

## Indonesian Criminal Law Regulation on Coral Reef Ecosystem Damage

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### Abstract

*This article aims to see how the provisions of the criminal law that apply in Indonesia are related to the protection of coral reef ecosystems. The problem is focused on the urgency of protecting coral reef ecosystems and the current criminal law regulation in Indonesia. In order to approach this problem, theoretical references are used from their books by Philipus M. Hadjon and Tatiek Sri Djatmiati who argue that in the civil law system, the first approach is the legal approach. The data were collected through the prevailing laws and regulations in Indonesia and analyzed qualitatively. This study concludes that the government has attempted to regulate the protection of coral reef ecosystems in Indonesia through legal arrangements and criminal sanctions for perpetrators of destroying coral reef ecosystems, however, punishment of perpetrators of destroying coral reef ecosystems cannot solve the damage to existing coral reefs. So that a new alternative punishment is needed for the perpetrators of destroying coral reef ecosystems in Indonesia.*

### Keywords

coral reef; law; criminal;  
Indonesia



### I. Introduction

Indonesia is a country that is rich in a very large diversity of aquatic biological resources. The breadth of the sea offers the potential for the Indonesian people to develop marine resources that show the diversity of both biological and other resources. Coral reefs are one of the potential biological resources economically or ecologically. Coral reefs are not only used for fish farming, but also for coastal protection against erosion and abrasion, and also for the tourism sector. Coral reefs are the livelihood of coastal communities, with 60% of Indonesia's population living in coastal areas. Indonesia accounts for 18% of the world's total coral reefs and 65% of the total area in the Coral Triangle. Scientists have identified a Coral Triangle (CT) region in the Indo-Pacific region. The scope of this area is determined based on the criteria that there are more than 500 species of coral found in its waters. This triangular area covers all or part of the Exclusive Economic Zone (EEZ) of six countries: Indonesia (central and eastern), Timor Leste, Philippines, Malaysia (Sabah), Papua New Guinea and Solomon Islands. The Coral Triangle, also known as The Amazon of the Seas, is the center of the diversity and abundance of marine life on planet Earth. Malaysia (Sabah), Papua New Guinea, and Solomon Islands. The Coral Triangle, also known as *The Amazon of the Seas*, is the center of the diversity and abundance of marine life on planet Earth (Finaka, 2018). Malaysia (Sabah), Papua New Guinea, and Solomon Islands. The Coral Triangle, also known as The Amazon of the Seas, is the center of the diversity and abundance of marine life on planet Earth. The determination of the coral reef triangle area is determined based on the

criteria for finding more than 500 coral species in the waters of each country. Indonesia is a coral reef triangle area that has quite good coral reefs, including the Raja Ampat Islands in West Papua. The number of types of coral reefs in Raja Ampat is 75% of all types of coral reefs in the world that have been found. While the Caribbean Islands in Central America and the *Great Barrier Reef Marine Park* in Australia are well known, they only contain about 400 species of coral. Some of the islands in Indonesia that also have high coral species are Derawan Islands, East Kalimantan (444 species of coral), Banda Island (330 species), Nusa Penida, Komodo, Bunaken, Wakatobi and Cendrawasih Bay. The islands are also a major destination for marine tourism, especially for world diving tourism. The tourism sector has become one of the leading sectors in various countries in the world, including Indonesia as one of the prima donna for foreign exchange earners (Hakim, 2021). The development of cultural tourism certainly requires increasing the utilization of youth potential optimally (Tambunan, 2021). The advantage of the tourism sector lies in its ability to increase foreign exchange and to drive various other business sectors such as the home industry (Nasution, 2021). Even so, threats that occur in the coral reef triangle area can occur at any time, both from nature and from human activities such as coastal development, pollution from watersheds, pollution and damage from the sea, and overfishing (Shecilia, 2018).

Various surveys noted the level of damage to Indonesia's coral reefs is very alarming and is increasing every year. Damage to coral reefs is mostly caused by human activities including fishing with poison or bombs and also theft of coral reefs themselves. Recently, more and more complaints have arisen regarding the sustainability of coral reef ecosystems due to irresponsible modes of natural resource management. The greatest damage is done by various activities carried out by humans. Human activities can be direct and indirect. Direct human activities are human activities that are directly related to coral reefs and cause damage and death. Meanwhile, indirect activities are activities carried out by humans on land that cause other environmental damage whose impacts also result in physical and chemical damage to the coral reef environment.

The human tendency to violate the agreement or the rule of law is not only against himself, but also happens to life outside himself, such as to environmental resources, especially coral reefs. On the other hand, sanctions have weaknesses, because they usually exist after the event has occurred. That is why preventive action is better than imposing sanctions, especially on the environment, the consequences are almost not felt in an instant, but for years, even hundreds of years afterward. Coral reefs, which are the oldest and largest ecosystems in the world, must be protected. The current criminal law regulation only imposes a prison sentence or a fine against the perpetrators of coral reef mining, whether individual legal subjects or legal entities, is a very light sanction. The huge impact of damage to coral reefs that is very extensive and lasts a long time with very light sanctions is an injustice considering that Indonesia is a legal state that prioritizes norms to achieve justice. The rationale for the need for legal protection of the environment is as a result of human activities that injure the environment. Legal protection in this paper is emphasized on legal arrangements by the government in taking actions based on positive law and the theoretical aspects contained therein. In this regard, it is interesting to study comprehensively the legal protection of marine biota which is part of natural resources whose protection and management cannot be separated from the protection and management of natural resources in the water/sea that affect human life in addition to mangrove forests and grasslands seagrass, namely coral reefs.

## II. Research Methods

This research is a normative legal research with a statutory approach. Research on Indonesian Criminal Law Regulations Against Coral Reef Ecosystem Damage uses a statutory approach (Marzuki, 2009). In their book, Philipus M. Hadjon and Tatiek Sri Djatmiati argue that in the civil law system, the first approach is a legal approach and to explain these norms must be accompanied by a conceptual approach because norms are basically a series of concepts, therefore the problem approach in writing This method uses the statute approach, which is an approach to a problem by first identifying the provisions of the legislation related to the subject matter being studied (Hadjon, 2016).

## III. Discussion

### 3.1 The Urgency of Protection for Coral Reef Ecosystems in Indonesia

Coral reefs contain enormous and varied benefits, both ecologically and economically. Estimated types of benefits contained in coral reefs can be identified into two, namely direct benefits and indirect benefits. The benefits of coral reefs that can be directly utilized by humans are as a place to live for fish which are much needed by humans in the fields of food, tourism, marine tourism to see the beauty of their shape and color, as well as research and use of other aquatic biota contained therein. Meanwhile, what is included in indirect use is as a barrier to coastal abrasion caused by waves and sea waves, as well as a source of biodiversity.

According to the Ministry of Environment of the 50,000 km<sup>2</sup> wide coverage of coral reefs spread across Indonesia, the percentage of coral reefs with a very good predicate is estimated to be only 7%, 33% in good condition, 46% in damaged condition, and 15% in critical condition. Given the benefits and importance of coral reef ecosystems in Indonesia, the authors argue that the survival of coral reefs is very important and contains many survivors of both marine life and human life. Coral reefs have a strategic role in protecting coastal and coastal ecosystems from the threat of waves that damage coastal ecosystems and modulate global climate. Moreover, almost a third of Indonesia's population lives in coastal areas and relies on shallow water fisheries, including those in coral reef ecosystems, making coral reefs very important from a social, economic and cultural perspective. Communities still use traditional methods and limit their fish resources in relatively shallow coastal waters, including coral reefs.

The existence of coral reefs plays an important role in breaking ocean waves and dampening storm surges. You can imagine how much it will cost to maintain beaches in Indonesia if the coral reefs are not well maintained. Fishermen will also lose their spawning grounds for coral reef habitats and other marine populations. Fish and marine animals such as turtles, crustaceans, squid, starfish and sea cucumbers use coral reefs as spawning grounds and breeding grounds for newly hatched animals. Coral reefs provide sufficient space for fish and other small animals to hide from prey. Therefore, this place is an ideal breeding ground for marine animals. Without coral reefs, marine life would have nowhere to breed, and its sustainability could be threatened. Therefore, it is not an exaggeration for the author to assume that the damage to coral reefs can disrupt the natural marine habitat and affect human livelihoods. Less fish means less income for fishermen. This will lead to poverty among fishermen, in this case the government must take a firm stance against groups that try to destroy coral reefs and also involve elements of the community around the sea coast to report if they suspect that there are activities that damage coral reef ecosystems, crimes that The damage to coral reef ecosystems has often occurred, causing the extinction of some of the animals in the sea, the government must be really serious in dealing with the destruction of coral reef ecosystems carried out by citizens themselves and foreign nationals who try to do

illegal acts so that it causes damage. coral reef ecosystems that have occurred recently, the actions taken by the perpetrators must be given severe sanctions because their actions have eliminated millions of species that have become our icon/pride as a nation known has the largest number of islands in the world, therefore the government's attention is urgently needed in terms of resolving the destruction of coral reef ecosystems that has occurred recently.

The problem of damage to coral reef ecosystems is also a world concern with the existence of international legal arrangements to protect coral reef ecosystems. Based on Article 145 of the 1982 UNCLOS concerning the Protection of the Marine Environment, it is stated that "Necessary measures with regard to activities in the area must be taken in accordance with this convention to ensure the effective protection of the marine environment from the adverse effects that may arise from these activities. -the activity. To this end the authority shall establish rules, regulations and procedures appropriate to inter alia:

- (a) prevention, reduction and control of pollution and other hazards to the marine environment, including coastlines, and disturbances to the ecological balance of the marine environment, paying particular attention to the need for protection against the adverse effects of activities such as drilling, dredging, excavation, waste disposal, construction and operation or maintenance of installations, pipelines and other equipment related to these activities and;
- (b) protection and conservation of the natural resources of the Area and prevention of damage to the flora and fauna of the marine environment." and in UNCLOS Article 192 states that "States have an obligation to protect and preserve the marine environment." Indirectly, this convention obliges countries to conserve and protect the marine environment, especially coral reefs as a place of protection (UNCLOS, 1982).

Efforts to prevent, mitigate, and control coral reef pollution are carried out through regulation, assessment, and analysis of coral reef damage based on scientific methods related to the risks or consequences of coral reef damage. Article 19 of UNCLOS 1982 states that States must take all necessary measures in accordance with the Convention to make their best efforts to prevent, reduce and control pollution of the marine environment from maritime activities. measures to ensure that activities under their jurisdiction or control are carried out in such a way that they do not cause pollution damage to other states and their environment, territories which are subject to the exercise of sovereignty.

These efforts are carried out in order to prevent, reduce, and control are carried out by regulating, assessing and analyzing coral reef damage based on scientific methods regarding the risks or consequences of coral reef damage. States must take all measures to ensure that activities under their jurisdiction are carried out so that these actions do not cause damage caused by pollution to other countries. And pollution arising from actions and activities under their jurisdiction does not spread beyond the areas under the exercise of their sovereign rights (Trimirza, 2021).

### **3.2 Indonesian Criminal Law Regulations for the Protection of Coral Reef Ecosystems**

Preservation Coral reefs as one of the most important ecosystems in Indonesia are mandated by the 1945 Constitution, and because coral reefs are one of the important ecosystems that are closely related to fisheries in Indonesia, the government and the DPR are trying to build a nation. Environmental protection and management policies are implemented according to principles from the center to the regions. Environmental protection and management according to Law Number 32 of 2009 concerning Environmental Protection and Management is carried out in order to maintain environmental functions and prevent environmental pollution and/or damage. UU no. 32 of 2009 regulates the protection and management of the environment in a more comprehensive manner. Improvements in this law

are based on the principles of environmental protection and environmental protection based on responsible corporate governance. This is in every process of developing and implementing tools to prevent pollution and environmental damage.

Based on the provisions of Article 88 of Law no. 32 of 2009 above, it is clear that in the environment, responsibility is charged with this new principle, namely strict liability. Where pollution and destruction of the environment, it is the responsibility of the destroyer/perpetrator of damage to the environment that it should be charged, whatever and whoever the legal subject is, both in small and large scale numbers, both people, government and companies, and others (Gumengilung, 2009).

In Law No. 5 of 1990 concerning Biological Natural Resources and Their Ecosystems regulates criminal acts that threaten the sustainability of Indonesia's natural resources and marine ecosystems, which in this case are coral reefs. Article 21 states that "Everyone is prohibited from: (1) taking, cutting, possessing, damaging, destroying, maintaining, transporting, and trading protected plants or their parts alive or dead; (2) removing protected plants or parts thereof, alive or dead from one place in Indonesia to another place inside or outside Indonesia. And the sanctions that govern the provisions of Article 21 are contained in Article 40 paragraph (2), namely "Anyone who intentionally violates the provisions as referred to in Article 21 paragraph (1) and paragraph (2) and Article 33 paragraph (3) shall be subject to a criminal sanction. imprisonment for a maximum of 5 (five) years and a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah)."

In addition, in connection with the violation of coral reef destruction directly or indirectly, it is more strict and severe as regulated in Law Number 1 of 2014 concerning Amendments to Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands. in article 73 coral reef mining activities may be subject to a minimum imprisonment of 2 (two) years and a maximum of 10 (ten) years, and a minimum fine of Rp. 2,000,000,000.00 (two billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah). With the regulation of these provisions, the government hopes to ensure the maintenance of ecological processes that support life support systems for sustainable development and human welfare and to ensure the maintenance of diversity of genetic resources and types of ecosystems so that they are able to support development, science and technology that enable the fulfillment of human needs using natural resources. natural resources for prosperity.

In addition to protecting coral reef ecosystems, apart from criminal sanctions as stipulated above, the government has also tried to provide legal arrangements on how to rehabilitate coral reef ecosystems. The laws and regulations governing the rehabilitation of coral reef ecosystems are as follows:

- a. Presidential Regulation No. 121 of 2012 concerning Rehabilitation in Coastal Areas and Small Islands, which regulates the rehabilitation process of coastal ecosystems and small islands consisting of the scope of activities for the rehabilitation of ecosystems and fish populations, criteria for ecosystem damage, rehabilitation stages (identification of causes of damage) , identification of damage level, rehabilitation planning), monitoring and evaluation
- b. KP Minister No. 24 of 2016 concerning Procedures for the Rehabilitation of Coastal Areas and Small Islands which regulates the rehabilitation procedures for each coastal ecosystem and small islands
- c. KepMenLHNo 04/2001 concerning Standard Criteria for Coral Reef Damage
- d. Ministerial Decree No. 38 of 2004 concerning General Guidelines for Coral Reef Management.

The state has tried to make arrangements for criminal sanctions, protection and rehabilitation of coral reef ecosystems, but coral reef ecosystems in Indonesia continue to

experience a decline in quality from day to day. Natural factors cannot be used as an excuse that the quality of coral reefs in Indonesia continues to decline, the diversity of species of coral reefs in Indonesia is very diverse, new species appear every day that are threatened with extinction before the benefits can be felt for the lives of Indonesian people. The Minister's decision on rehabilitation, management guidelines need to be supported by proper technical implementation. There is a need for socialization, education and research by experts in protecting thousands of coral reef species. The local community must really be involved in all these processes.

Protection of environmental managers is a systematic and integrated effort carried out to preserve environmental functions that are polluted and/or environmental damage which includes planning, utilization, control, maintenance, supervision, and law enforcement.

Each country is required to have laws and regulations regarding immediate and adequate compensation for damage caused by pollution of the marine environment by natural persons or legal entities within its jurisdiction. Therefore, each country must cooperate in implementing international law that regulates the responsibility and liability for compensation for losses caused by pollution of the marine environment, and regarding the payment procedures related to the existence of mandatory insurance or compensation funds.

#### IV. Conclusion

As a country that has a wealth of diverse natural resources, coral reefs are one of the most abundant resources. Indonesia is one of the countries with the largest coral reef area in the world. As a result, the risk of damage to the Indonesian coral reef ecosystem is also very high. Therefore, Indonesia's coral reef ecosystem must be protected. Since most Indonesians depend on the sea for their livelihood as fishermen, the state has an obligation to protect and ensure the welfare of all its citizens. Damage to coral reefs in Indonesia is a major concern and is increasing from year to year. Damage to coral reefs is mainly caused by human activities, such as fishing with poison and bombs, as well as theft of coral reefs themselves, who play a very important role in maintaining it is the government and society. Coral reefs provide sufficient space for fish and other small animals to hide from prey, making them ideal breeding grounds for marine life. The government's suggestion is to strengthen rules and law enforcement officers to take firm action against perpetrators of crimes that destroy coral reef ecosystems and strengthen provisions regarding rules and policies related to crimes against coral reef ecosystems that often occur in Indonesia against the coral reef ecosystem, crimes against coral reef ecosystems that often occur will cause all species under the sea to become extinct.

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