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ANALYSIS OF THE APPLICATION OF CRIMINAL REGULATIONS AGAINS NATURAL RESOURCE MANAGERS FOR ENVIRONMENTAL VIOLATIONS

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Abstract: Violations in natural resource management often occur and result in significant negative impacts on the environment, threaten the sustainability of ecosystems, and cause social and economic losses. By focusing on the Indonesian legal framework, this study aims to determine the extent of the effectiveness of the application of criminal sanctions against natural resource managers who commit environmental violations and the effectiveness of criminal law in dealing with environmental damage caused by poor management of natural resources. This research uses a normative juridical method, which focuses on the analysis of relevant legal regulations and doctrines. The findings show that, despite the various legal provisions governing criminal sanctions, their application is often inconsistent and ineffective. Several factors include weak supervision, low public awareness, limited resources for law enforcement. This study recommends the need for improvements in the law enforcement system, capacity building for law enforcement agencies, and strengthening community participation in monitoring natural resource management to encourage greater accountability for environmental protection

Keywords: Degadration; Environment Law; Lex Spesialis

1. Introduction

All living creatures on this earth are given a nice and healthy environment by God Almighty; thus, everyone has the right to enjoy a healthy environment, including people and all other living things. It is undoubtedly everyone's responsibility to protect the environment so that we can all enjoy a clean and pleasant atmosphere. In addition to the impact of natural elements like climate and weather, it is now widely acknowledged that human activity is the primary cause of environmental harm, posing a growing danger to the sustainability of a clean and healthy environment. [1]For instance, overuse of natural resources, illicit logging, and variations in rainfall and temperature. Given the significant impact that environmental pollution has on maintaining a clean and healthy environment, environmental impacts must be controlled in order to reduce the danger of environmental pollution. Law No. 32 of 2009 concerning Environmental Protection and Management is a policy that addresses environmental consequences and serves as a basis for environmental management in Indonesia today. This law introduces new ideas to environmental regulations because it includes legal instruments and principles for managing and protecting the environment that are consistent with Indonesia's environmental governance framework.

[1] Ni Putu Risna Daryani, Ayu Putu Laksmi Danyathi, and I Made Walesa Putra, "Pertanggungjawaban Tindak Pidana Lingkungan Hidup Ditinjau Dari Perspektif Hukum Pidana Di Indonesia," *Kertha Wicara: Journal Ilmu Hukum* 9, no. 2 (2020): 4, https://ojs.unud.ac.id/index.php/kerthawicara/article/view/43516.

The issue of environmental violations by natural resource managers has become a serious concern in Indonesia. As a country rich in natural resources, Indonesia also faces great challenges in preserving the environment amid management practices that are often not in accordance with applicable regulations. These violations often lead to environmental pollution, ecosystem damage, and the loss of resources that are vital to the lives of the wider community.

To overcome these problems, the Indonesian government has implemented various regulations aimed at providing protection for the environment, one of which is through criminal law enforcement. Law No. 32 of 2009 concerning Environmental Protection and Management is the main legal basis in cracking down on environmental violations. This law regulates administrative, civil, and criminal sanctions for violators, and emphasizes the use of criminal law as a last resort (Ultimum Remidium) when administrative and civil sanctions are not effective enough in overcoming these violations.[2]

However, the application of criminal law in cases of environmental violations often faces various obstacles, especially in terms of enforcement against corporations that are the main actors in natural resource management. Case studies on several companies that have been proven to pollute the environment show that even though administrative warnings have been given, companies still commit violations that have a wide impact, so it is necessary to take stricter legal steps.[3] Therefore, this study aims to analyze the extent of the application of criminal sanctions against natural resource managers who violate environmental rules, as well as the effectiveness of existing regulations in overcoming these problems.

2. Research Methode

The normative juridical technique, a legal research approach that centres on evaluating relevant legal norms or regulations, is employed in this study. The goal of this approach is to examine laws and rules pertaining to the imposition of criminal penalties on managers of natural resources who disregard environmental standards. In order to apply the normative juridical approach, pertinent primary and secondary legal texts are examined. The laws and regulations that serve as the legal foundation for this study are examples of primary legal materials. Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) is one of the regulations that are used. Additionally, secondary legal materials are those that elaborate on fundamental legal information. Articles from scholarly journals that address environmental law and its efficacy comprise this legal content. Articles from scholarly journals that address environmental law, the efficacy of criminal laws, and pertinent research reports comprise this legal content.

3. The Application of Criminal Sanctions for Environmental Violations in Indonesia

[2] Fachrul Rozi, "Penegakkan Hukum Lingkungan Hidup Ditinjau Dari Sisi Perdata Dan Pidana Berdasarkan Undang-Undang No. 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Jurnal Yuridis Unaja Vol 1 No 2 Desember 2018* 1, no. 32 (2018): 42.

[3] Hendra Wijaya, Budi Santoso, and Muhamad Azhar, "Pertanggungjawaban Pidana Korporasi Atas Pencemaran Lingkungan Hidup," *Notarius* vol 14, no. 1 (2021): 211, https://doi.org/10.14710/nts.v14i1.38863.

Law Number 32 of 2009 regulates various criminal provisions for parties who commit environmental violations, including natural resource managers. Articles 98 to 101 of the law stipulate criminal sanctions in the form of imprisonment and fines for perpetrators of environmental crimes. For example, Article 98 paragraph (1) states that anyone who intentionally dumps waste and/or materials into environmental media without permission can be sentenced to a maximum of 3 (three) years in prison and a maximum fine of Rp3,000,000,000.00 (three billion rupiah). And at most IDR 10.000.000.000,00 (ten billion ruoiah). Over the past few years, we have seen the destruction and pollution of the environment caused by natural resources and man-made activities worsen for the environment and natural resources of Indonesia. This is due to the rules that are applied ineffectively. [4]In dealing with environmental problems, criminal sanctions must be applied. However, it is considered ineffective to handle cases of environmental pollution crimes if criminal sanctions are used as an ultimatum to remind. If administrative penalties are imposed, it could lead to industrial closures and worker unemployment, which could lead to an increase in crime and criminality. In addition, the civil case process usually takes a long time. To combat environmental violations, acts of pollution and environmental destruction must be acted upon firmly. Current laws and regulations stipulate sanctions for environmental crimes. The law also stipulates three steps for law enforcement that are carried out systematically, namely administrative law enforcement, dispute resolution outside or through the courts, and investigation of criminal acts of environmental violations.

There is an opinion in criminal law theory that criminal sanctions are the last way to punish the perpetrators of environmental crimes. This opinion is based on the idea that administrative sanctions are the responsibility of the government to manage the environment. Authorized agencies or institutions to grant permits and take administrative action if violations are committed. After the administrative sanction, there will be a civil sanction consisting of a fine or compensation for material violations. On the contrary, when administrative and civil sanctions do not function properly, new criminal sanctions will be imposed. Law No. 32 of 2009 stipulates minimum threats and maximum penalties, penalties for violators of environmental standards, development of evidence, regulation of corporate crimes, and integration of criminal law enforcement. The principle of ultimum remidium is only used for formal crimes that are considered ineffective after administrative sanctions are applied. Examples of criminal acts that use this principle are violations of wastewater quality standars, emissions, or disturbances in accordance with articel 100 of Law No. 32 of 2009. In addition, the principle of primum remidium is applied to criminal provisions in other articles, such as B3 waste management and dumping. The application of the principle of primum remidium is considered appropriate because violations of B3 waste and dumping are not material offenses or offenses that do not require material proof to know the prohibited impact of an act that occurs.

According to Law No. 32/2009 on Environmental Protection and Management (hereinafter referred to as the PPLH Law), sanctions fall into two categories: administrative and criminal sanctions. Administrative sanctions are the result of norms made in the form of prohibitions, orders, and obligations. Administrative sanctions are used to implement the provisions of the

[4] Darmono, "Pencemaran Lingkungan Pencemaran," *Pencemaran Lingkungan Pencemaran* vol 03, no. 1 (2001): 111, https://doi.org/10.32332/siyasah.v4i1.

law itself with the aim of providing punishment to everyone who violates, which is adjusted to how severe, mild, or moderate the violation is, and creating a deterrent effect so that everyone does not violate the law. [5]Some experts argue that administrative sanctions are used to prevent, stop, and restore the environment that is damaged and polluted by violations. Thus, it can be concluded that the main purpose of applying administrative sanctions is to protect and prevent environmental damage. Thus, such sanctions focus more on the "legal subject who commits environmental damage" and the "legal subject who is harmed" as a result of such actions, when compared to other legal sanction instruments, such as civil and criminal sanctions. In addition, national environmental policy collaborates with the application of environmental administrative sanctions to achieve the goal of environmentally sustainable development. Administrative sanctions are very important in environmental law enforcement because of their function as a tool to control, prevent, and follow up on actions prohibited by environmental law. Administrative sanctions function as a non-judicial preventive and repressive tool to end or stop violators.

Law No. 23 Year 1997 on Environmental Management tends to emphasize aspects of environmental management in the process of environmental law enforcement. As a result, in cases related to environmental issues, this law tends to provide administrative sanctions rather than criminal sanctions. Some people argue that the imposition of administrative sanctions is easier than criminal law enforcement that must be carried out by the police, even if their tasks and functions do not specifically deal with environmental protection issues. Regulation of the Minister of Environment of the Republic of Indonesia Number 2 of 2013 concerning Guidelines for the Application of Administrative Sanctions in the Field of Environmental Protection and Management must be applied when applying administrative sanctions in environmental protection and management efforts, as stipulated in Article 76 of the PPLH Law, where ministers, governors, regents, or mayors are authorized to apply administrative sanctions. Minister of Environment Regulation No. 2 of 2013 stipulates the following administrative sanctions:

1. Written reprimand
2. Government coercion
3. Suspension of environmental permit
4. Revocation of environmental permit
5. Administrative fine.

Environmental loss and damage are not only tangible but also potentially threatening to the environment and public health. This is due to the fact that such damage is often not immediately apparent and difficult to identify. As such, the less serious general criminal offenses should be formulated as material criminal offenses, where the consequences must be proven. However, for specific criminal offenses, or special criminal offenses, which fall under the lesser administrative law, formal formulation can be done without waiting for proof of the consequences. [6]As the scope of environmental crimes and violations is broader than other

[5]Darmono, "Pencemaran Lingkungan Pencemaran," *Pencemaran Lingkungan Pencemaran* vol 03, no. 1 (2001):108-109, https://doi.org/10.32332/siyasah.v4i1.

[6] Muhammad Amin Hamid "*Penegakan Hukum Pidana Lingkungan Hidup Dalam Menanggulangi Kerugian Negara*" Legal Pluralism vol 6 no 1, January 2006 : 108.

conventional crimes, they are categorized as economic crimes in the broadest sense and cause significant economic losses in addition to environmental damage. One example is the illegal logging committed by timber businessman Adelin Lis of Medan, which has caused significant environmental damage. Illegal deforestation that lasted from 1967 to the present has led to the destruction of 1.8 million hectares of forest in Indonesia per year, despite ultimately increasing foreign exchange.

Enforcing strong and efficient law enforcement can help raise awareness of the significance of environmental protection. The PPLH Law's criminal law enforcement employs the law enforcement integration mechanism, which is governed by Article 95 paragraph (1) as amended by Constitutional Court Decision Number 18/PUU-XII/2014. This decision states that, when it comes to enforcing the law against those who commit environmental crimes, as well as other crimes resulting from violations of the PPLH Law, integrated law enforcement is carried out between PPNS, Police, and Attorney under the direction of the Minister. In theory, law enforcement is not just seen as a positivist process of applying the law; it also has a wider dimension since, in the course of its operations, the realisation of the values outlined in environmental law regulations is sought after. [7]According to Soerjono Soekanto, the fundamental principle of law enforcement is the activity of balancing the relationships between ideals enshrined in the legal code. rules to establish, preserve, and uphold peace in the association of life that are consistent, visible, and a sequence of final stage value elaboration. Jimly Assiddiqie, on the other hand, asserts that law enforcement is a process. It is the process of working to maintain or carry out legal norms, which serve as actual rules for conduct in traffic or legal interactions in society and the state. Regarding environmental law enforcement, environmental law enforcement refers to the implementation of legal standards outlined in the PPLH Law. Criminal law enforcement implementation Criminal law enforcement in the context of environmental crimes as defined by the PPLH Law through the criminal law enforcement process. governed by the PPLH Law, during the PPNS investigation process at government organisations whose investigatory authority is conferred upon them for the protection and management of the environment. In addition to other powers outlined in the PPLH Law, the PPNS has the authority to investigate the veracity of reports or information pertaining to environmental crimes, examine anyone suspected of committing environmental crimes, and request information and supporting documentation from anyone in connection with an environmental crime. This includes using force, such as arresting, detaining, and detaining someone. When it comes to arrest and custody, PPNS works with the Republic of Indonesia's investigative police officers.

The handling of environmental criminal cases is carried out within the framework of integrated cooperation to prevent and reduce differences of opinion, and the local government and relevant sectoral agencies fully support it. To construct the juridical and technical aspects, a common perception and understanding between prosecutors, experts, and witnesses must be

[7] Ihwan Sutiawan, Sigid Suseno, and Maret Priyanta, "Prosedur Penegakan Hukum Pidana Terpadu : Dalam Tindak Pidana Dibidang Lingkungan Hidup," *Jurnal Wawasan Yuridika* vol 6, no. 1 (2022): 10, https://doi.org/10.25072/jwy.v6i1.537.

established. Further thinking about the concept of one-stop law enforcement in Indonesia, particularly in terms of environmental crimes, requires planning for career development systems and incentives for prosecutors and police. Furthermore, the recruitment system for officers entering the one-stop law enforcement institution should be based on quality and integrity assessment, which will produce law enforcers who are professional and have a conscience in realizing sustainable development.

1. Offense in Environmental Crime

In Law No. 32, Year 2009, criminal provisions are governed from Article 97 to Article 120. From these regulations, in general, the formation of environmental violations is qualified into material and formal offenses. While Articles 100-111 and 113-115 define formal offences, Articles 98, 99, and 112 define material offences. Environmental offences are defined as deliberate or careless actions that lead to the exceeding of air quality requirements under Articles 98 and 99 of Law No. 32/2009. exceeding the normal thresholds for environmental damage, water quality, marine water quality, or ambient air quality regulations. Furthermore, the act has the potential to cause injury, significant injury, impairment to human health, or even death. Article 112, on the other hand, defines environmental offences as the wilful failure of authorised officials to provide supervision that leads to environmental pollution and/or damage that causes mortality.[8]

Article 88 of the Environmental Law states that "Every person whose actions, his/her actions, business, and/or activities use B3, produce and/or manage B3 waste, and/or which pose a serious threat to the environment" is subject to criminal prosecution in the form of strict liability. Without having to establish negligence, those who handle hazardous material and/or who represent a significant environmental risk are solely accountable for any damages sustained by the environment (Amalgamation of Article 88). demonstrating the fault part. However, it turns out that the fundamentals of criminal law itself are being challenged by this flexible environmental offence. The fundamental idea of criminal law The principle of nullum crime, nulla poena sine lege certa (lex certa), which mandates that the offence be specified explicitly and not multilaterally, is violated by the flexible definition of environmental offences. It is not multi-interpretive and is clearly formulated. The protective role of the legality principle, which states that criminal law shields the populace from governmental power, is also connected to a precise definition of the offence. The people are shielded from unbridled government power by the criminal law. As previously mentioned, Article 100 paragraph (2) regulates the use of criminal law as the last resort in cases involving environmental offenses. According to Article 100 paragraph (1), "Any person who violates wastewater quality standards, emission quality standards, or nuisance quality standards shall be punished with imprisonment for a maximum of 3 (three) years and a maximum fine of Rp. 3,000,000,000 (three billion rupiah)" is the only exception to this rule. Only when the administrative consequences are not followed or the breach is committed more than once can criminal offences under Article 100, paragraph (1), be imposed. is repeatedly committed. [9]According to this article's provisions, the PPLH Law's functionalisation of criminal law as the ultimate remedy can only be implemented if it satisfies three requirements: 1) It can only be applied to offences listed in Article 100, paragraph (1); 2) it can only be applied in the event that the administrative sanctions that have

[8] Rusdianto Pratama, "Tindak Pidana Pencemaran Lingkungan Serta Pertanggungjawabannya Ditinjau Dari Hukum Pidana Di Indonesia," *Lex Crimen* vol 4, no. 2 (2015): 108.

[9] Ryan Akbar Fitriadi, "Penegakan Hukum Pidana Dibidang Lingkungan Hidup: Pemidanaan Berbasis Konservasi Lingkungan Hidup," *Syntax Idea* vol 3, no. 7 (2021): 1716–34, https://doi.org/10.46799/syntax-idea.v3i7.1374.

been imposed are not carried out. Administrative consequences that have been put in place are not being followed; and 3) the offender has committed the offence in Article 100 paragraph (1) more than once. The administrative law procedure is being used for the settlement if the offender has only committed the offence once. Brief explanation of the reasoning behind the majority of articles' usage of primum remedium and how ultimum remedium is accommodated. the majority of publications, as well as how the ultimum remedium is accommodated. As previously stated, Law No. 32/2009's punishments are intended to have a deterrent effect on the offender as well as the community. The purpose of the ultimum remedium is to dissuade the offender and the public at large; its use must be consistent with this objective. Only when the punishments meted out to violators are severe enough to outweigh the harm done can there be a deterrent effect.

Vicarious liability, a type of liability in criminal law under the Anglo-Saxon legal system, has been accepted by UUPPLH. In the Anglo-Saxon legal system, culpability in criminal law does not necessitate the presence of mensrea or guilt. does not necessitate a criminal offence's element of mensrea or culpability. criminal activity. A departure from the Indonesian criminal law's tenet of no punishment without blame would result from the adoption of this interpretation. Another view is that even though mensrea, or fault, is explicitly mentioned in the UUPPLH's definitions of formal offences, it is assumed to exist because these offences typically involve active human behaviour that must be motivated by the offender's conscious mind. Legislative measures that are purposefully created or may also result from "negligence" in their ability to successfully prevent or address environmental issues. A number of pragmatic, retroactive, sectoral, partial, and short-term environmental laws and regulations demonstrate this problem.

2. Corporate Liability in Environmental Crimes

Companies that act and are criminally accountable are recognised by UUPPLH as subjects of criminal law. If an environmental crime is committed by/for, or on behalf of a business entity, the following parties may be subject to prosecution, punishment, and criminal sanctions, according to Article 116 of the Environmental Law, which governs the criminalisation system for corporations:

1. Business entity
2. Whoever issued the order to perpetrate the crime or who led the activities involved in the crime.
3. Both natural individuals and business entities are subject to the same penalties.

The escalation of penalty in environmental criminal proceedings conducted for and on behalf of corporations is governed by Article 117 of the Environmental Law. if the criminal charges are brought against the commanders or leaders of the criminal offence, offences committed for and on behalf of a corporation. According to Article 116 paragraph (1) letter b of the Environmental Law, criminal charges are brought against the person who gave the order or who was the leader of the criminal offence (natural human). As defined by the PPLH Law's Article 116, paragraph (1), letter b. Consequently, criminal charges will be brought against the offender when an environmental offence is committed by an individual acting on behalf of a corporation. Carries out the unlawful act on behalf of the company, and the penalty is made worse

by a third of the threat of the article being broken. One of the more intriguing aspects of UUPPLH's corporate criminal liability regulations is Article 118. According to the article, management is in charge of enforcing criminal penalties against company companies. The management, who is authorised to represent in and out of court (functional actors), is in charge of representing commercial enterprises that have been subjected to criminal sanctions. This means that even if the PPLH Law primarily governs the criminal penalties imposed on commercial entities, environmental crimes always result in the criminalisation of natural human people alone. Despite the PPLH Law's regulation of corporate offenders, it only applies to natural human persons, according to Article 119 of the UUPPLH, businesses may only face additional penalties. Governed by UUPPLH Article 119. Vicarious liability in the Anglo-Saxon legal system is formulated similarly to the terms of Article 118 UUPPLH.

4. Conclusion

Administrative, civil and criminal sanctions can be used to sanction violations of environmental law. Administrative sanctions should be the first to be carried out. To initiate environmental law enforcement, Law No. 32/2009 on Environmental Protection also applies an administrative sanction system (Article 76). Administrative, civil, and criminal sanctions are the three types of sanctions used in tackling environmental protection crimes (PPLH).

Criminalization policy, criminal responsibility, and punishment are important elements in handling environmental crimes. Therefore, a clear regulation on minimum sanctions and the formulation of strict and specific articles are needed, so as to provide legal certainty. This will not only make it easier for the public to understand the applicable rules, but also facilitate law enforcement in enforcing sanctions fairly and effectively. Thus, natural resource management can run more responsibly, and prevent greater environmental damage in the future.

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