

Opportunities in the Imposition of Legal Accountability Against Individuals Destroying the Environment Across Borders: Challenges and Barriers

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Abstract

Within the horizon of international law, individuals can only be held accountable if they commit violations of international criminal law as set out in the Rome Statutes. However, environmental destruction does not fall within the jurisdiction of the International Criminal Court to prosecute. On the other hand, environmental destruction is often attributed to the state as a subject of law, even though individuals who are the main perpetrators of environmental destruction cannot be held accountable internationally. This shows weaknesses in the international legal system in arresting and punishing individuals responsible for environmental damage across borders. The research method used is normative research with a legislative approach, in this study, using several international provisions. The result of this study is that recognition of environmental destruction is very important, especially when the state is held accountable by other aggrieved countries. This accountability request can be brought to the International Court of Justice with certain limitations. Through Article 5 of the Rome Statute, this recognition allows international courts to prosecute perpetrators of environmental destruction, so that law enforcement of environmental destruction can be carried out to the maximum. It is hoped that there will be an active role in Indonesia and the international community in responding to environmental destruction and making it a 'Crime' special. Thus, international environmental law enforcement becomes more optimal and provides justice for all affected parties, both directly and indirectly.

Keywords: International Crime, Environment, Cross-Country

Introduction

International Law is part of the legal science that regulates activities in the international sphere (Juwana, 2019). If we look at its initial existence, international law only regulates relations between countries without any recognized legal subject in international relations (Situngkir, 2019). However, along with the development of the times, international relations have transformed into increasingly complex in line with the problems that arise, so that the types of international law subjects that exist have also developed. Thus, currently, international law is also concerned with the structure

and behavior of international organizations, and to a certain extent, multinational companies, even individuals, are also recognized as subjects of international law as long as they meet the criteria that have been set (Atmasasmita, 2019).

The provisions of international law can enter and apply when there are losses incurred and experienced by other countries, especially in the context of international environmental law itself (Tangel, 2019). When there is a subject of international law that violates international law, even though it is not a state, the state is obliged to be responsible on an international scale. This happens because the state is considered to be the holder of the highest authority within its territory (Hutagalung, 2017). Therefore, if there is a non-state legal subject that violates cross-border environmental law, then the state is held accountable by other countries that feel aggrieved by the violation (Tangel, 2019). This can become a problem when it turns out that the state has taken all preventive measures and actually eliminates individual responsibility in the international realm in terms of violations of international environmental law.

In the horizon of international law, individuals can only be held accountable for committing violations of international criminal law as stipulated in Article 5 of the Rome Statute, which regulates what types of crimes are recognized as the jurisdiction of the International Criminal Court to prosecute them. In addition, individuals are also recognized in Article 25 of the Rome Statute, which is also unequivocal in stating that the concept of accountability of the International Criminal Court is *individual criminal responsibility* (Situngkir, 2019). However, in this context, environmental destruction cannot be the domain of the authority of the International Criminal Court to prosecute. This becomes interesting when you see the environmental destruction in the world that occurs due to the actions of a person, and the results of the destruction cross national borders to other countries.

An example of a case that occurred was the 2022 Siberian Forest Fire, which was allegedly caused by a combination of summer and human activities, both individually and in the form of corporations. If it is found that one of the perpetrators is an individual and indeed the main perpetrator in the destruction of the environment, it does not make him liable under international law, even though the responsibility for environmental law is fully imposed on the state (Fahmi, 2011). This is precisely as if it eliminates individual responsibility, even though domestic legal instruments are binding and can punish the perpetrator. However, if an individual is the main actor in environmental destruction, the individual should be able to be pulled into the main actor to be held accountable within the scope of international law.

This research is a development of the following studies. The first research that became *Literature Review* from this research is a study written by Yusnia Tika Safitri, Mahendra Putra Kurnia, and Rika Erawaty entitled State Responsibility for West Atlas Montara Oil Pollution in the Indonesian Sea Based on UNCLOS 1982. The context of this study discusses marine pollution in Indonesian territory, which leads to state

accountability based on UNCLOS 1982. This research also describes and explains the relationship between the case and its settlement with UNCLOS 1982. Moreover, this study emphasizes that the state must be responsible for all activities carried out in the marine area, whether carried out by the participating state, individuals or state companies or legal entities, or individuals who have the nationality of their country (Safitri et al., 2020). The similarity with this study is a discussion related to environmental violations that occur in the jurisdiction of other countries. The difference with this study is that the study analyzes its legal liability based on UNCLOS 1982. Meanwhile, this study analyzes it based on the Rome Statute and tries to find novelty in legal accountability in the Rome Statute.

Then the second research, which became *Literature Review* from this research, is a research written by Muhammad Ar Rafii and Nadira Syawaliyah Nurfaedah entitled Criminal Responsibility of State Leaders Due to Gross Human Rights Violations and Jurisdiction *International Criminal Court*. The context of the research related to the concept of handling carried out by the International Criminal Court, in this case, the establishment of a Hybrid Court for serious human rights crimes committed by state leaders, and also to understand the concept of accountability of state leaders for their immunity. This is also consistent with the gross human rights crimes committed by him within the jurisdiction of the International Criminal Court.

This study emphasizes the approach of the case of Liberian President Charles Taylor, who was tried through a hybrid court for offenses committed by him. In the end, it was formed *The Special Court for Sierra Leone* (SCSL) who has tried and sentenced the former President of Liberia to 11 (eleven) charges with a sentence of 50 (fifty) years in prison (Rafii & Nurfaedah, 2024). The similarity with this study is a discussion related to the Rome Statute, which will also be discussed in this study. The difference with this study is that it analyzes the case of the President of Liberia with the Rome Statute and focuses on his judicial process in a hybrid court. Meanwhile, this research focuses on the discovery of new accountability for individuals who destroy the environment based on the Rome Statute.

The third research was the Literature Review. From this research is a study written by Intan Sekar Arum, I Gusti Ayu Ketut Rachmi Handayani, and Fatma Ulfatun Najicha entitled Indonesia's Accountability for Air Pollution Due to Forest Fires in International Law. The research discusses the affirmation in domestic law enforcement when faced with cases of forest fires that lead to transnational air pollution. In addition, affirmation from domestic law enforcement is important to anticipate the same incident so that it does not happen again in the future. However, it was found that there has been no maximum enforcement of forest fire violations by certain parties, and those responsible for not coordinating as well as possible, which has an impact on repeated incidents in several regions in Indonesia (Arum et al., 2021).

The similarity with this research is related to the accountability of international law to the subject of international law, which, in the context of the research, is the state (Indonesia). The difference with this study is that the study focuses on Indonesia's accountability related to international law regarding environmental pollution at the ASEAN level through the *ASEAN Agreement on Transboundary Haze Pollution*. Meanwhile, this research will discuss related to the imposition of international legal responsibility in the form of criminal liability for individuals who commit large-scale and transnational environmental destruction based on the Rome Statute.

Based on the above background explanation, the problem formulation of this study is as follows: 1) how is the status *quo* of the imposition of legal liability on individuals who destroy the environment across countries, and 2) how are the challenges and obstacles of imposition of legal liability on individuals who destroy the environment across countries.

Research Methods

The research method used in this study is a normative legal research method with a legislative approach (*statute approach*) (Marzuki, 2017). This approach was chosen to provide a comprehensive analysis of the imposition of legal liability on individuals who harm the environment across countries by reviewing several provisions such as the Human Rights Treaty, the Statute of the International Court of Justice, and the UN Charter, as well as the challenges and obstacles faced in their implementation.

Result and Discussion

Status Quo Imposition of Legal Liability on Individuals Destroying the Environment Across Countries

The concept of accountability can be seen in 2 (two) types, namely *strict liability* and *liability based upon fault* (Praja et al., 2016). Absolute liability or *strict liability* believes that responsibility can be demanded of the party who does something without considering the fault factor as a determining factor (Nur & Prabowo, 2011). Concept of strict liability upheld in the enforcement of international environmental laws that must be imposed on the state in the event of a violation of cross-border environmental laws (Latukau & Uar, 2021). In this case, other countries that feel aggrieved by environmental violations that are cross-border or cause concrete losses in their country, the country can hold the country where the violation occurred, regardless of whether the country is indeed guilty or not (Safira et al., 2020). This can happen because the state holds the highest authority in granting environmental management permits and business permits to individuals and corporations to carry out business activities involving the environment. If there is indeed an environmental violation, other countries will not look for who did it, but it is enough to hold the country responsible for the environmental destruction.

Liability based upon fault is an accountability based on the mistakes made by the perpetrator (Sauri et al., 2023). This concept of accountability emphasizes mistakes made by parties who violate environmental laws such as individuals and corporations. This concept of accountability is embraced in the provisions of the Rome Statute which requires accountability when mistakes or criminal acts have occurred, so that the perpetrators can be tried in the International Criminal Court. However, the jurisdiction of the International Criminal Court can only come in to prosecute the perpetrator when the country ratifies the Rome Statute *unwillingly* or *not* in resolving a case, especially in cases regulated in Article 5 of the Rome Statute (Rahim, 2017). The concept of accountability based on these mistakes can also only be entered when the three elements exist, namely the existence of mistakes committed by the perpetrators, the elements of criminal acts committed by the perpetrators are fulfilled, and the participating countries of the Rome Statute are indeed *unwilling* and *Not* in resolving a case (Asmadi, 2021).

In relation to the existing concept of accountability, violations of environmental law can be enforced through existing instruments if environmental destruction is categorized as a criminal act included in Article 5 of the Rome Statute itself. It is undeniable that in environmental management, there are still often violations of the law there which also result in large-scale environmental damage. In addition, the damage is also accompanied by consequences that can harm other countries both materially and immaterially. In this context, individuals and non-state parties can be accompanied by the state when they are held accountable by the aggrieved state. This regime can be carried out when it enters the realm of the International Criminal Court.

The concept of acknowledging environmental destruction can be categorized as a violation of human rights because it relates to the right to life, which is included in essential human rights (Fikri, 2022). The concept of the right to life is recognized in Article 3 of the UDHR (Universal Declaration of Human Rights), where the United Nations formulates that everyone has the right to their life, liberty, and security (Article 3 of the UDHR). This provision guarantees the right to life for all mankind. In this regard, the environment makes humans able to maintain their continuity because, in essence, humans need the environment, and the environment needs to be maintained and preserved so that humans can be sustainable from generation to generation. Therefore, the concept of recognition of individuals and non-state actors in the demand for responsibility in the realm of international criminal courts becomes important when large-scale environmental destruction occurs and the perpetrators are found.

In addition, the concept of this state responsibility request can also be brought before the *International Court of Justice* when requested, even though there are restrictions that individuals cannot enter the ICJ. This is stated in Article 36 paragraph (1) of the Statute of the International Court of Justice which states that the jurisdiction

of the court covers all matters submitted by the parties and all matters stipulated in the UN Charter as enshrined in international treaties or conventions (Article 36 paragraph (1) of the UN Charter). From this article, it was found that the ICJ can only adjudicate a case arising from a member state ratifying a convention. If the country is not a member of the convention and applies for settlement to the International Court of Justice, then the lawsuit can be dismissed. This is a loophole for the state to be able to bring non-state parties or legal subjects to the International Court of Justice in terms of proof of the occurrence of environmental damage that occurs, although in the end the burden of responsibility remains on the state itself in terms of *status Quo*.

Challenges and Obstacles to Imposition of Legal Liability for Individuals Who Destroy the Environment Across Countries

The imposition of individual liability in the international sphere raises several complicated problems. The imposition of this individual responsibility is not easy because of the desire of other countries to participate in the implementation of the Rome Statute. As is known, international law is said to be *Soft Law*, so that its enforcement becomes difficult (Zuhra & others, 2021). It is different from what happens in the European Union, which makes the region a unit like a country (Hix, 2013). The context of the EU requires international law that is more bound by the commonality of the region and the commitment of each member of the region to recognise the EU (Falkner, 2005). Thus, the enforcement of international law, especially on EU regulations, is more respected because of the commitment of the region's member states.

The context of international treaties that are general and subject to the doctrine of public international law does not provide a strong binding relationship between signatory states (Bakar, 2014). This also applies to the enactment of the Rome Statute, which cannot be binding to intervene with the signatory state. Such as the case of Russian President Vladimir Putin, who was directed by the International Criminal Court to be immediately arrested by the signatory countries of the Rome Statute. But until now, Vladimir Putin has not been arrested. Even Vladimir had come as a state guest to Mongolia, which was included in the countries that signed the Rome Statute (Thibault, 2024). From here, the choice of the affirmation of international law, especially in terms of its enforcement, depends very much on the *political will* signatory countries.

This also applies to international environmental law enforcement, which is currently within the jurisdiction of the *International Court of Justice* (ICJ), which emphasizes the loss of the state (Husin, 2020). This context shows that in the jurisdiction of the ICJ, countries that can be parties and individuals are not allowed to be parties there (Mangku & others, 2012). Moreover, the request for environmental responsibility is also imposed on the state (Manullang, 2020), not on individuals or subjects of law other than countries, such as individuals, *multi-national corporations*

(MNCs), and so on. Thus, when there is a fault of a subject other than the state within the scope of a transnational environmental violation, responsibility is held to the state and not to the subject of the law. In addition, even though the state can be sanctioned through the ICJ ruling, the ruling can still be ignored by the state due to the absence of coercion and pressure on the state to comply with the ruling (Lantang, 2013). This is a challenge in international law enforcement.

The obstacle tends to the commitment of the state when it is bound by the provisions of an international agreement itself. As is known, the Rome Statute has not accommodated matters related to large-scale and transnational environmental destruction violators. This concept is also closely related to *the soft law* of international law, where state commitments are only limited to the formality of signing the joining commitment, which is often ignored until the implementation of international agreements. This is what is feared in the implementation of international agreements, which in this case also include the Rome Statute, which contains binding matters on the parties, even though the agreement still respects the sovereignty of the signatory country. Thus, the concept of international law does dwell and depends very much on the good faith of the signatory country, which extends to the process of implementing the content of the agreement, not only the signing process.

The next obstacle is the lack of recognition of the crime of environmental destruction in the Rome Statute. The Rome Statute has not recognized the existence of transnational environmental crimes and has harmed many parties. If indeed the one who does it is an individual who is jointly or individually. The context of an individual as a party to the trial is regulated in Article 25, paragraph (1) of the Rome Statute, which reads that "*The Court shall have jurisdiction over natural persons according to this Statute.*" In addition, the concept of liability is also individual as explained in Article 25, paragraph (1) of the Rome Statute, which reads that "*A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.*"

However, this individual context is not limited to one person, but the ICC can also prosecute and punish groups even though conceptually the responsibility will be given individually. This context is emphasized in Article 25 paragraph (3) letter a which reads "*In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: (a) Commits such a crime, whether as an individual, jointly with another person or through another person regardless of whether that other person is criminally responsible.*" On the other hand, although individuals have been recognized in the Rome Statute, large-scale and cross-border environmental destruction has not been recognized in the Rome Statute, which is an obstacle to holding individuals accountable. Therefore, it is indeed necessary to radically change the types of criminal acts in the Rome Statute in tackling or even preventing large-scale environmental destruction.

The embodiment of international environmental law accountability is through the recognition of large-scale environmental destruction as a criminal offense in Article 5 of the Rome Statute. If this is realized, the perpetrators of destruction can not only be held accountable through the domestic judicial process, when the state is *unwilling* and *Not* to try the perpetrator, the jurisdiction of the International Criminal Court can come in to try the perpetrator. In addition, it is also necessary to consider whether the state has ratified the Rome Statute or not. Then the form of accountability is *individual liability* or individual accountability in the right to punish perpetrators of massive environmental destruction, which makes the form completely change. Therefore, it is necessary to recognize large-scale environmental destruction as a criminal offense in Article 5 of the Rome Statute by changing it through the mechanism of amending the convention. Thus, law enforcement of environmental destruction can be carried out optimally at the international level or across national borders.

Conclusion

The concept of accountability in environmental law is divided into two types, namely *strict liability* and *liability based upon fault*. Absolute liability or *strict liability* does not consider fault, as in international environmental law, where states can be held accountable without regard to fault in the event of cross-border violations. On the other hand, *liability based upon fault* emphasizes the wrongdoing of the perpetrators, as in the Rome Statute, where individuals or corporations can be tried at the International Criminal Court if the state is unable or unwilling to resolve the case. Environmental violations can be pursued through existing legal instruments, especially if environmental destruction falls within Article 5 of the Rome Statute.

This violation is also considered a violation of human rights because it relates to the right to life. Acknowledgment of this environmental destruction is important, especially when the state is held accountable by other aggrieved countries. Accountability requests can also be brought to the *International Court of Justice*, but with certain limitations. The realization of this recognition through Article 5 of the Rome Statute can enable courts at the international level to prosecute perpetrators of environmental destruction, so that law enforcement of environmental destruction can be carried out optimally on an international scale. Although there are several challenges and obstacles behind all of this, the hope is that there will be an active role of Indonesia and the international community in responding to environmental destruction and making it an *extraordinary crime*. Thus, international environmental law enforcement becomes more optimal and can provide justice for all affected parties, both directly and indirectly.

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