to recognize and defend human rights while preserving the environment, and that both of these can be done to promote sustainable development. This is due to the fact that protecting and respecting human rights is an effective means of safeguarding the environment.

Liability is a specific form of responsibility, its definition refers to the position of a person or legal entity that is deemed to have to pay a form of compensation or compensation after a legal event or legal action. According to Agus Yudha Hernoko, liability is a series to bear losses caused by mistakes or risks (Anis Rifai, 2022). It is also explained by Y.Sogar Simammora that liability is not only in the form of compensation, but also restoration to its original state. Civil liability in Law No. 32 of 2009 on Environmental Protection and Management ("*UUP PPLH*"), tort (*PMH*) or strict liability are both possible. Evidence must meet the requirements below to prove that a person or business violated the law. According to article 67 of Law No. 32 of 2009 on Environmental Protection and Management (hereinafter *UUPPLH*) that "every person is obliged to preserve the function of the environment and control pollution and/or environmental damage". Each party has the right to a healthy and good environment. People can pursue their interests in a safe and healthy environment by using their rights as a basis for legal action. This legal statement covers two separate purposes listed below and can be practiced through court procedures or other institutional means (Syaifullah, 2009b):

1. The first function relates to the individual's right to protect himself from environmental disturbances that have damaged him.
2. The second function refers to the individual's ability to request action for the preservation, improvement, or maintenance of the environment. In addition, Article 84 of *UUPPLH* stipulates that:
  - a. It is possible to resolve environmental conflicts in court or outside of it.
  - b. The parties involved choose willingly to resolve environmental disputes in this way.
  - c. Only when the chosen attempt to resolve the conflict out of court has been deemed a failure by one or more of the opposing parties, a lawsuit may be filed with the court.

According to this article, if attempts to settle the dispute out of court fail, especially if the disputing parties cannot agree on the amount of compensation to be given to victims of environmental pollution, an environmental lawsuit may be filed. Filing a claim for compensation for environmental damage in court is one way to take legal action to force the government to uphold the right to a good and healthy environment.

Civil liability in the context of environmental law enforcement, civil liability is a civil law mechanism for seeking restitution and expenses related to environmental restoration caused by environmental pollution. Liability based on fault (also known as *Schuld*

Aansprakelijk Tort Liability) or liability based on fault (also known as Schuld Aansprakelijkheid in Continental European legal systems) are two categories of liability recognized by this civil liability. Tort liability, which is a very old type of liability and is thought to have its origins in ancient Rome, is often referred to as tort liability or tortious liability in Anglo-American legal systems.

The concept of liability based on fault implies that the defendant is liable if it proves its fault, thereby relieving it of any civil liability. For example, in the case of a claim for damages caused by environmental pollution, the defendant must be liable for compensation if he proves that he has committed an act that causes environmental pollution that harms the plaintiff or victim.

The concept of liability is enshrined in Article 1365 of the Civil Code on tort, and has been adopted in the 2009 *UUPPLH* precisely in Article 87 paragraph (1) that "every person in charge of a business or activity that commits an unlawful act resulting in pollution and/or destruction of the environment that endangers other people or the environment is obliged to compensate and/or take certain steps".

According to this article, any person who controls a company or activity that pollutes or damages the environment commits an illegal act. The provisions of Article 87 paragraph (1) of *UUPPLH* contain elements:

- a. Person in charge of business and or company activities
- b. Unlawful act
- c. Pollution or destruction of the environment
- d. Harming people or other living beings
- e. Paying compensation and/or taking certain actions"

In order to obtain the prescribed action for environmental pollution, the conditions or elements of this article must be met. In one of these articles, it is stated that the things that can lead to environmental claims are unlawful acts, but not all unlawful acts can lead to environmental claims (Lili Rasjidi & I.B Wysa Putra, 1993). The unlawful act referred to here is an unlawful act that pollutes the environment and for the unlawful act to cause environmental pollution that leads to environmental liability claims, the act must cause environmental damage, harm to others or the environment.

The provisions of Article 87 *UUPPLH* are the implementation of the principle in environmental legislation known as the polluter pays principle. In addition to the obligation to pay compensation, the judge can also impose obligations on polluters in determining certain legal actions as follows:

- a. Placing or repairing a waste management system to provide certainty that the waste is in accordance with the established environmental quality requirements.
- b. The function of the environment returns to normal.
- c. Destruction or elimination of the root cause of environmental pollution.

In general, the polluter pays principle means that the perpetrator must incur the costs of pollution prevention and the authorities choose to meet environmental quality standards. This

is based on the fact that the cost of environmental management measures should be reflected in the cost of environmentally damaging goods and services to be produced or used (Putra Manuaba, 2007).

The weakness of fault-based liability in the application of environmental law in court will cause various obstacles. This is because an important requirement that must be met is the element of negligence or fault (Budiarsih, 2021). Thus, if the defendant succeeds despite causing harm, it can be exempted from liability.

Changes made in Indonesia that encourage movement in the territorial demonstrations of government. The most significant amount of control allowed for regional organizations, especially in the form of giving independence to the districts in the development of their domains (Kastiyowati I, 2001). Changes to the 1945 Constitution, which form the state structure, can certainly have an important impact on changes to the overall state regulatory structure. As a result of the 1945 Protection Revision, laws and regulations have also been adjusted. "Laws and other controls related to administration in the regions are to fill in the use of the number of independence that is most important for the region, to make corrections and progress or changes to current progress," said Bintan Saragih.

The nearby government is allowed to manage its territory, and with that control, the government can issue licenses to manage the normal resources in the territory. Usually since the nearby government looks better studied almost the results are imagined to create characteristic assets in their zone in order to expand the people's welfare. The organization of common assets, especially normal gas assets, is under the domain of the neighborhood government, and they should be accountable. Neighborhood governments are expected to oversee their normal assets by considering the standards of territorial independence inside the system of the Unitary State of the Republic of Indonesia much obliged for this territorial independence and the control they have, so that they can really contribute to the success and welfare of the general public (Budiarsih, 2021).

## **Conclusion**

Environmental licenses in Indonesia are regulated by various sectoral laws and regulations, with areas regulated under license agreements including those related to irrigation, mining, forestry, industry, planning, land use, hazardous waste treatment, combating pollution and/or damage to the sea, fishing, conservation of biological natural resources and their ecosystems, as well as environmental issues such as climate change (Arsyad L, 2005). Administrative law enforcement and criminal law enforcement are the 2 (two) types of law enforcement involved in the permit acquisition process. The purpose of applying administrative law is to improve the situation.

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