


Investigative Auditing in Environmental Pollution Cases: An Analysis of Indonesian Supreme Court Decision



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ABSTRACT

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This study investigates the implementation of the investigative audit function within criminal decisions related to environmental pollution cases. The research employs a normative juridical approach, wherein court decisions constitute the primary legal sources and hold a significant position in the legal hierarchy. Specifically, the central legal material scrutinized in this research pertains to the final ruling of the Supreme Court, documented as Decision Number 6978 K/Pid.Sus.LH/2022, dated December 30, 2022. Supporting references encompass pertinent literature, including books and scholarly journals. The findings of this study underscore the indispensability of investigative audits in the context of environmental pollution cases in Indonesia, particularly in adjudicating criminal offenses associated with such pollution. The utilization of the investigative audit function within the criminal decisions for environmental pollution cases is evident through the comprehensive analysis of the aforementioned Supreme Court decision. This decision, rendered by the Panel of Judges of the Supreme Court, effectively demonstrates the application of the investigative audit function. Notably, expert testimony plays a pivotal role in this process. Dr. Ir. Basuki Wasis, M.Sc., conducts rigorous assessments on PT Belfat Indah Permai's land by extracting and analyzing multiple soil samples. The subsequent expert conclusions presented in court serve as a testament to the adept utilization of the investigative audit function throughout the legal proceedings.

1. INTRODUCTION

Environmental cases in Indonesia are subject to adjudication in general courts (criminal and civil) and the State Administration (TUN). These cases encompass a broad range of environmental protection and management violations. The regulatory framework for environmental cases is defined by Article 5, paragraph (3) of the Decree of the Chairman of the Supreme Court (SK KMA) No.134/KMA/SK/IX/2011, which certifies Environmental Judges. This framework encompasses infringements of administrative regulations and civil/criminal provisions across various sectors, including forestry, plantation, mining, coastal and marine, spatial planning, water resources, energy, industry, and natural resource conservation [1].

The Supreme Court (MA) issued Guidelines for Handling Environmental Cases via Decree No. 36/KMA/SK/II/2013, expanding environmental crime scope beyond the Environmental Protection and Management Act (UU PPLH). This expansion includes specific offenses outlined in laws such as Plantations Act No. 18 of 2004, Forestry Act No. 41 of 1999, Mineral and Coal Mining Act No. 4 of 2009, Spatial Planning Act No. 26 of 2007, and Industry Act No. 5 of 1984. These legislative additions broaden the spectrum of environmental crimes.

Law Number 32 of 2009, the Protection and Management of the Environment Act (UU PPLH), defines criminal acts in

the environmental domain, covering Articles 97 to 120 [2]. Research conducted by Nur Syarifah et al. in 2020 analyzed 436 environmental criminal decisions, identifying prominent legal issues. Notably, these encompass criminal prosecution of corporations, forest/land fires, the interface between criminal and administrative offenses, and utilization of protected forests by residents [3].

The author proposes the significance of investigative audits in environmental pollution criminal cases to address these issues. While existing studies have explored environmental audits empirically, they haven't delved into environmental pollution criminal cases specifically [4-6]. This research seeks to establish a link between case resolution and implementing environmental restoration solutions as a form of legal accountability. Consequently, this paper introduces the role of investigative audits after the verdict of environmental pollution criminal cases.

While the Guidelines for Handling Environmental Cases issued by the Supreme Court (Decree No. 36/KMA/SK/II/2013) expanded the scope of environmental crimes beyond the Environmental Protection and Management Act (UU PPLH), including specific offenses outlined in other laws, there remains a research gap in understanding the implementation of investigative audits in environmental pollution criminal cases [2, 3]. Prior studies have examined environmental audits empirically, but they have yet to specifically explore their role in addressing legal

accountability in cases of environmental pollution [4-6].

This research aims to bridge this gap by investigating the significance of incorporating investigative audits in environmental pollution criminal cases, mainly focusing on their role in establishing a connection between case resolution and implementing ecological restoration solutions. The study centers on a specific case involving the Sorong District Court, which initially acquitted Belfat Indah Permai Ltd. but was later found guilty by the Supreme Court of intentionally exceeding environmental quality standards and causing ecological damage [7, 8]. This paper addresses the need for more research on applying investigative audits in environmental crime cases and sheds light on their potential to ensure legal accountability and ecological restoration.

Belfat Indah Permai Ltd., located in Sorong City, faces Primary charges under Article 98 Paragraph (1) in conjunction with Article 116 Paragraph (1) letter a of Law Number 32 of 2009 concerning Environmental Protection and Management, along with Subsidiary charges under Article 99 Paragraph (1) in conjunction with Article 116 Paragraph (1) letter a of the same law. The prosecution seeks to establish the defendant's guilt beyond a reasonable doubt for committing a criminal act as specified in the First Primary charge, aiming to impose a fine of IDR 3,000,000,000.00 (three billion Indonesian Rupiahs) and additional restoration penalties totaling IDR 7,494,800,000.00 (seven billion four hundred ninety-four million eight hundred thousand Indonesian Rupiahs) based on calculations by environmental expert Ir. Basuki Wasis. Despite the Sorong District Court's verdict, declaring the defendant's actions not to be criminal, the Supreme Court accepted the cassation appeal by the Public Prosecutor. It ruled Belfat Indah Permai Ltd. guilty of intentionally exceeding environmental standards. The Supreme Court imposed a fine of IDR 1,000,000,000.00 (one billion Indonesian Rupiahs) and an additional ecological restoration penalty of IDR 7,494,800,000.00 (seven billion four hundred ninety-four million eight hundred thousand Indonesian Rupiahs).

2. MATERIALS AND METHODS

This research employs a normative juridical approach, necessitating a comprehensive elucidation of its procedural framework. The following sections elaborate on the steps taken to conduct the normative juridical research, the analytical process employed for the court decision, the criteria utilized to assess its legal robustness, and the detailed process of selecting and analyzing pertinent books and scientific journals for the literature review.

2.1 Normative juridical research methodology

The normative juridical research methodology involves meticulously examining legal principles, statutes, and court decisions [9]. In this study, the normative juridical research approach was executed through the following steps:

(1) Identification of Key Legal Materials: Initial identification and collection of pertinent legal materials, including court decisions and applicable laws.

(2) Comprehensive Review: Thorough review of the court decision, specifically the Supreme Court of the Republic of Indonesia Number 6978 K/Pid.Sus.LH/2022 Dated December 30, 2022. This involved an in-depth analysis of the court's reasoning, legal arguments, and case context.

(3) Criteria for Legal Soundness: Evaluation of the court decision's legal soundness based on established criteria, such as adherence to legal precedents, consistency with relevant statutes, and alignment with fundamental legal principles. Applying these criteria provided a basis for judging the credibility of the court decision.

2.2 Literature review process

The literature review process was undertaken with meticulous attention to selecting and analyzing secondary data, comprising books and scientific journals [8]. The following steps outline the literature review methodology:

(1) Source Selection: Careful selection of authoritative books and peer-reviewed scientific journals pertinent to the research topic. The selection was based on the relevance of content, credibility of authors, and alignment with the research objectives.

(2) Thorough Analysis: Rigorous analysis of the selected sources, including an assessment of the authors' perspectives, methodologies employed, and the empirical or theoretical foundation of the literature.

(3) Synthesis of Findings: Synthesizing the insights and findings from the literature review to provide a comprehensive overview of existing knowledge, gaps, and trends in the research area.

By following this methodological framework, this research aimed to ensure a systematic, thorough, and credible exploration of the normative juridical aspects pertinent to the study.

3. DISCUSSION

3.1 Environmental pollution

Environmental pollution refers to entering materials or energy into the environment, which results in changes detrimental to living organisms and the environment. Pollution can occur in various environmental media, including air, water, and soil.

3.1.1 Air pollution

Air pollution arises from releasing pollutants like smoke, vehicle emissions, and dust particles into the atmosphere. This can lead to severe health issues, including respiratory problems, heart disease, and skin disorders [10].

3.1.2 Water pollution

Water pollution occurs when industrial waste, fertilizers, and sewage enter water bodies, endangering aquatic life and human well-being [11].

3.1.3 Soil contamination

Soil pollution arises when hazardous substances infiltrate the soil, affecting soil fertility and potentially causing harm to human health through contaminated food [12].

Environmental pollution can affect the ecosystem as a whole and can cause long-term and even irreversible ecological damage. Therefore, the government and society need to pay attention to efforts to reduce pollution and take preventive measures to maintain a healthy and sustainable environment.

Environmental pollution cases committed by Belfat Indah

Permai Ltd. according to the relevant juridical facts at the trial, namely Belfat Indah Permai Ltd., in this case represented by the management, namely the director Humala Simanjuntak from 2017 until the Gakkum operation was carried out by the Ministry of Environment and Forestry, which had carried out land preparation/cleaning activities on land cleared obtained from auction results, namely by exploiting land using heavy equipment, excavators and trucks, such as mining sand, dredging the aim is to level the ground to build housing, because it is included in the business sector of Belfat Indah Permai Ltd, but the work of Belfat Indah Permai Ltd. is included in a protected forest area and a warning has been given to Witness Ina Rosewlina Yunece Sikirit from the Protected Forest Management Unit, in 2020, because it is known that Belfat Indah Permai's land ownership certificate is partly included in the protected forest area of Sorong City which has been worked on [8].

The results of soil analysis at the Environmental Biotechnology Laboratory (ICBB) indicated that soil damage was caused by soil, sand, and rock mining (quarry C) because it has entered the standard damage criteria for the parameters of cell fraction (clay), sand, redox and electrical conductivity (Government Regulation No. 150 of 2000). The actions of Belfat Indah Permai Ltd, represented by the director Humala Simanjuntak, were carried out intentionally over a 20 (twenty) hectare protected forest area which resulted in exceeding the standard or standard criteria for environmental damage, in this case, land, which has a very vital function for life and environmental ecosystem, according to the size of environmental damage that has occurred and losses due to such damage there are 15 (fifteen) criteria based on Government Regulation Number 150 of 2000 concerning Control of Soil Damage for Biomass Production. After conducting research and taking soil samples, the results are:

a). There are locations on land where land preparation (cut and fill) causes the death of vegetation and trees;

b). The depth of construction was as deep as 2-3 (two to three) meters on damaged land found soil pollution of 0 centimeters on the surface of 80-100 (eighty to one hundred) percent, which means that environmental damage has occurred due to land preparation for soil erosion, soil solum and rocks on the surface, and at two other locations with the same damage;

c). There are environmental losses due to land preparation/land clearing by Belfat Indah Permai Ltd., namely environmental loss costs (all at once) of IDR 3,825,000,000.00 plus environmental and economic loss costs of IDR 1,920,000,000.00 plus environmental restoration costs of IDR 1,749,300,000.00, so that is a total of IDR 7,494,800,000.00. [8].

Thus Defendant's actions fulfill the criminal element as in Article 98 Paragraph (1) juncto Article 116 Paragraph (1.a.) of Law Number 32 of 2009 concerning Environmental Protection and Management [8].

Beyond its immediate context, the Belfat Indah Permai Ltd. case carries implications that extend to environmental protection efforts, legal accountability, and corporate responsibility. The potential impacts of this case could ripple through various spheres, including the legal system, corporate practices, and public perception.

This case could set a precedent for future environmental crime judgments, influencing how similar cases are handled and shaping the evolution of environmental law and regulation. The broader impact also extends to how industries

perceive the enforcement of environmental regulations and the consequences they may face for non-compliance.

Moreover, a comprehensive discussion of potential societal, economic, and ecological consequences from this case can provide a holistic understanding of the stakes involved. Examining whether the case has stimulated public discourse on environmental issues, corporate behavior, or judicial consistency further enriches the analysis.

Through a comparative lens and a consideration of its broader implications, the Belfat Indah Permai Ltd. case takes on a deeper significance. It becomes a lens through which to examine the interplay between legal decisions, corporate actions, and the pursuit of environmental sustainability.

3.2 Controversial Sorong district court decision

District Court acquitted Belfat Indah Permai Ltd. of environmental crime charges despite evidence proving violations [7]. The inconsistency in the court's ruling raises questions about enforcing environmental laws.

Environmental Crime committed by Belfat Indah Permai Ltd., originally by the Sorong District Court in Case Number: 6/Pid.B/LH/2022/PN.Son. On August 10, 2022, the Panel of Judges decided that they were acquitted of all lawsuits (*onslag van rechtvervolging*). The panel of judges at the Sorong District Court stated in their decision that the Defendant, Belfat Indah Permai Ltd., had been legally proven to have committed a crime as in the indictment of the two Public Prosecutors, but the act was not a crime [7].

The Defendant Belfat Indah Permai Ltd. is a Business Entity engaged in Construction, Trade, Mining and Quarrying, Agriculture, and Forestry, which was established based on the Notary Deed – PPAT Imelda Florance Solissa, S.H.,M.Kn. Number: 03 dated February 04, 2020, amended by Notarial Deed – PPAT Imelda Florance Solissa, S.H.,M.Kn Number: 03 dated March 17, 2020, in mid-February 2020 to November 2020 or at least at another time in 2020, located at Jl. Klasele / Crocodile Pool RT/RW 03/01 Matalagi Village, North Sorong District, Sorong City, West Papua Province or at least in a place that is still included in the jurisdiction of the Sorong District Court, which has the authority to examine and adjudicate this case, "Any person who carries out a business and/or activity without having an environmental permit". The actions of Defendant Belfat Indah Permai Ltd. violated Article 109 in conjunction with Article 116 paragraph (1.a.) of the law of the Republic of Indonesia Number: 32 of 2009 concerning the Protection and Management of the Environment in conjunction with Article 22 of Law Number 20 of 2021 concerning Job Creation [13]. But, the Sorong District Court's decision contradicted the legal provisions underpinning the violation. Despite clear evidence of infringement, the company was declared non-criminal [13].

Supposedly if the panel of judges stated that it was proven that Belfat Indah Permai Ltd. violated Article 109 in conjunction with Article 116 paragraph 1.a. of the Law of the Republic of Indonesia Number: 32 of 2009 concerning the Protection and Management of the Environment as stated in Article 109, any person who carries out a business and/or activity without having an environmental permit as referred to in Article 36 paragraph (1), shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of a minimum of IDR 1,000,000,000.00 (one billion rupiahs) and a maximum of IDR 3,000,000,000.00 (three billion rupiahs)" the panel of judges

should have imposed a sentence instead of declaring the actions of the Defendant as not a crime.

Furthermore, Article 116 states, (1) if an environmental crime is committed by, for, or on behalf of a business entity, criminal charges, and criminal sanctions will be imposed on: a. business entity; and/or b. the person giving the order to commit the crime or the person acting as the activity leader in the crime.

The panel of judges at the Sorong District Court was inconsistent in their decision because Belfat Indah Permai Ltd. was proven to have violated Article 109 in conjunction with Article 116 paragraph (1.a.) of the Law of the Republic of Indonesia Number: 32 of 2009 concerning the Protection and Management of the Environment but in its decision it was released from all lawsuits.

The Sorong District Court's decision carries broader implications beyond the immediate circumstances of this case. An in-depth analysis of the potential impacts can uncover the repercussions on environmental protection efforts, legal enforcement, and corporate responsibility. The implications could extend to influencing the behavior of other businesses in complying with environmental regulations, understanding the perceived leniency of judicial decisions, and the effectiveness of legal deterrents for preventing future ecological crimes.

Moreover, this case could have ripple effects on public perception of environmental justice and the credibility of the legal system in upholding environmental laws. Discussing the potential societal, economic, and ecological consequences of such a decision is essential to understand the stakes involved. Additionally, this case could become a precedent for future issues, shaping how environmental crimes are handled in legal proceedings and encouraging the development of more stringent regulations.

By analyzing this case concerning prior cases and studies and examining its broader implications, we can provide a more comprehensive understanding of the significance of the Sorong District Court's decision. This approach will illuminate the complexities of enforcing environmental laws and the potential impact on legal and regulatory frameworks.

3.3 Investigative audit function in environmental crime cases

The Supreme Court's Investigative Audit function is pivotal in legal considerations. Dr. Ir. Basuki Wasis, M.Sc., offered expert testimony based on soil samples, enhancing the evidentiary value (Figure 1).

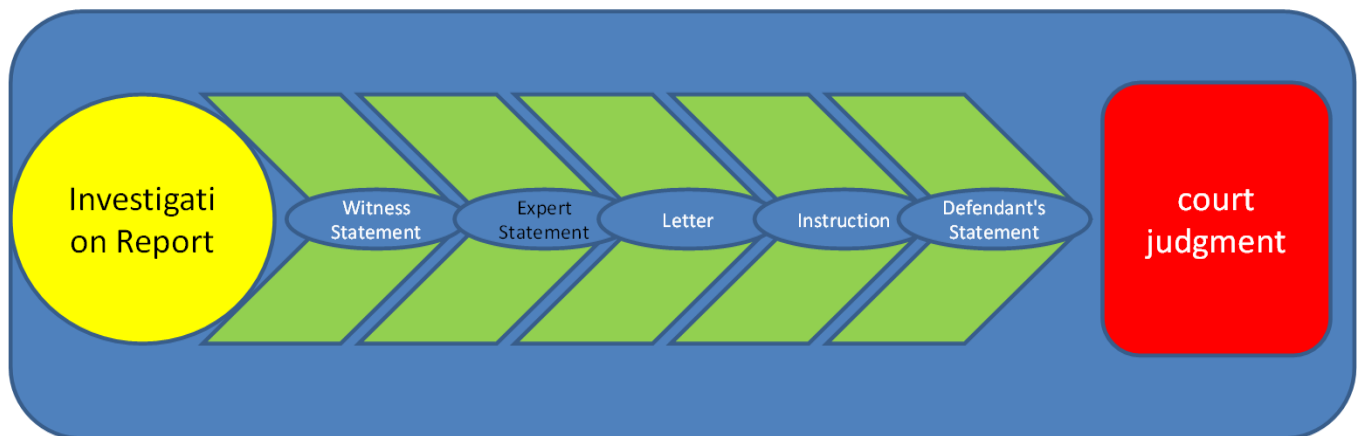


Figure 1. Flow of proof in Court

The investigative audit has an essential role in environmental pollution cases in Indonesia. Some of the investigative audit functions that can be performed in this case include:

3.3.1 Evidence collecting

Investigative audits gather evidence, including licensing documents, water quality data, and witness statements [14]. Documentary evidence plays a crucial role in criminal proceedings [15].

The results of the Investigative Audit found by the investigative auditor are witness statements because it is the auditor who examines according to the facts whether there is direct environmental pollution in the field. Witness statements are in the first place as evidence in the Criminal Procedure Code. Witness testimony is one of the most critical pieces of evidence in proving a criminal case.

A letter as legal evidence must meet one of two criteria; namely, the letter is made under oath of office, or the letter is made under oath [15]. What is meant by documentary evidence are written documents such as Minutes of Examination (BAP), judge's decision, authentic deed, *visum et*

repertum, certificate of expert fingerprints (dactyloscopy), certificate of ballistics expert, report of investigative audit results, report on calculating state financial losses, including contracts, agreements, or letters that have anything to do with the contents of other evidentiary instruments. Report on calculating losses due to environmental damage from experts in the fields of a. Pollution and/or Environmental Damage; and/or; b. environmental, economic valuation appointed by the Central/Regional Environmental Agency, which in the realm of law can be categorized as a "Certificate of Evidence", is one of the primary references for judges in making their legal decisions. In the context of handling cases of environmental crimes in court, documentary evidence containing figures for state financial losses will build the judge's confidence in the certainty of the existence of criminal acts of corruption. In criminal acts of corruption, the element of failure to state finances absolutely must exist and actually occur, and the amount of money must show actual and definite figures [16].

3.3.2 Assessing compliance

Investigative audits evaluate compliance with environmental regulations and recommend suitable sanctions

[17]. Audits ensure fair punishments for violations and prevent recurrence. The investigative audit is an inspection process carried out by an independent and professional party to collect evidence and information regarding alleged violations. In the investigative audit process, the auditor will collect sufficient evidence to prove the existence of a violation and determine the amount of loss incurred. Furthermore, the auditor can recommend sanctions following the violations that have occurred. The exact sanction may vary depending on the type of violation and the severity of the violation. For example, if an employee committed a violation, the sanction could be a warning, reduced salary, dismissal, or legal action if there is a criminal element. In this case, an investigative audit can help ensure that sanctions are appropriate to the severity of the violation and can prevent future violations from occurring.

3.3.3 Identify causes

Investigative audits pinpoint the causes of pollution, aiding preventive measures and policy improvements [18]. These audits enable companies and governments to address root causes and enhance environmental practices. In the context of environmental pollution, for example, an investigative audit can assist in identifying the causes of pollution and determine the steps that need to be taken to prevent similar pollution. Furthermore, after an investigative audit has been carried out, the company or government can use the audit results to develop and improve operating procedures and policies related to the environment and implement corrective actions to correct problems found. Thus, investigative audits can help improve environmental quality and prevent future pollution so that companies or governments can carry out business activities or programs that are more sustainable and environmentally friendly.

3.3.4 Increase transparency

Investigative audits boost transparency and accountability in environmental management, empowering the public with objective information [19]. Transparent audit results facilitate informed decisions by communities regarding resource utilization. Investigative audits are often conducted to evaluate the impact of a business activity or project on the environment and surrounding communities. With transparent and objective investigative audit results, the public can obtain more transparent information regarding the environmental impacts caused by a business activity or project. This allows communities to understand better the impact this may have on their health, well-being, and the surrounding environment. In addition, investigative audits can also provide data and information that can help communities make more informed decisions regarding using and utilizing the natural resources around them. Thus, the community can take more appropriate actions in overcoming environmental problems and fighting for their right to live in a healthy and safe environment.

3.3.5 Raise awareness

Investigative audits promote public awareness about environmental protection, fostering behavior change and support for preservation efforts. The audits empower individuals and communities to advocate for sustainable practices and influence policy changes. With transparent and objective investigative audit results, the public can better understand the impact of a business activity or project on the environment and their well-being. Information obtained from investigative audit results can help the public to understand the

importance of environmental preservation and take appropriate actions to support environmental preservation efforts. This can be in the form of fighting for their right to live in a healthy and safe environment and promoting environmentally friendly practices in everyday life. In addition, the results of investigative audits can also be used as a tool to advocate for changes in policies and regulations that are more effective in protecting and preserving the environment. As such, investigative audits can act as a powerful tool in increasing public awareness and support for environmental preservation and encouraging positive changes in people's behavior and more sustainable environmental policies.

4. CONCLUSION

The investigative audit has a vital role in cases of environmental pollution in Indonesia, especially in deciding criminal acts of environmental pollution. Evidence of the implementation of the investigative audit function in (criminal decisions) of environmental pollution cases in Indonesia is a court decision which is the final decision of the Supreme Court in its Decision Number 6978 K/Pid.Sus.LH/2022, dated December 30, 2022, is one of the investigative audit functions carried out by the Panel of Judges of the Supreme Court, namely by considering and using expert testimony, namely Dr. Ir. Basuki Wasis, M.Sc. who carried out tests on land owned by PT Belfat Indah Permai by taking several soil samples, with expert conclusions explained in court. This perfectly uses the investigative audit function in the court to adjudicate criminal cases of environmental pollution.

The discussion focuses on environmental pollution, a controversial court decision regarding the Belfat Indah Permai Ltd. case, and the role of investigative audits in environmental crime cases. Environmental pollution, particularly air, water, and soil, can have severe health and ecological consequences. The case of Belfat Indah Permai Ltd. raises questions about the enforcement of environmental laws and the accountability of businesses. The court's decision, despite evidence of violations, may have broader implications for environmental protection, legal enforcement, and corporate responsibility. Investigative audits are pivotal in legal considerations, enhancing the evidentiary value and addressing ecological crime. These audits collect evidence, assess compliance, identify causes, increase transparency, and raise public awareness about environmental protection.

The Belfat Indah Permai Ltd. case and the court's decision have several implications. First, it highlights the need for more vigorous enforcement of environmental laws to prevent ecological damage and protect the ecosystem. The case underscores the importance of corporate responsibility and adherence to environmental regulations. Furthermore, the court's inconsistent ruling may impact how other businesses perceive environmental regulations and judicial decisions, potentially influencing compliance.

The case also has implications for public perception, as it can affect how the public views environmental justice and the credibility of the legal system in upholding environmental laws. It may lead to increased scrutiny of court decisions and their alignment with environmental protection goals.

Moreover, the case could serve as a precedent for future environmental crime judgments, influencing the legal landscape and regulatory frameworks. The issue might

encourage the development of stricter regulations and more robust legal deterrents to prevent future ecological crimes.

Future research should focus on the following areas:

1. Comparative Analysis: Comparative studies of similar environmental crime cases in different regions and their outcomes can provide insights into the effectiveness of environmental laws and judicial decisions.
2. Public Perception: Investigating how the Belfat Indah Permai Ltd. case has influenced public perception of environmental justice and the legal system can provide valuable data on the impact of such cases on public opinion.
3. Corporate Responsibility: Research on corporate behavior and responsibility in complying with environmental regulations can shed light on the role of businesses in ecological protection.
4. Legal Reforms: Evaluating the need for legal reforms in the context of environmental crimes and studying the potential changes in regulations that may arise from cases like this can contribute to better environmental protection.
5. Investigative Audits: Exploring the effectiveness of investigative audits in identifying and addressing environmental crimes and their impact on environmental management can inform future ecological protection strategies.

By conducting research in these areas, scholars and policymakers can gain a deeper understanding of the significance of the Belfat Indah Permai Ltd. and other companies' cases and their implications for environmental protection, legal enforcement, and corporate responsibility.

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