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The Enforcement of Environmental Criminal Law in Customary Law Community

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Abstract
The purpose of this paper was to examine and analyze the regulation of criminal sanctions in environmental crimes by customary law community, and analyze customary law community policies in the settlement of environmental crimes. This paper was normative research with a statutory and conceptual approach. The results of the study indicated that the regulation of Environmental Criminal Enforcement by Customary Law Community has been regulated in the provisions of environmental laws and regulations, namely Law No. 32 of 2009 concerning Environmental Protection and Management, Law No. 41 of 1999 concerning Forestry, and Regulation of the Minister of Environment and Forestry Number 32 of 2015 concerning Forests. Further, there are also environmental criminal laws which are regulated in other sectoral laws relating to the environment and natural resources. Regarding the Settlement of Environmental Crimes by Customary law community, it is done through efforts to arrange Deliberations and Restorations in the balance of nature and the environment that were previously damaged and polluted by customary law community. Thus, there is a need for recognition and management of customary forests that must be carried out professionally and sustainably based on local wisdom. Hence, it is expected to be able to improve equitable welfare.

I. Introduction

The material legality of an unwritten law is the basis of sentencing in Indonesia based on the Emergency Law Number 1 of 1951 concerning Temporary Measures to Organize the Unity of Powers and Procedures for Civil Courts (*hereinafter* Emergency Law No. 1 of 1951), in Article 5 paragraph 3 sub b, which states that civil material law and civil criminal material law which are currently in force are autonomous regions that are examined by customary courts. In other words, an act which according to living law must be considered a criminal act is punishable by a penalty of not more than 3 months in prison and/or a fine of five hundred rupiahs, as a substitute punishment, if the customary law imposed is not followed by the convicted party and the replacement referred to is deemed commensurate by the judge with the magnitude of the error. This indicates that customary criminal law still applies among customary law community.

Article 5 paragraph 3 b of the Emergency Law No. 1 of 1951 also stated that criminal acts are measured according to the law that lives in society, if this happens, then customary punishment is the sanction. Furthermore, Law Number 48 of 2009 concerning Judicial Power (*hereinafter* Law No. 48 of 2009) namely the provisions of Article 4 paragraph (1) include the phrase "according to the law", which can be interpreted as formal and material legality that the sound of the article contains instructions that judges pay attention to written regulations and legal regulations that are still lives in customary law communities. The provision is in accordance with the Article 5 paragraph (1) of Law No 48. of 2009, which stated that "*Judges and constitutional judges are obliged to dig, follow, and understand the legal values and the sense of justice that lives in society*". These provisions indicate an acknowledgment of the existence of customary law community and their regulations which are still used by them.

The existence of customary law community cannot be separated from the environment in which these communities live and develop. The environment for customary law community is a part of life, which is likened to the motherland as a foothold for generations. Hence, the preservation of the environment for customary law community is one of the main things. Referring to the provisions in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (*hereinafter* the 1945 Constitution) it is stated that:

> "*The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people*".

According to these provisions as the constitutional basis, it indicates that there is a close relationship between the community and the environment, including in terms of environmental enforcement and management for customary law community in Indonesia. This was later reaffirmed in Law Number 32 of 2009 concerning Environmental Protection and Management (*hereinafter* UUPPLH 2009) which provides opportunities for noble values that apply in the life of the community, including in terms of protecting and managing the environment in a sustainable manner, including the enforcement of criminal law in the environmental field.

The government has sought legal protection for the environment through the UUPPLH 2009, but environmental damage still occurs. Environmental damage is evidence that there is a need for reaffirmation through legal products that prioritize regulations regarding environmental damage by including legal instruments in administrative law, civil law and criminal law by adopting environmental-oriented international legal instruments. However, the handling of cases is still not focused on improving the environment, hence there are still cases of environmental destruction in several areas in Indonesia.

Based on the abovementioned, it is important to examine the regulation of criminal sanctions in environmental crimes by customary law community and the policies of the customary law community in the settlement of environmental crimes. The sanctions that can be imposed on the perpetrators of environmental destruction do not only focus on criminal sanctions, but the perpetrators are also subject to punishment in the form of participation in improving the environment in accordance with the initial conditions before the criminal act of environmental destruction occurred. This study suggests a settlement through restorative justice that uses the customs of customary

law community, namely with peace by prioritizing religious values as the basis for the movement of the community to repair the damage to the social order due to the actions of the perpetrators.

Previous study was conducted by Rodrigo Christopher Rembet in 2020 concerning "*Pengaturan Hukum Pengelolaan Lingkungan Hidup Menurut Deklarasi Stockholm 1972*".[1] This study shows the regulation concerning human environment according to the Stockholm Declaration 1972 and its implementation in Indonesia. Similar research was conducted by Febrian Chandra in 2020 concerning *"Peran Masyarakat Hukum Adat Dalam Mewujudkan Pelestarian Lingkungan Hidup*". [2] This research shows that environmental management must pay attention to intergenerational impacts including effective protection.

Based on the abovementioned, it seems that there are similarities in terms of topics, namely they both examine the role of customary law community in environmental management, but the focus of the study is different. This research focuses on the study of the regulation of criminal sanctions in environmental crimes by customary law community and the settlement of environmental crimes by customary law community.

The purpose of this study is to examine and analyze the regulation of criminal sanctions in environmental crimes by the community. This paper also aims to analyze the policies of customary law community in the settlement of environmental crimes. To realize the purpose of writing, this paper will discuss the substance that is relevant to the focus of the problem in a structured and systematic way. First, it discusses the regulation of criminal sanctions in environmental crimes by the community. Second, it discusses the policies of customary law community in the settlement of environmental crimes.

2. Research Method

This paper uses a normative legal research method because the focus of the study departs from the void of norms[3], using several approaches, namely: *statute approach, conceptual approach*, serta *analytical approach*. The technique of tracing legal materials uses document study techniques, as well as analysis studies using qualitative analysis.

3. Result and Discussion

3.1. Regulation of Criminal Sanctions in Environmental Crimes by Customary law community

Law enforcement is a system in which there are members of the government who act in an organized manner to enforce the law by finding, obstructing, recovering, or punishing people who violate the laws and legal norms that govern the community where the law enforcement members are located. Referring to Jimmly Assiddiqie's idea, Law Enforcement is defined as the process of making efforts to enforce or actually

[1] Rodrigo Christopher Rembet, "Pengaturan Hukum Pengelolaan Lingkungan Hidup Menurut Deklarasi Stockholm 1972," *Lex Et Societatis* 8, no. 4 (2020).

[2] Febrian Chandra, "Peran Masyarakat Hukum Adat Dalam Mewujudkan Pelestarian Lingkungan Hidup," *Ekopendia* 5, no. 1 (2020): 103–10.

[3] I Made Pasek Diantha and M S SH, *Metodologi Penelitian Hukum Normatif Dalam Justifikasi Teori Hukum* (Jakarta: Prenada Media, 2016). h. 12.

function legal norms as guidelines for behavior in traffic or legal relations in social and state life.[4]

Law enforcement in the context of criminal law is carried out through a criminal justice system whose implementation consists of at least 4 (components) namely the Police, Prosecutors, Courts and Corrections. These four components have been regulated in Law Number 8 of 1981 concerning Criminal Procedure Code (*hereinafter* KUHAP). Crimes handled by the Criminal Justice System in Indonesia always end up in prison. Even though prison is not the best solution in solving crime problems, especially crimes where the "damage" caused to victims and the community can be restored so that conditions that have been "damaged" can be returned to their original state, as well as eliminating the bad effects of imprisonment.

With regard to what is meant by Customary Law Community, it has been contained in the Elucidation of Article 67 of Law no. 41 of 1999 concerning Forestry (*hereinafter* Law No. 41 of 1999). According to the explanation of the article, a customary law community is one that meets the following elements:

a. The community is still in the form of an association *(rechtsgemeenschap);*
b. There are institutions in the form of traditional rulers;
c. There is a spesific customary law area;
d. There are legal institutions and instruments, particularly customary courts, which are still being adhered to; and
e. Still collects forest products in the surrounding forest area to fulfill their daily needs.

Referring to the research conducted by So Woong Kim, Law Number 32 of 2009 concerning Environmental Conservation and Management (*hereinafter* UUPPLH 2009) which replaces Law Number 23 of 1997 (*hereinafter* UUPPLH 1997) serves as a master law or *umbrella provisions.*[5] UUPPLH 2009 brings a fundamental change in the regulation of environmental management in Indonesia.[6]

There are some differences in the arrangement between UUPPLH 1997 dan UUPPLH 2009. Initially, UUPPLH 1997 formulate a criminal act as an act that results in environmental pollution and/or destruction (as regulated in Article 41), however UUPPLH 2009 formulate a criminal act, namely as an act that results in exceeding ambient air quality standards, water quality standards, sea water quality standards, or standard criteria for environmental damage (as regulated in Article 98). Moreover, UUPPLH 1997 formulate a criminal with a maximum penalty, while UUPPLH 2009 formulate a minimum and maximum penalty. Further, UUPPLH 2009 regulates things that are not regulated in UUPPLH 1997 namely, punishment for violating quality

[4] Muhar Junef, "Penegakkan Hukum Dalam Rangka Penataan Ruang Guna Mewujudkan Pembangunan Berkelanjutan," *Jurnal Penelitian Hukum P-ISSN* 1410 (2021): 5632.
[5] So Woong Kim, "Kebijakan Hukum Pidana Dalam Upaya Penegakan Hukum Lingkungan Hidup," *Jurnal Dinamika Hukum* Vol. 13, no. No. 3 (2013): Hal. 415.
[6] Edra Satmaidi, "Politik Hukum Pengelolaan LingkunganHidup Di Indonesia Setelah Perubahan Undang-Undang Dasar 1945," *Jurnal Konstitusi* Vol. 4, no. No. 1 (2011): Hal. 69-81.

standards (as regulate in Article 100), expansion of evidence, integration of criminal law enforcement, and regulation of corporate crime.[7]

Further, regarding the explanation of UUPPLH 2009, it also explained about the basic differences with UUPPLH 1997. The difference can be seen in the reinforcement contained in the UUPPLH 2009 concerning the principles of environmental protection and management based on good governance because in every process of formulating and implementing instruments for preventing pollution and/or environmental damage as well as tackling and enforcing the law, it is obligatory to integrate aspects of transparency, participation, accountability, and justice.[8]

With regard to the regulation of environmental crimes committed by customary law community, it has been specifically regulated in Law No. 41 of 1999. The Article 8 paragraph (1) states that the Government can designate certain forest areas for special purposes. Further, in article 8 paragraph (2) it has been regulated that the determination of forest areas with special purposes, as referred to in paragraph (1) is required for public interests such as:

a. Research and development
b. Education and training; and
c. Religion and culture.

Based on the provision abovementioned, it can be understood that the relationship between forests and customary law community. Arrangements for the relationship between forests and customary law community are regulated in Article 34 which stipulates that the management of forest areas for special purposes as referred to in Article 8 can be granted to:

a. Customary law community;
b. Educational institutions;
c. Research institutions;
d. Social and religious institutions.

The forest benefits are regulated in the provisions of Article 37 paragraph (1) Law No. 41 of 1999 which determines that the utilization of customary forest is carried out by the customary law community concerned, in accordance with its function. Article 37 Paragraph (2) the utilization of customary forest with the function of protection and conservation can be carried out as long as it does not interfere with its function.

The scope of environmental criminal law is UUPPLH 2009 which is in Article 97 to Article 120 which regulates criminal acts. In addition to this law, there are also environmental criminal laws regulated in sectoral laws, namely, among others; Law Number 5 of 1960 concerning Agrarian Principles, Law Number 11 of 1962 concerning Hygiene for Public Enterprises, Law Number 5 of 1967 concerning Forestry Principles, Law Number 5 of 1983 concerning Economic Zones Indonesian Exclusive (ZEEI), Law Number 5 of 1984 concerning Industry, Law Number 9 of 1985 concerning Fisheries, Law Number 5 of 1990 concerning Conservation of Biological Resources and Their

[7] So Woong Kim, "Kebijakan Hukum Pidana Dalam Upaya Penegakan Hukum Lingkungan Hidup."
[8] Ibid.

Ecosystems (called the Law on Biological Conservation), Law Number 5 of 1990 1992 concerning Cultural Conservation Objects, Law Number 21 of 1992 concerning Shipping, Provincial and Regency City Regulations relating to the environment.[9]

Enforcement of Environmental Criminal Law in Overcoming State Loss Law has the function of regulating, it also functions as a provider of certainty, security, protection and balance, which can be not only adaptive, flexible, but also predictive and anticipatory. This legal potential lies in the two main dimensions of the legal function, namely the preventive function and the repressive function. The preventive function is the prevention function, which is outlined in the form of prevention arrangements which are basically the design of every action that the community wants to take which includes all aspects of human action, including risk and predictive arrangements for the form of risk mitigation.[10] While, repressive is the function of tackling, which is outlined in the form of dispute resolution or restoration of damage to conditions caused by the risk of action that has been previously determined in the planning of the action.[11]

Environmental crimes can be categorized as administrative penal laws or public welfare offenses which give the impression of lightness of the act.[12] In this case, the function of criminal law is to support administrative sanctions to comply with administrative law norms. Thus, the existence of environmental crimes actually depends on other laws. Loss and damage to the environment are not only real but also threats of potential damage, both to the environment and to public health. This is because the damage is often not instantaneous and is not easily quantified.

However, for specific crimes attached to relatively mild administrative law, a formal formulation without waiting for proof of the consequences that occurred can be done. The crime in the form of pollution and environmental damage has brought a huge impact on human life, such as global warming, flash floods, forest fires, landslides that cause casualties both human and community economic resources, several social facilities and public facilities, in addition to the decrease in the quality of the carrying capacity of the environment has resulted in various endemic diseases that afflict almost all parts of Indonesia such as outbreaks of dengue fever, vomiting, lung and diarrhea and others. Environmental crimes are categorized as crimes in the economic field in a broad sense, because the scope of crimes and environmental violations is wider than other conventional crimes, the impact of which results in extraordinary state economic losses, as well as environmental damage.

Enforcement of environmental criminal law has several objectives to be achieved in sentencing, namely: initially, to educate the public regarding moral errors related to prohibited behavior, further, to prevent or hinder irresponsible behavior towards the environment. In principle, law enforcement must be able to provide benefits or be

[9] Muhammad Amin Hamid, "Penegakan Hukum Pidana Lingkungan Hidup Dalam Menanggulangi Kerugian Negara," *Legal Pluralism: Journal of Law Science* 6, no. 1 (2016).
[10] Ibid.
[11] Rian Hidayatullah, "Pengawasan Izin Lingkungan Hotel/Wisma Dan Penginapan," *Jurnal Demokrasi Dan Otonomi Daerah* 16, no. 3 (2018).
[12] Mahrus Ali, Ach Tahir, and Barda Nawawi Arief, "Criminological Outlook of Overcoming Disproportionate Punishment in Environmental Crimes," *International Journal of Criminology and Sociology* 10 (2021): 22–32.

efficient for the community, but in addition, the community also expects law enforcement to achieve justice.

In the implementation or enforcement of the law, justice must be considered. The law is not identical with justice, the law is general, binding on everyone, generalizing.[13] Whoever destroys the environment must be punished: Everyone who destroys the environment must be punished regardless of who destroys. If we punish people who have damaged the environment, then at the same time we are protecting the preservation of that environment. Thus we maintain the socio-economic structure of society. On the other hand, justice is subjective, individualistic and does not generalize.

The process of delegating case files through Polri Investigators sometimes becomes less than optimal if Civil Servant Investigator and Police do not coordinate with each other in investigations, therefore sometimes the process of delegating cases becomes slow.. In addition, when the case file has arrived in the hands of the Public Prosecutor, based on Article 138 of the KUHAP the Public Prosecutor is given the opportunity to return the file to the investigator if it is deemed insufficient to be submitted to trial. The return of the file is accompanied by instructions to complete the file, but the Criminal Procedure Code does not regulate how many times this process can take place. This is also an obstacle in handling forestry crimes. The Civil Servant Investigator, Police and the Public Prosecutor should have a sense of togetherness and good coordination in accordance with the spirit that is reflected in the criminal justice system. The obstacles faced above can be minimized, by applying Article 95 paragraph (1) UUPPLH 2009, which stated: "In the context of law enforcement against perpetrators of environmental crimes, integrated law enforcement can be carried out between civil servant investigators, the police, and the prosecutor's office under the coordination of the minister" (in this case the State Minister for the Environment). Other obstacles faced in handling criminal acts in environment issues, including:[14]

1) The public's ignorance of the mechanism for handling environmental crimes and the reporting process if they find indications of environmental crimes;
2) Lack of coordination between Civil Servant Investigator, Police and Public Prosecutors;
3) The Public Prosecutor's re-examination authority is not used in examining forestry crimes to assist investigators in filing, and it is not uncommon to find an inadequate understanding of the Public Prosecutor's understanding of the legal rules that can be used to ensnare environmental criminals.
4) The length of the case examination process until the judge's decision, making it difficult to fulfill the principle of a fast trial;
5) Limited experts in the environmental field;
6) The attitude of arrogant individuals with the authority they have is still found, each of which should be able to improve its capacity and support each other in the smooth running of each stage of case handling;

[13] Danang Risdianto, "Perlindungan Terhadap Kelompok Minoritas Di Indonesia Dalam Mewujudkan Keadilan Dan Persamaan Di Hadapan Hukum," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017): 125–42.

[14] M Nurdin, "Peranan Penyidik Dalam Penegakan Hukum Terhadap Pelanggaran Tindak Pidana Lingkungan Hidup," *Jurnal Hukum Samudra Keadilan* 12, no. 2 (2017): 172–85.

7) There is a tendency to blame each other between one police officer, the Prosecutor's Office and the sectoral service or local government, which they should coordinate with each other in enforcing the law;
8) Lack of involvement of experts who are experts in sectoral fields (related to the substance of environmental cases), the environment, corporations and others who should have been involved from the start at the investigation stage or at the investigation stage to help conduct environmental studies or audits to help provide conclusions that have been the occurrence of pollution and or environmental damage;
9) There is backing from unscrupulous officials from local governments, departments or (sectoral) departments, security forces, and others, so that law enforcement does not work as it should.

3.2. Settlement of Environmental Crimes by Costumary Law Community

Customary law has various wisdoms in managing the environment. It has an important role in environmental conservation efforts, one of the efforts to preserve the environment is to protect customary forests, and not cut down trees indiscriminately. The concept of restorative justice in Indonesia has been developed and implemented as legislation since the enactment of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. (*hereinafter* UUSPPA). Restorative Justice supports the creation of a peaceful and just society, not to punish.[15]

Restorative justice is an opportunity for the settlement of criminal acts that occur in society. Restorative justice is a reflection of values that grow in the midst of Indonesian society that have been known for a long time. The values of the concept of restorative justice have basically existed and have long been practiced in social life in Indonesia. The values of peace contained in the approach or concept of restorative justice are also in accordance with the values of Pancasila. Customary criminal law as living law in Indonesia strongly recommends resolving disputes by peaceful means.

The form of Settlement of Environmental Crimes by Customary Law Community of Papuans has been supported by the Government through the implementation of development in Papua Province, it is necessary to pay attention to the principles of environmental conservation. Normatively, it has been stated in Law No. 21 of 2001 concerning Special Autonomy for Papua Province. This gives the Papuan Provincial Government the authority to regulate environmental conservation, taking into account the rights of indigenous peoples to the greatest extent possible for the welfare of the population.

The same thing was also done in the effort to settle Environmental Crimes by the Acehnese Customary Law Community as a region that has special autonomy stipulated under Law No. 1 of 2006 concerning the Government of Aceh. Based on this regulation, Aceh was given specialties, including in environmental management as regulated in Aceh Qanun No. 2 of 2011 concerning Environmental Management (also

[15] Marwan Effendy, "TEORI HUKUM Dari Perspektif Kebijakan, Perbandingan Dan Harmonisasi Hukum Pidana," 2018.

known as PLH). The principle used is based on local wisdom, including in the application of the settlement of environmental crimes.[16]

According to Qanun No. 9 of 2008, the settlement of disputes/disputes between customs and customs is resolved in stages, meaning that disputes/disputes that occur are resolved first in the family, if they cannot be resolved, they will be brought to a traditional settlement in the village. This qanun also orders that law enforcement officers provide the opportunity for disputes/disputes to be resolved in a customary manner by customary law enforcers in the gampong or other names, if they cannot be resolved, they will be handled by law enforcement officers. Besides, traditional institutions are also obliged to cooperate with all parties to explore customary rules and customs.[17]

Through a method that is in accordance with Islamic law, with the name *diyat* [18], *sayam*[19], and *suloh*[20] (reconciliation). Regarding the criminal provisions described in the *Qanun* PLH Chapter. XVIII Articles 46, 47, 48, and 49 of *Qanun* No. 2 of 2011, that any person who commits an act of environmental destruction or because of his negligence, is threatened with criminal and fines in accordance with statutory regulations, as well as restoration of the environment, while fines are income Aceh or Regency/City income and must be deposited into the Aceh or Regency/City general treasury. In accordance with the applicable laws and regulations listed in the PLH *Qanun*, it means that criminal sanctions refer to UUPPLH 2009, which adheres to the principle that punishment is the ultimum remedium, which is the enforcement of criminal law as a last resort.[21]

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[16] Article 1 point 21 of Law Number 11 of 2006 concerning the Government of Aceh states that, "The Aceh Qanun is a statutory regulation similar to a provincial regional regulation that regulates the administration of government and the lives of the Acehnese people". Article 1 point 22 of the Aceh Government Law states that, "Regency/city Qanun is a statutory regulation similar to a district/city regional regulation that regulates the administration of government and the life of the district/city community in Aceh".

[17] Sitti Mawar, "PERKEMBANGAN SISTEM HUKUM PERADILAN ADAT ACEH," *LEGITIMASI: Jurnal Hukum Pidana Dan Politik Hukum* 10, no. 1 (2021): 150–70.

[18] *Diyat* or *dhiet* is defined as the punishment for perpetrators of murder and persecution is qishash and diyat is the main punishment of Islamic criminal law in the form of property that must be handed over to the victim or to his guardian (see Abdul Qadir Audah, Op. Cit, p. 71) *Diyat* is also called "aql , because someone who has killed will collect camels and then bring to the house of the murdered family with his aqad, I pay diyat to so and so" (see Abdul 'Azim bin al-Khalafi al-Wajiz, 2011, Encyclopedia of Islamic Fiqh in al-Qur-andan as - Sunnah as Shahihah, Pustaka as-sunnah, Jakarta, p. 873

[19] *Sayam* is "a form of compensation in the form of property given to the victim or his heirs in the event that the limb is damaged or does not function". When viewed from the designation between *diyat* and *sayam*, the difference is that *diyat* tends to compensate for fatalities, while punishment is for the destruction of limbs or non-functioning due to persecution or other means that result in other people being damaged or not functioning.

[20] *Suloh* will produce various possibilities according to the needs and suffering of the victim including: a) Transfer of responsibility; b) Connecting hope; c) Restoration of disturbed value balance; d) Empowerment of victims.

[21] Kukuh Subyakto, "Azas Ultimum Remedium Ataukah Azas Primum Remedium Yang Dianut Dalam Penegakan Hukum Pidana Pada Tindak Pidana Lingkungan Hidup Pada Law Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Jurnal Pembaharuan Hukum* 2, no. 2 (2015): 209–13.

The implementation of customary law raises several obstacles, which are faced by the Aceh region. The obstacle in question is the effect on the determination of punishment in the Aceh Province PLH *Qanun* which does not dare to appear different from the Criminal Code which has not yet achieved one of the legal objectives, namely justice, especially justice for victims towards a legal order in accordance with local wisdom.[22]

The Settlement of Environmental Crimes by Balinese Customary Law Community has been stated in the Bali Provincial Government through Perda No. 1 of 2017 concerning Environmental Protection and Management regulates the environment, but Balinese people are still very strong regarding their customs. Balinese people use all the rules that are used as guidelines in the life of traditional organizations through traditional villages whose rules are known as "*awig-awig*". [23] For instance, Tenganan Pegringsingan village[24], Manggis District, Karangasem Regency. Karangasem Regency has three Bali Aga villages, namely Trunyan Village, Sembiran Village, and Tenganan Village. Bali Aga Village is a village environment in Bali that still maintains a traditional community life system that has been passed down from generation to generation by its ancestors. Apart from the three *Bali Aga* villages, there are also *Bali Aga* Villages in other regencies such as Cempaga, Sidetapa, Pendawa, Tigawasa.

First, in Tenganan Village in its *awig-awig* there are customary rules regarding the use of the environment, including containing rules for the use and management of forests and forest resources sourced from the *awig-awig* of the traditional village of Tenganan Pegringsingan, namely:

1) It is not allowed to cut down the forest without the village's permission;
2) It is not allowed to down trees that are still alive;
3) Trees may be cut down for building purposes and for firewood after the tree is dead;
4) Trees that are prohibited from cutting, such as cempaka, durian, jackfruit, are prohibited from cutting if they are still alive;
5) For trees that have died, if they want to be cut down, they must first report to the customary village head to be examined;
6) It is permissible to cut down living trees for building materials for newly married families;
7) Not allowed to sell land to outsider;
8) It is not allowed to pick fruit from the tree, only those that have fallen can be taken.

This condition becomes a customary rule that is considered to have sacred beliefs, it is also considered a way to preserve the environment, especially the use of the forest environment hence, its sustainability is always maintained. This is done from generation to generation so that the next generation of Tenganan Pegringsingan Traditional Village can feel and enjoy their environment until they die. *Awig–awig*

[22] Syahruman Tajalla and Yanis Rinaldi, "Pertanggungjawaban Pidana Perusakan Barang Yang Dilakukan Bersama-Sama," *Syiah Kuala Law Journal* 2, no. 1 (2018): 39–56.

[23] In general, *awig-awig* consists of law and regulation that regulate the customary law community. It is also known as *sima, dresta,* or *uger-uger*. The issuance of *awig-awig* aims to to realize justice and a sense of propriety in customary law community, in order to create a harmonious relationship with God and society, as well as the environment.

[24] Tenganan is an area in the form of a traditional village that still adheres to the customs and cultural heritage of the ancestors, namely as *Bali Asli* or *Bali Aga*.

which is accompanied by strict, real, and coercive sanctions for violators contributes to the preservation of the forest around the traditional village of Tenganan Pegringsingan. The location of the traditional village of Tenganan Pegringsingan is in a valley very close to the mountains, hence village is prone to natural disasters such as landslides, floods, and droughts which resulted in the formulation of regulations regarding plants that should not be planted, trees that should not be cut down, and fruit that should not be picked. , how to take agricultural produce in the Tenganan village area, how to raise animals and release animals, sanctions for those who steal, pick fruit, or cut down prohibited trees, and various other violations into the *Awig–Awig* of traditional village of Tenganan Pegringsingan.

One of the articles in the *Awig-Awig* related to the environment, can be seen in Article 14, namely: "*Dan barang siapapun didesa itu memelihara pohon kayu diwilayah desa Tenganan Pegringsingan, termasuk di tanah – tanah "tegalan" Tenganan Pegringsingan*" (And whoever in the village maintains wood trees in the Tenganan Pegringsingan village area, including on the Tenganan Pegringsingan "*tegalan*" lands.). As for wood trees that are maintained (meaning they are collected and used for necessary things) jackfruit trees, tehep trees, tingkih trees, pangi trees, cempaka trees, durian trees, palm trees, which are on the west side of the river in the north of the village are prohibited from cutting down palm trees that still flowering (fruiting) when the palm tree bears fruit it can be cut down, if someone violates cutting wood or palm oil, it should be confiscated by the village according to what has been done. In the east of the village, continue until a hill in the east is allowed to cut palm trees, and if there is a place in the village area, and if anyone in the village burns something in their place in the village area, eventually burning trees or sacred buildings for example, then it is better to burn them. replace the burnt or damaged one as before, and the one who burns should be fined by the person who has the damage, according to the size of the error and is obliged to carry out purification (customary cleaning), in accordance with applicable regulations.[25]

Likewise, Article 61 of the *awig-awig* states that if there is a wooden tree that is uprooted by the wind in the Tenganan Pegringsingan Village area, village prohibitions such as durian trees, tingkih can be picked up (taken) by people in Tenganan Pegringsingan if the teap tree, jackfruit , cempaka, it is forbidden to take the wood, it is appropriate for the wood to enter all villages, if someone violates working on the wood without checking it with the village, then they should be fined 2,000 and the wood should be confiscated by the village. All of these articles have a connection with the local wisdom of the Tenganan Pegringsingan traditional village community which is contained in the values, norms, religious knowledge, laws, beliefs, heritage of the ancestors, traditional procedures used to help overcome various problems every day as described above found in *awig-awig*.

In general, Balinese people prefer to resolve disputes or legal issues through peaceful means. There is a term "*Sabha Kertha*", which can be said to be a kind of Traditional Village Judiciary Institution, this institution is intended to ease the tasks of traditional villages which are considered to understand customary problems and customary law that applies in Bali in general. The duties of the Customary Court are carried out by

[25] Natal Kristiono, "Pola Kehidupan Masyarakat Adat Desa Tenganan Pegringsingan Bali," *Integralistik* 28, no. 2 (2017): 158–75.

Prajuru desa or *Pengurus desa* lead by Bendesa Adat. The order of customary law community in Bali in resolving legal issues can be said to be in line with the values and principles of restorative justice, which prioritizes deliberation, peace in the settlement of legal cases.

Customary law community in Bali relies on the *Tri Hita Karana* philosophy, which is inspired by Hinduism, which is very basic for people's lives, especially in maintaining harmonious relations between humans and God, humans and humans, and humans and their environment. Customary law community in Bali are very dependent on nature, because nature is the potential of life and livelihood. If explored more deeply, the meaning of *Tri Hita Karana* can be translated into the meaning of three elements which are the cause of the growth of goodness and prosperity.

Based on the examples abovementioned indicated that restorative justice has similar values with customary criminal law, customary criminal law, is imbued with magical religious familial nature, where what is prioritized is not a sense of individual justice, but a sense of justice, kinship, so that a peaceful settlement of cases is believed to bring harmony (harmony). Customary Criminal Law does not mean to show the laws and punishments imposed in the event of a violation, but the aim is to restore the law that was lame as a result of the violation.[26]

4. Conclusion

Based on all the abovementioned, it can be concluded that the regulation of Environmental Criminal Enforcement by Customary Law Community has been regulated in the provisions of environmental laws and regulations, namely Law No. 32 of 2009 in Article 97 - Article 120, apart from that it is also specifically regulated through Law No. 41 of 1999 concerning Forestry, and Regulation of the Minister of Environment and Forestry Number 32 of 2015 concerning Forests. Further, there are also environmental criminal laws which are regulated in other sectoral laws relating to the environment and natural resources. Regarding the Settlement of Environmental Crimes by Customary law community, it is done through efforts to arrange Deliberations and Restorations in the balance of nature and the environment that were previously damaged and polluted by customary law community. Thus, there is a need for recognition and management of customary forests that must be carried out professionally and sustainably based on local wisdom. Hence, it is expected to be able to improve equitable welfare. Moreover, the precautionary principle is needed, from initial planning to monitoring and evaluation. aspects of local wisdom and traditional knowledge, are important, as a counterbalance to the currents of globalization and modernization which sometimes do not match the geographical, cultural, and social conditions of the Customary Law Community, hence the State needs to provide a proper protection to customary law community as well.

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[26] Elwi Danil, "Konstitusionalitas Penerapan Hukum Adat Dalam Penyelesaian Perkara Pidana," *Jurnal Konstitusi* 9, no. 3 (2016): 583–96.

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