



**THE CONCEPT OF SANCTION IMPLEMENTATION IN LAW ENFORCEMENT  
ENVIRONMENTAL VIOLATIONS IN INDONESIA**

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**ABSTRACT**

The existence of Law No. 32 of 2009 on the Protection and Management of the Environment is to ensure a good and healthy environment, because it is guaranteed by the constitution of Article 28H of the 1945 Constitution of the Republic of Indonesia as the basic right of every citizen.

The law enforcement process model in the settlement of environmental disputes must be resolved. It prioritizes the environmental dispute settlement outside the court to achieve a deal because in environmental cases of the criminal law is *ultimum remedium*.

The Enforcement of environmental law through administrative means, first, to be done to achieve regulatory arrangement. There is an option for enforcement of environmental law through administration compared to other law enforcement (civil and criminal), even the practice of administrative law enforcement in current environmental law is still overlapping to implement the regulation related to environmental violations.

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**INTRODUCTION**

The changes that occur within the environment will inevitably affect human beings and other living things, because human beings depend on many ecosystems of the environment. Human beings is part of the ecosystem, Human being is also the manager of the system. Environmental damage is a side effect of human actions to achieve a goal that has consequences on the environment. Environmental pollution is the result of the *ambiguity* of human action<sup>3</sup>.

The development in the concept of environment is a conscious effort and a plan to use and manage resources wisely in the sustainable development to improve the quality of life<sup>4</sup>, while sustainable development is defined as development that meets the current needs without diminishing the ability of next generations to meet their own needs<sup>5</sup>.

Everyone has the right to a good and healthy environment. And the otherwise they also has an obligation to maintain the environment, including preventing and tackling the destruction of the environment. These rights and obligations can be well implemented if the subject that supports for rights and obligations participates in the environmental management. It also means that the rights and obligations can be carried out properly if the subject that supports for rights and obligations has access to data and information concerning the condition and condition of the environment<sup>6</sup>.

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Environmental laws are needed to regulate the environment to be protected. Environmental law in the implementation of the development in the concept of environment is to prevent the occurrence of pollution and or destruction of the environment so that the environment and natural resources are not disturbed the continuity and carrying capacity. In addition, the function of environmental law is as legal action for acts that damage or pollute the environment and natural resources<sup>7</sup>.

Besides, the existence of environmental law must be viewed from two dimensions, namely as a field that requires development and coaching, where law serves as an object of development. And on the other hand, the law must act as a means of safeguarding of the implementation of development and its results. In brief, environmental law must play a safeguard for the continuation on the development in the concept of environment<sup>8</sup>.

Environmental destruction as stipulated by Law Number 32 Year 2009 on Environmental Protection and Management, clearly states that if a businessman fails to do the procedure or until environmental damage can be solved through litigation and non litigation processes.

In the case of a violation of the environment that closely related to the administration, the Government prioritizes to give administrative sanctions against perpetrators or uses non-litigation judicial models with the hope that the perpetrator can restore what he has damaged by doing for example the reclamation, even though it cannot recover fully to the damage, but through the reclamation, it is expected to re-

enable the environment slowly but surely. The focus of the study is on how the choice of law enforcement process can be done when environmental violations occur and how administrative sanctions can be applied for environmental violations.

### ***The Understanding the Concept of Law Enforcement***

Law enforcement is defined as an attempt to execute/enforce a matter such as enforcing a law containing a mandate or order. There are two types of law enforcement namely preventive and repressive enforcement. Preventive enforcement involves active supervision by law enforcement officials or government officials granting permission. This rule is also applied to the repressive enforcement such as the authority to impose sanctions for violation of the rules in the permit or the formulation of the law by the licensor<sup>9</sup>. By the end of law-making, the new legal process completes just one step of a long journey to govern society. The step of law-making must be followed by the concrete implementation in the daily life of society. This is what the law enforcement is<sup>10</sup>. So, after the rule, there must be an action so that what the law wants becomes a reality<sup>11</sup>. The rule of law is reflected in the consistency of law enforcement by the judiciary, and not by the beauty of law substance. The ideal of course is to have good substance rules and consistent execution<sup>12</sup>.

If the discussion about the law enforcement, it essentially speaks of the enforcement of ideas and concepts that the note is the abstract. Law enforcement is an attempt to bring these ideas into reality. The process of realizing these ideas is the essence of law enforcement. To be more specific, discussing of law enforcement issues will be placed in the context of complex society<sup>13</sup>. The nature of the law as an attempt is to discipline society, so that the life can run smoothly. These efforts include the actions to be taken to measure human behavior<sup>14</sup>.

As it is formulated in the Fourth National Law Seminar Report, that: "Law enforcement is the overall activity of law enforcement, justice and protection of human dignity, tranquility and legal certainty, in accordance with the Indonesian Constitution of the Year 1945 ". According to Soerjono Soekanto<sup>16</sup>, there are several factors that influence the success of law enforcement. Those are:

1. The legal factor itself;
2. Law enforcer factors, which include the official or institutions that constitute and apply the law;
3. Facilities factors that support the law enforcement;
4. Community factors;
5. Cultural factors, like the creation and sense based on human and social life.

According to Radbruch, the legal task is to make clear the legal values and the postulates down to the deepest philosophical foundations<sup>17</sup>. Legislation is a statutory law that contains certain philosophical values. The rule of law as a norm is the support of the order and justice which has certain qualities<sup>18</sup>.

The enforcement of abuses needs to be done on the basis of justice values in the absence of alignments of conflicting interests among business actors, but however the value of justice sometimes is not regarded as fair to a particular party, it must be upheld and carried out for the sake of legal certainty, and as the value of legal use is held to protect the

environment in order not to be used by irresponsible people, the environmental law must be run with the value of justice in accordance with the values of Indonesian.

Discussing the justice cannot be separated from legal issues<sup>19</sup> and humanitarian issues. Human being has a consciousness of justice and injustice, as he also has an awareness of good and evil, holy and vanity, beautiful and bad<sup>20</sup>. Awareness of justice usually lives a buried life and will arise from the unconscious nature into the consciousness in certain social and political situations, where there is suffering and chaos, especially if there is a disturbance in the order of society. Because the consciousness of justice means the awareness of an order in society relating to relationships between human and human, people and groups, as well as classes and groups. In addition to the chaos and suffering, the awareness of justice requires the process of individualization, that is the human consciousness, and it implies the ability to distinguish one from others<sup>21</sup>.

Awareness of environmental law will be realized if there are indicators of legal knowledge, legal attitudes, and legal attitude that obey the law. In theory, these three indicators can be used as a benchmark of legal awareness, because if legal knowledge, legal attitudes, and legal behavior is low then the legal awareness will be low or otherwise. Low or high legal awareness of the community affects the implementation of the law. Low legal awareness will be an obstacle in the implementation of the law, neither level of violation of law is high or the lack of public participation in the implementation of law<sup>22</sup>.

Environmental law awareness is a psychic process found in human, which may appear and disappear. Thus, the consciousness of the law is the awareness or values that exist in human about the existing law or the law that is expected to exist. The harmony of braided values is not only harmony between two pairs of values, but also contradictory. But the problem is how to convey the law in order to be a benchmark of behavior and also reflects the harmony of the values embraced by a particular society<sup>23</sup>.

### ***The Enforcement of Environmental Criminal Law***

Article 1 point 1 of the Environmental Protection and Management Act states that the jurisdiction of the environment is the unity of space with all things, power, circumstances, and organism, including human beings and their behavior, which affect nature itself, the survival of life and human welfare and other organisms. In relation to the meaning above, it is found the formulation of a wide legal norm because the legal relationship is no longer limited to human relationships with humans, but includes the continuity of life and welfare of other organisms. Human position is interpreted as part of the environment because the environment is called the unity of space with all objects, power, circumstances, and organisms, including human beings and their behavior that affect the continuity of life and welfare of humans and other organisms.

The change of *ethics*, which was previously confined to the value system applicable to *homo sapiens*, now it includes other organisms besides humans in ecosystems (*ecoethics*). The effect of pollution not only harm and threaten human life (*criminal code*), but also it harm and threaten other organisms

or ecosystems. Therefore, the new legal concept of *ecocrime* is one of these latest developments<sup>24</sup>.

The 7th UN Congress of 1991 on *The Prevention of Crime and the Treatment of Offenders* has highlighted the evil dimensions of development, crimes against social welfare, and crimes against environmental quality. These three forms of crime are closely intertwined, because they cannot be separated from the problems of development with the problems of community welfare and environmental issues. The UN Congress declared that *ecological / environmental crimes* are:

1. Impinged on the quality of life;
2. Impinged on the material well-being of entire societies; and had a negative impact on the development efforts of nations.

Remembering the effect and wide negative influence from environmental, there are efforts are made to overcome. One of them is the enforcement of criminal law<sup>26</sup>. The problems in this environment are direct or indirect affect of the welfare of human life<sup>27</sup>.

The enforcement of environmental law in Indonesia includes compliance and enforcement. Therefore the national environmental law enforcement program includes:

1. enforcement of the legal system;
2. the determination of priority cases that need to be resolved legally;
3. upgrading of law enforcement officers;
4. review of the Nuisance Act

Environmental law is a juridical tool that contains rules on environmental management. Environmental law aims to prevent the shrinkage and deterioration of environmental quality. Furthermore, Munadjat said that environmental law is an environmental study that specializes in the science of law, with the object of law is the level of awareness and understanding of society to the aspects of protection as a necessity of life<sup>29</sup>.

Understanding the enforcement of environmental law can be concluded as the protection of human life in the present and next generations (sustainable development) that cannot be separated from the welfare of society and the quality of the environment to be able to maintain and create an environment that can be enjoyed by every human being.

The philosophical issue of the criminal provisions referred to in Law Number 32 Year 2009 is closely related to the problem of the basic values of the legal objectives of justice, utility and legal certainty.

Hopefully, the enforcement of Environmental Law policy with Criminal Law is as *ultimum remedium*. However, experience in handling environmental criminal cases is often done in *premium remedium*.

The provisions of Article 84 of Law Number 32 Year 2009, states: Paragraph (1) Environmental dispute resolution can be pursued through court or out of court. And Paragraph (2) the choice of environmental dispute settlement shall be conducted voluntarily by the parties to the dispute. Furthermore, in Paragraph (3) a lawsuit can only be pursued if a dispute resolution effort outside a chosen court is declared unsuccessful by one or the parties to the dispute.

While in Article 85 of Law Number 32 Year 2009, explains in Paragraph (1) Environmental disputes outside the court are conducted to reach agreement on:

1. Form and amount of compensation;
2. Recovery actions due to pollution and / or destruction;
3. Certain measures to ensure that no pollution and / or destruction will be repeated; and/or
4. Measures to prevent negative impacts on the environment

While in the content of Paragraph (2) the settlement of disputes outside the court does not apply to environmental crimes as provided in this Law. And Paragraph (3) in the settlement of environmental disputes outside the court may be used the services of mediators and/or arbitrators to help resolve environmental disputes.

As in the case of administrative law, the enforcement of criminal law includes the prevention of preventive law in the form of investigative authority from investigators to find suspects and make it clear in a crime (Law Number 8 Year 1981 (State Gazette Year 1981 Number 76) as well as repressive aspects of the imposition of criminal sanctions based on the judge's verdict. Unlike the administrative law that emphasizes the consistency of authority from the granting of permits, supervision and imposition of sanctions, criminal law emphasis on the formulation of offense and the granting of sanctions (punishment). This is because in the positive criminal law, the formulation of the offense is concerned on formulation of the prohibition norm which must be linked to the threatened sanction, in order to be enforced.

Criminal law is a law that has a special nature, in the sanctions in which there are provisions on what to do and what not to do, and consequently, we know as sanctions. The distinguish criminal law from other laws is coming from the sanctions. The negative sanction is called as criminal (punishment). There are many kinds of suction such as: taking a property to pay the fine; deprived of his freedom because imprisonment, or death penalty<sup>30</sup>.

*Pompe* declares the criminal law is the same as the constitutional law, civil law and other parts of the law. It can be defined as a whole of the more or less general rules that are abstracted from concrete circumstances. Positive criminal law has a material law that is criminal code (KUHP)<sup>31</sup>. From the definition given by *Pompe* it can be concluded that there are two element of criminal law, first, the rules that determine what actions are threatened with criminal. Second, criminal law, weight and type, and how to apply it.

With regard to environmental crime issues clustered into independent environmental crimes, and criminal offenses related to permits.

The understanding of the criminal acts that are independent is a material crime, that is element of causality must be proven in advance, such as the death of fish, the damage of mangrove plants causing the sick, dead and so forth. While the criminal act related to the permit is a criminal act that violates the provisions in the business license and or activity. In practice, environmental crimes are partly perpetrated by corporations. If the environmental crime is committed by a legal entity, a corporation, a union, a foundation or other organization, the criminal threat is exacerbated by one third.

This environmental crime also implies the act of good conduct to the legal entity, the company, the union, the foundation or other such organizations as well as those committing the offense or acting as the leader in the act or against both<sup>33</sup>.

The legal norms of Article 97 of Law Number 32 Year 2009 regarding Environmental Protection and Management regulate crime in this law constitutes a crime. This indicates that the environmental issue is a human rights issue, because everyone is entitled to a clean and healthy environment so that the consequences of human and corporate actions and behaviors that undertake environmental destructive efforts can be categorized as crimes. The provisions in Law Number 32 of 2009 strictly regulate the application of criminal sanctions covering from Article 97 to Article 120.

#### ***Administrative Instruments in the Implementation of Environmental Violation Sanctions***

The implementation of administrative sanctions is provided in article 71 paragraph (1) of Government Regulation of Indonesia Number 27 Year 2012 on Environment License Jo. Regulation of the Minister of Environment of the Republic of Indonesia Number 2 Year 2013 on Guidelines for Implementing Administrative Sanctions in the Field of Protection and Environmental Management Article 4 paragraph (1) Enforcement of Environmental Permit violating the provisions shall be liable to administrative sanctions which include:

1. Written reprimands;
2. Government Coercion;
3. Freezing of Environmental Permits and;
4. Revocation of Environmental Permit.

The provisions of Law Number 32 Year 2009, Article 76 stipulates that Paragraph (1) The Minister, governor, or leader will impose administrative sanctions for those who are responsible for the business and/or activity if there is a violation of the environmental permit under the supervision. And Paragraph (2) Administrative sanctions consist of: a. Written warning; B. Government coercion; C. Freezing of environmental permits; Or d. Revocation of environmental permit. Furthermore, in the legal norm of Article 78 of Law Number 32 Year 2009, the administrative sanctions as referred to Article 76 will not relieve people who are responsible for the business and/or activities of the recovery and criminal responsibility.

In the technical regulation of the Government Regulation of the Republic of Indonesia Number 27 of 2012 on Environmental Permits, in the provision of Article 71 Paragraph (2) that administrative sanctions are imposed by the Minister, Governor or leader in accordance with their authority "and Article 72 the implementation of administrative sanctions as intended In Article 71 paragraph (2) is based on:

1. Effectiveness and efficiency on the preservation of environmental functions;
2. The level or severity of the type of violation committed by the holder of the Environmental Permit;
3. The level of environmental permit holder's compliance with government fulfillment or obligations specified in the environmental license;

4. History of compliance with environmental permits; and/or
5. The degree of influence or implication of violations committed by the holder of Environmental License to the environment.

#### ***The Procedures of Implementing Administrative Sanctions***

The procedure of applying administrative sanction is as follows<sup>35</sup>:

1. The procedures for the implementing the sanctions must be ensured in accordance with the rules as a based and the Good Governance Principles;
2. Officials applying administrative sanctions must have valid authority under legislation. The authority may originate from attribution, delegation, or mandate. The source of this authority will determine the way in which the administrative authority exercises its authority;
3. The appropriateness of administrative sanctions

The appropriate implementation of administrative sanctions used in the implementation of administrative sanctions include:

#### ***Accuracy of Legal Form***

Administrative sanctions are directed to the infringement of people who are responsible for the business and/or activities, then the instruments used to apply administrative sanctions must be determined in the form of a State Administrative Decree (KTUN).

#### ***Accuracy of Substance***

The appropriateness of substance in the implementation of administrative sanctions relates to the clarity of:

1. Types and regulations that are violated;
  2. Types of sanctions applied;
  3. Orders to be executed;
  4. Time period;
  5. The consequences of administrative sanctions are not enforced; and
  6. Other relevant matters.
1. There is no of non-judicial disability in the implementation of sanctions
  2. In the State Administrative Decision, avoid the clause as follows: "If here is any mistake in this decree, it will be corrected accordingly."

The principle of sustainability

In applying administrative sanctions it is necessary to consider the principles of sustainability. The principle of sustainability is that everyone assumes obligations and responsibilities to the next generations by conserving the ecosystem's carrying capacity and improving the quality of the environment.

Mechanisms for applying administrative sanctions, including:

Gradually

The gradual implementation of administrative sanctions is the application of sanctions preceded by mild administrative sanctions to the heaviest sanctions. If written warning is not adhered to, the next sanction of further administrative sanctions will be imposed, that is the government coercion or freezing of permit. If governmental sanction or freezing permit is not obeyed it can be sanctioned more severe sanction of revocation of permit.

#### **Free (not gradually)**

The implementation of administrative sanctions is the discretion of officials authorized to impose sanctions to determine the choice of types of sanctions based on the level of violations committed by people who are responsible for business and/or activity. If the violation committed by people who are responsible for business and/or activity has caused pollution and/or damage to the environment, it can be directly imposed sanction of government coercion. Furthermore, if governmental administrative sanctions are not enforced the sanction will be imposed without prior written warning sanction.

#### **Cumulative**

The implementation of cumulative administrative sanctions consists of internal cumulative and external cumulative.

Internal cumulative is the implementation of sanctions by combining several types of administrative sanctions on one offense. For example, governmental coercion sanctions are combined with permit freezing sanctions.

External cumulative is the implementation of sanctions by combining the application of one type of administrative sanction with the application of other sanctions, such as criminal sanctions.

The implementation of administrative sanctions will be established by state administrative decisions containing as follows:

1. The name of the position and address of the authorized administrative authority;
2. Name and address of people who are responsible for the business and/or activity;
3. Name and address of the company;
4. Type of violation;
5. The provisions violated by both the provisions stipulated in legislation and the requirements and obligations contained in the environmental permit;
6. The scope of the offense;
7. Description of obligations or orders performed by people who are responsible for the business and/or activity;
8. The period of obligation of people who are responsible for the business and/or activity;
9. The threat of sanctions will be heavier if they don't execute the order in written reprimand sanctions.

The people who are gave the sanction must:

1. Convey the judgment politely (time, manner and place) and immediately to sanctioned parties.
2. Provide explanations to the parties
3. Supervise the implementation of sanctions.
4. Make a report of the results of the implementation of sanctions.

Administration of administrative sanction decisions will be conducted through the following stages:

1. The preparation of the text of the decision with the substance and format in line with the laws and regulations;
2. Signing by an authorized official;
3. Number and enactment;
4. Delivering to interested parties;
5. Making receipt.

## **CONCLUSIONS AND RECOMMENDATION**

### **Conclusions**

The legal norms of Law Number 32 Year 2009 on Environmental Protection and Management has been explicitly regulated on the application of sanctions if there is a violation of the environment such as criminal sanctions stipulated through the provisions of Articles 97 to 120. This indicates a seriousness of the legislators to view the damage to the environment dealt with in strict legal order because actions that can damage the ecosystem of the environment can influence to endanger the life of next generations (*sustainable development*);

The enforcement of environmental law through administrative means that the first step that must be done to achieve regulation. There are advantages of enforcement of administrative environmental law compared to other law enforcement (civil and criminal), that is: the enforcement of environmental administration law can be optimized as preventive and administrative law enforcement. It can be more efficient than financing compared criminal and civil law enforcement. Financing for administrative law enforcement includes routine field inspection costs and laboratory testing. It is cheaper than evidence collection efforts, field investigations, hiring expert witnesses to prove causality in criminal and civil cases;

Administrative law enforcement has ability to invite community participation. Public participation is initiated from the licensing process, monitoring of supervision, and participation in filing objections and requesting state administrators to impose administrative sanctions.

### **Recommendation**

The environmental law enforcement must be firmly focused not only on the implementation of sanctions including criminal sanctions and administrative sanctions, and civil sanctions, but also it must be supported by a community culture that understands the importance of preserving the environment by altering living behavior that cares about the environment. Alignment should take precedence over more biocentric human behavior, rather than the anthropocentrism approach.

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