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## THE LEGAL CONSEQUENCES OF CONSTITUTIONAL COURT DECISION NO. 18 OF 2014 ON THE ENFORCEMENT OF CRIMINAL LAW CONCERNING HAZARDOUS AND TOXIC WASTE AGAINST CORPORATIONS

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### ABSTRACT

This research aims to examine the legal consequences of Constitutional Court Decision No. 18 of 2014 regarding the case of hazardous and toxic waste against corporations. Furthermore, the study also analyzes the enforcement of criminal law concerning hazardous and toxic waste against corporations after the Constitutional Court's decision. The Constitutional Court's Decision No. 18 of 2014 has significant implications for the enforcement of criminal law concerning hazardous and toxic waste by corporations. It provides guidance and limitations on how the law should be interpreted and applied in cases related to environmental offenses committed by corporations. The research will focus on evaluating the post-decision enforcement of criminal law against corporations involved in hazardous and toxic waste cases. It will examine the roles of law enforcement agencies, such as the police, prosecutors, and the judiciary, in investigating, prosecuting, and adjudicating cases involving corporations and hazardous waste. Additionally, the study will explore the protection of human rights and access to justice for victims affected by hazardous and toxic waste. It will also investigate preventive measures and regulatory frameworks aimed at deterring environmental offenses by corporations. The research will employ a combination of legal analysis, case studies, and comparative studies to examine the effectiveness of the enforcement of criminal law in light of the Constitutional Court's decision. It will contribute to the understanding of the legal implications and challenges faced in prosecuting and holding corporations accountable for hazardous and toxic waste.

**Keywords** : *Constitutional Court Decision, Hazardous And Toxic Waste, Corporations, Criminal Law Enforcement, Environmental Offenses.*

### INTRODUCTION

Environmental Crimes or Environmental Delicts are lawful orders and prohibitions against legal subjects which, if violated, are threatened with imposition of criminal sanctions,

including imprisonment and fines with the aim of protecting the environment as a whole as well as elements in the environment such as animals, land, air and water as well as people.<sup>1</sup> Environmental offenses are not only criminal provisions formulated by Law Number 32 of 2009 concerning Environmental Protection and Management, but also criminal provisions formulated in other laws and regulations as long as the formulation of these provisions is intended to protect the environment as a whole. or parts thereof.<sup>2</sup> Criminal law provisions in Law Number 32 of 2009 concerning Environmental Protection and Management are regulated from Article 97 to Article 120. Law Number 32 of 2009 concerning Environmental Protection and Management expressly stipulates that environmental crimes are crimes.

With the MK 18/PUU-XII/2014 Decision giving a new color to the understanding of several articles contained in the UUPPLH, as well as giving a big influence, namely that in terms of implementing environmental criminal law enforcement whether it is related to environmental crimes or other criminal acts originating from of the UUPPLH must apply integrated law, both civil investigators, police investigators, prosecutors under the coordination of the minister of environment. In connection with environmental crimes related to Toxic Hazardous Materials, it is increasingly common in Indonesia due to the industrialization era, including export and import of Hazardous Toxic Waste, dumping (disposal) of hazardous and toxic waste, illegal storage of Toxic Hazardous Material waste or management of Toxic Hazardous Material waste without permits should receive more attention from the Government. In fact, Indonesia has been one of the importing countries for Toxic Hazardous Material waste since 1991. One of the Toxic Hazardous wastes that is still being imported today is used batteries which are taken as lead which is a dangerous and toxic contaminant. In addition to importing used batteries, Indonesia has also imported plastic waste, in which other Toxic Hazardous Materials such as plasticizers and sludge and Hazardous Toxic Material packaging have also been sent.<sup>3</sup>

The case of 113 containers containing used iron imported into Indonesia through several major ports, containing hazardous and toxic waste taken from landfills in England and the Netherlands without being cleaned first even though there was a lot of dirt, including soil, oil, rust, plastic, asphalt or other dirt. According to the rules, the import of used iron must be cleaned first, and only the metal or iron is brought. Then the liquid waste allegedly containing hazardous and toxic materials that were disposed of in the waterways near the Romo Kalisari flat is also waste imported from South Korea. Handling of cases of import of hazardous and toxic waste on Galang Baru Island in Batam with the modus operandi of importing hazardous and toxic waste with the argument that organic material (compost) turns out that the heavy metal content contained in the waste is included in the hazardous and toxic materials.<sup>4</sup> On that basis, the law enforcement of Hazardous and Toxic Material waste must be upheld and must not be weak, and

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<sup>1</sup> Bukit, N., Ginting, E. M., Hutagalung, E. A., Sidebang, E., Frida, E., & Bukit, B. F. 2019. "Preparation and characterization of oil palm ash from boiler to nanoparticle". *Reviews on Advanced Materials Science*, 58(1), 195–200, h. 197

<sup>2</sup> Takdir Rahmadi, 2011. *Hukum Lingkungan di Indonesia*, Jakarta: PT. Raja Grafindo Persada, h. 221

<sup>3</sup> <http://www.nasional.tempo.co/berita/baca/Indonesia-Jadi-Importir-Limbah-B3-dikunjungi-pada-tanggal-5-mei-2023>

<sup>4</sup> <http://www.menlh.go.id/berita/Kemajuan-Penanganan-Pidana-Kasus-Impor-Limbah-B3-di-Pulau-Galang-Baru-Batam-dikunjungi-pada-tanggal-5-mei-2023>

the discussion and/or regulation regarding Toxic Hazardous Material waste must be comprehensively understood. Based on the Constitutional Court Decision 18/PUU-XII/2014 it requires integrated enforcement under the coordination of the ministry to make environmental law enforcement directed under one coordination. Prior to the Constitutional Court Decision 18/PUU-XII/2014; environmental law enforcement seems to work separately because the UUPPLH does not require integrated enforcement but instead provides a choice with the phrase "can".

Environmental law issues that grow and develop in society are increasingly complex, thus requiring comprehensive and integral regulations capable of being used as a basis for implementing law enforcement. Explicitly, the environmental management paradigm has been accommodated in the state constitution. In Article 33 paragraph (3) and (4) of the 1945 Constitution, it is fundamental and fundamental. Thus it can be said that the Indonesian Constitution which contains legal policies for environmental management is what Jimly Asshiddiqie calls the principle of "green constitution". This principle should become the spirit that animates the logic of our legislation so as to create the principle of "green legislation" in the formation of laws and regulations.<sup>5</sup> MK Decision NO 18 PUU-XII.2014 has "progressive" implications in the implementation of law in Indonesia. So that in the implementation of the "integrated criminal justice system" in the Criminal justice system which is a working mechanism in crime prevention that uses a basic systems approach. The system approach in question is that crime prevention is carried out by involving the sub-systems in it as a unit that is interconnected and influences each other between these sub-systems. Through this system approach, the police, prosecutors, courts and correctional institutions are sub-systems that are related to each other in carrying out their duties and functions.

Based on the description above, the formulation of the problem can be formulated, namely regarding the legal consequences of the Constitutional Court Decision No. 18 of 2014 Regarding Cases of Toxic Hazardous Waste Against Corporations. further in this research will also analyze the enforcement of criminal law against toxic hazardous waste materials against corporations after the decision of the constitutional court no. 18 of 2014.

## **RESEARCH METHOD**

The normative legal research method used in this study aims to analyze the legal consequences of the Constitutional Court Decision No. 18 of 2014 regarding cases of toxic hazardous waste involving corporations. In addition, this study will also analyze the enforcement of criminal law against toxic hazardous waste against corporations after the issuance of the decision. This research method will involve an analysis of relevant legal regulations, such as environmental protection laws and laws on hazardous waste. Researchers will identify and analyze the legal norms contained in these regulations, including permit requirements, corporate responsibility, criminal sanctions that can be applied, and other aspects related to the

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<sup>5</sup> Jimly Asshiddiqie, 2009, *Green Constitution, Nuansa Hijau Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, Jakarta: Raja Grafindo Persada, h. 62

enforcement of criminal law against toxic hazardous waste by corporations. In addition, this research will also conduct a literature study to collect information and data related to the implementation of the Constitutional Court decision no. 18 of 2014. This literature study will cover previous research, journals, books, and other relevant sources to gain a comprehensive understanding of criminal law enforcement against toxic hazardous waste by corporations.

## RESULTS AND DISCUSSION

### The Legal Implications of Constitutional Court Decision No. 18 of 2014 Regarding Toxic and Hazardous Waste against Corporations

The Legal Implications of Constitutional Court Decision of the MK 18/PUU-XII/2014 Decision giving a new color to the understanding of several articles contained in the UUPPLH, as well as having a major influence, namely that in terms of implementing environmental criminal law enforcement whether it is related to environmental crimes or other criminal acts originating from UUPPLH must apply integrated law both civil investigators, police investigators, prosecutors under the coordination of the minister of environment.<sup>6</sup> If it is associated with the concept of a criminal justice system, it was first put forward in the United States by criminal law experts and experts in criminal justice science. The criminal justice system emerged along with dissatisfaction with the working mechanism of law enforcement apparatus and law enforcement institutions which are based on a law and order approach which heavily depends on the success of crime prevention on the effectiveness and efficiency of work only on the police organization (law enforcement).<sup>7</sup> based on the concept of the criminal justice system is associated with the Constitutional Court Decision No. 18 of 2014 regarding the case of toxic hazardous material waste against corporations has a significant impact on the criminal justice system. This problem is related to the involvement of corporations in environmental violations involving the waste of toxic hazardous materials that have the potential to damage human health and ecosystems.

The concept of a criminal justice system in this context is that in the Constitutional Court's decision it can influence the interpretation and application of criminal law related to environmental crimes by corporations. The decision may provide new instructions or limitations regarding corporate criminal responsibility in cases of toxic hazardous waste, including types of actions that can be considered as criminal violations, sanctions that can be imposed, and prosecution mechanisms. The decision of the Constitutional Court can also affect the practice of enforcing criminal law against corporations in cases of toxic hazardous waste.<sup>8</sup> This involves the role of law enforcement agencies, such as the police, prosecutors and courts, in investigating, prosecuting and prosecuting corporations involved in environmental violations. The influence of

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<sup>6</sup> Andi Haryanti, Dkk, 2014, *Studi Pemanfaatan Limbah Padat Kelapa Sawit*, *Jurnal Konversi*, 3(2), h. 20-21.

<sup>7</sup> Romli Atmasasmita, 1996. *Sistem Peradilan Pidana (Criminal Justice System) Perspektif Eksistensialisme Dan Abolisionalisme*. Jakarta: Bina Cipta. h. 9

<sup>8</sup> Muliari Dan Zulfahmy, 2016, "Dampak Limbah Cair Kelapa Sawit Terhadap Komunitas Fitoplankton Di Sungai Krueng Mane Kabupaten Aceh Utara", *Jurnal Perikanan Dan Kelautan*, 6(2), h. 138

these decisions can affect prosecution strategies, the evidence needed, and the authority of law enforcement agencies to take action against corporations that violate them.

The criminal justice system also involves considerations regarding the protection of human rights and access to justice in handling cases of toxic hazardous material waste against corporations. This includes protecting the rights of victims, a fair process, as well as efforts to recover and compensate those who are negatively affected by the waste of toxic hazardous materials.<sup>9</sup> In this analysis, it is important to evaluate whether the criminal justice system has the firmness and effectiveness in dealing with cases of toxic hazardous waste against corporations. Factors such as the availability of sufficient evidence, the quality of investigations, the involvement of experts and witnesses, as well as transparency and accountability in the judicial process are important considerations. In addition, it is also necessary to pay attention to efforts to prevent environmental crimes by corporations, including supervision, regulations and incentives in the criminal justice system. Prevention is an important aspect in minimizing cases of toxic hazardous waste and promoting environmental awareness in corporate business practices. In the context of the problem of the Constitutional Court decision No. 18 of 2014 regarding cases of toxic hazardous material waste against corporations requires a thorough evaluation of aspects of legal substance, law enforcement practices, protection of human rights, and prevention efforts. The goal is to ensure that the criminal justice system is able to effectively deal with environmental violations by corporations, provide justice to victims, and promote environmentally responsible business practices.

The Environmental Crimes or Environmental Delicts are lawful orders and prohibitions against legal subjects which, if violated, are threatened with imposition of criminal sanctions, including imprisonment and fines with the aim of protecting the environment as a whole as well as elements in the environment such as animals, land, air and water as well as people. Therefore, with this understanding, environmental offenses are not only criminal provisions formulated by Law Number 32 of 2009 concerning Environmental Protection and Management, but also criminal provisions formulated in other laws and regulations insofar as the formulation of provisions it is aimed at protecting the environment as a whole or its parts.<sup>10</sup>

### **Enforcement of Criminal Law against Toxic and Hazardous Waste on Corporations Post-Constitutional Court Decision No. 18 of 2014**

The existence of waste often causes problems for the environment, especially hazardous and toxic material waste. Toxic Hazardous Waste is the residue of a business or activity that contains Toxic Hazardous Materials. Hazardous Waste Toxic, both directly and indirectly, has the potential to pollute and endanger the environment, health, human survival and other living things. The characteristics of Toxic Hazardous Waste are explosive, flammable, reactive, toxic, infectious, corrosive, and so on. Therefore, special handling and processing of this type of waste

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<sup>9</sup> Henry Loekito, 2002, "Teknologi Pengelolaan Limbah Industri Kelapa Sawit", *Jurnal Teknologi Lingkungan*, 3(3), h. 250

<sup>10</sup> Takdir Rahmadi, 2011, *Hukum Lingkungan di Indonesia*, Jakarta: PT. Raja Grafindo Persada, h. 221

is required. An environmental permit is a permit granted to anyone who carries out a business and/or activity that is subject to an Amdal or UKL-UPL in the framework of environmental protection and management as a prerequisite for obtaining a business and/or activity permit. Supervision is carried out on activities that have environmental permits as an effort to monitor the arrangement of licensing requirements by agencies authorized to issue environmental permits.<sup>11</sup> As part of government decisions, licensing is a government legal action based on public authority that allows or introduces according to law a person or legal entity to carry out an activity.

The existence of norms contained in Article 59 paragraph (4) in conjunction with Article 102 of Law Number 32 of 2009 requires a permit for the management of toxic hazardous waste materials, but on the other hand Article 95 paragraph (1) stipulates that producers of toxic hazardous waste materials are required to manage waste materials. the resulting toxic hazard with the threat of criminal sanctions if it does not do so. The existence of these two contradictory norms has harmed the constitutional right to "recognition of guarantees, protection and fair legal certainty", as stipulated in Article 28D paragraph (1) of Law Number 32 of 2009. Therefore a legal issue arose which then the existence of this article The examiner submitted a judicial review of the Article in Law Number 32 of 2009 concerning Environmental Protection and Management which then raised the question of what was the basis for consideration of the Panel of Judges of the Constitutional Court in carrying out the review of Article 59 Paragraph (4), Article 95 Paragraph (1) ) and Article 102 of Law No. 32 of 2009 concerning the Protection and Management of the Environment against the 1945 Constitution. The Court's legal considerations are based on positive legal considerations and legal considerations outside of positive law. Whereas as argued by the Petitioner, Article 59 paragraph (4) in conjunction with Article 102 and Article 95 paragraph (1) of Law Number 32 of 2009, in decision number 18/PUU-XII/2014, the Court declared Article 59 paragraph (4) of the PPLH Law contrary to the 1945 Constitution and does not have binding legal force as long as it does not mean "Management of toxic hazardous material waste must obtain a permit from the minister, governor or regent/mayor in accordance with their authority and for the management of toxic hazardous material waste whose application for permit extension is still in process must be considered have obtained permission. The Constitutional Court judge also removed the word "can" and gave a conditional unconstitutional interpretation of the phrase "environmental crime" in Article 95 paragraph (1) of the PPLH Law as long as it does not mean "including other criminal acts stemming from violations of this law." That way, Article 95 paragraph (1) of the PPLH Law in full becomes "In the context of law enforcement against perpetrators of environmental crimes, including other criminal acts stemming from violations of this law, integrated law enforcement is carried out between civil servant investigators, the police, and the prosecutor's office under the coordination of the Minister.

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<sup>11</sup> Siti Sundari Rangkuti, 2000. *Izin Lingkungan sebagai Instrumen Pencegahan Pencemaran Lingkungan*, Surabaya: Universitas Airlangga., h. 488.

Enforcement of criminal law in the framework of executing evidence of Hazardous and Toxic Waste Materials must be in accordance with laws and regulations regarding the environment, its success is highly expected because it is in the field of law enforcement that the meaning of "a state based on law" is at stake.<sup>12</sup> The prosecutor as the executor has difficulty implementing the judge's decision which has permanent legal force. If the hazardous waste is confiscated for destruction, it has the potential to pollute the environment again. The enactment of the Law on the Protection and Management of the Environment, the complexity of the issue of environmental permits, remains unresolved. It is proven from the formulation of Article 18 paragraph (2) UUPPLH: permits to carry out activities are given by authorized officials in accordance with applicable laws and regulations.<sup>13</sup>

The Attorney General's Office as a component of the Criminal Justice System has a central role in law enforcement, namely as a *dominus litis*<sup>14</sup> as the executor of the prosecution function can effectively assess which criminal provisions will be used in prosecuting a case of environmental crime as well as the executor in carrying out judge decisions that have permanent legal force (*inkracht van gewijsde*). Evidence of toxic hazardous waste materials confiscated in a case also poses a legal risk to investigators and public prosecutors if the process of the case is not managed properly, whereas in order to execute the case the prosecutor must wait until the decision has obtained permanent legal force.

After the Constitutional Court Number 18/PUU-XII/2014 greatly influenced the enforcement of environmental law in Indonesia, for example one of them, namely the Constitutional Court Decision 18/PUU-XII/2014 made the management of hazardous waste materials which required permits in terms of its management to be interpreted differently, namely for the subject Those who are still in the process of extending management permits are said to have obtained material permits. environmental law enforcement in Indonesia is actually carried out with various legal instruments with the aim that ideal management and protection of the environment can be realized. The existence of the Constitutional Court Decision 18/PUU-XII/2014 gives a new color to the understanding of several articles contained in the UUPPLH, and has a major influence, namely that in terms of implementing environmental criminal law enforcement whether it is related to environmental crimes or other criminal acts originating from UUPPLH must apply integrated law both civil investigators, police investigators, prosecutors under the coordination of the minister of environment. so that every agency related to environmental law enforcement is obliged to follow the Constitutional Court Decision 18/PUU-XII/2014 which has provided a new interpretation of how to enforce environmental law, so that when practice in the field synchronization occurs between law enforcement agencies in enforcing environmental law.

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<sup>12</sup> Muladi, 1995, *Kapita Selekta Sistem Peradilan Pidana*, Semarang: Badan Penerbit Undip h. 71

<sup>13</sup> Siti Sundari Rangkuti, 2005. *Hukum Lingkungan dan Kebijakan Lingkungan Nasional*, Surabaya: Airlangga University Press, h. 47

<sup>14</sup> Jan Marinka, 2018. *Reformasi Kejaksaan dalam Sistem Hukum Nasional*. Jakarta: Sinar Grafika, h. 39

## CONCLUSION

Based on the discussion above, it can be concluded that the Constitutional Court Decision 18/PUU-XII/2014 gives a new color to the understanding of several articles contained in the UUPPLH, and has a major influence, namely that in the case of enforcing environmental criminal law, whether it is related to criminal acts environment or other criminal acts originating from the UUPPLH must apply integrated law, both civil investigators, police investigators, prosecutors under the coordination of the minister of environment. so that every agency related to environmental law enforcement is obliged to follow the Constitutional Court Decision 18/PUU-XII/2014 which has provided a new interpretation of how to enforce environmental law, so that when practice in the field synchronization occurs between law enforcement agencies in enforcing environmental law.

Enforcement of Criminal Law Against Toxic Hazardous Waste Against Corporations After the Constitutional Court Decision No. 18 of 2014 has a significant impact on criminal law enforcement against corporations involved in hazardous waste violations. The criminal justice system needs to adjust the interpretation and application of criminal law related to environmental crimes by corporations in accordance with the instructions and limitations provided in the Constitutional Court's decision. more The role of law enforcement agencies, such as the police, prosecutors, and courts, is important in investigating, prosecuting, and prosecuting corporations involved in hazardous waste violations. It is also very important that the prevention of environmental crimes by corporations through supervision, regulation and incentives must be the focus of criminal law enforcement after the Constitutional Court's decision to ensure that corporations are responsible for the negative impacts they have on the environment and society.

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