

CHAPTER I

INTRODUCTION

A. Background of Research

Indonesia is one of the states with the largest coal producers and exporters in the world. Since 2005, Indonesia has been the highest exporter of thermal coal at around 85% (eighty five percent) of total state revenues, over Australia's production. The category of thermal coal exported by Indonesia consist of two types, medium quality type (between 5100 and 6100 cal/gram) and low quality type (below 5100 cal/gram). The main destination states for Indonesia's coal exports are China, India, Japan and South Korea.¹

In addition, many states have begun to reduce the use of coal as an energy source, but the Indonesian government is increasingly massively planning coal mining and coal-fired power plant construction. In fact, the use of coal is very damaging for environment and human beings. According to Donna Lisenby, Global Advocacy Manager at Waterkeeper Alliance, coal mining pollution occurs from mining activities, transportation to the construction of power plants. She also added that coal pollution has a direct impact on water pollution. The retained waste is not discharged into the air but it will be wasted into the soil or

¹ Indonesia Investment. *Batubara*, <https://www.indonesia-investments.com/id/bisnis/komoditas/batubara/item236?>, accessed on January 3, 2020 (23:04).

water. The result is pollution in upstream and downstream of river. Pollution in soil and water will have a negative impact on agriculture. Peatlands that function as water purifiers can be damaged.²

This case happens in the PT Indominco Mandiri case which deals with environmental protection and management. According to Public Prosecutor, Nadrah Nasir, PT Indominco Mandiri allegedly carried out the disposal of the waste directly to the ground, resulting in water pollution and entered the infiltration ponds to the surrounding rivers. In addition, if the waste disposal is carried out in open area, there is a risk of causing air pollution. The invention itself came from the results of a study of environmental permits supervision by environmental protection officials (PPLH) in September, 2015. In general, it is violations, because the placement of waste products is not authorized. This will have an impact on environmental destruction. If the waste is placed in open place without being stored in a proper place, it will enter the soil infiltration. Then, the water from well consumed by the surrounding community is dangerous. In addition, the air inhaled is also dangerous when entering the lungs. The allegations of PT Indominco Mandiri's actions themselves, as reported by the Ministry of Environment and Forestry, threatened with punishment as stipulated

² Indra Nugraha, *Batubara, Rusak Lingkungan, Sumber Beragam Penyakit sampai Hancurkan Pangan dan Budaya*, <http://www.mongabay.co.id/2014/02/24/batubara-rusak-lingkungan-sumber-beragam-penyakit-sampai-hancurkan-pangan-dan-budaya/>, accessed on January 4, 2020 (08:00).

in article 104 conjunctions with article 116 of Law No. 32/2009 about The Environmental Protection and Management.³ However, in the Verdict No. 526/Pid.Sus-LH/2017/PNTrg on December 4, 2017, it was deemed not to represent corporate and environmental crime. The judgment is assumed to be unrestrained by statute, which should be legal in order to have clear legal certainty in order to have a dissuasive effect, as the rule without legal certainty would lose its significance because it can no longer be a code of conduct for anyone.⁴

Therefore, the researcher chose the title of “The Enforcement of Criminal Provisions in the Law Number 32 Year 2009 Against the Case of Coal Mine Waste Disposal in the District Court of Tenggara No. 526/Pid.sus-lh/2017/PN.Trg” because of the possibility of a discrepancy between the Verdict No. 526/Pid.Sus-LH/2017/PN.Trg with Law No. 32/2009 about The Environmental Protection and Management which caused PT Indominco Mandiri's corporate problems to the environment with the community.

B. Problems Formulation

³ Nur Aditya, *Kementerian LHK Ungkap Perusahaan Batu Bara di Kukar Buang Limbah Sembarangan*, <https://www.merdeka.com/peristiwa/kementerian-lhk-ungkap-perusahaan-batu-bara-di-kukar-buang-limbah-sembarangan.html>, accessed on January 4, 2020 (13:00).

⁴ Fence M. Wahyu dalam Tata Wijayanta, “Asas Kepastian Hukum, Keadilan dan Kemanfaatan dalam Kaitannya dengan Putusan Kepailitan Pengadilan Niaga”, *Jurnal Dinamika Hukum*. XIV. No. 2. May, 2014. Pg. 220.

Based on the background above, the researcher found the problems formulation of undergraduate thesis entitled The Enforcement of Criminal Provisions in the Law Number 32 Year 2009 Against the Case of Coal Mine Waste Disposal in the District Court of Tenggara No. 526/Pid.sus-lh/2017/PN.Trg, such as:

1. How does Law No. 32/2009 on Environmental Protection and Management regulate illegal actions of disposal of waste?
2. What is the corporate criminal liability for the disposal of illegal waste, as done by PT Indominco Mandiri?
3. How is the legal enforcement of the Criminal Provision of Waste Dumping based on Verdict No.526 / Pid.Sus-LH/2017/ PNTrg?

C. Scopes of Analysis

Based on problems formulation that has already been determined, the researcher formulates the scope of analysis of undergraduate thesis under title The Enforcement of Criminal Provisions in the Law Number 32 Year 2009 Against the Case of Coal Mine Waste Disposal in the District Court of Tenggara No. 526/Pid.sus-lh/2017/PN.Trg, such as:

1. Suitability of the Law No. 32/2009 on Environmental Protection and Management regulate illegal actions of disposal of waste.

2. Suitability of corporate criminal liability for the disposal of illegal waste within the Law No. 32/2009 about The Environmental Protection and Management.
3. Legal analysis of Verdict No.526 / Pid.Sus-LH/2017 / PNTrg (the case of PT Indominco Mandiri).

D. Objectives of Research

Based on problems formulation that has already been determined, the researcher formulates the objectives of research of undergraduate thesis under titled The Enforcement of Criminal Provisions in the Law Number 32 Year 2009 Against the Case of Coal Mine Waste Disposal in the District Court of Tenggaraong No. 526/pid.sus-lh/2017/pn.trg, such as:

1. To answer how Law No. 32/2009 on Environmental Protection and Management governs the illegal disposal of waste in the case of PT Indominco Mandiri.
2. To answer how the corporate criminal liability for the disposal of illegal waste is done, such as by PT Indominco Mandiri.
3. To answer whether the PT. Indominco Mandiri company violates Law No. 32/2009 about The Environmental Protection and Management.

E. Advantages of Research

The researcher formulates the advantages of research of undergraduate thesis entitled The Enforcement of Criminal Provisions in the Law Number 32 Year 2009 Against the Case of Coal Mine Waste Disposal in the District Court of Tenggara No. 526/Pid.Sus-lh/2017/PN.Trg, such as:

1. Theoretical Advantage

The research can provide insight of legal knowledge and information on public law accordance with Environmental Protection and Management in Indonesia.

2. Practical Advantage

The result of research can be used as a basis consideration in social issue related to environmental protection and management in Indonesia.