



OPTIMIZATION OF THE PRIMUM REMEDIUM PRINCIPLE IN ENVIRONMENTAL CRIMES

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Abstract: Environmental crime is still one of the problems faced, and there is a need for sanctions to provide a deterrent effect for the perpetrators. In Law Number 32 of 2009, one enforcement of environmental criminal law is the principle of premium medium, which states that criminal law is the primary tool in law enforcement. However, in Law Number 6 of 2023 concerning the Stipulation of Government Regulation instead of Law Number 2 of 2022 concerning Job Creation, there are changes in the punishment system that make punishment the last legal remedy (Ultimum Remedium) even though the determination of the punishment system has a crucial/critical position to reduce the high level of crime or environmental violations, This has also weakened the power of environmental law and is also contrary to the constitution which adheres to the concept of Green Constitution. This research aims to identify and describe how to strengthen the principle of Premium Remedium in environmental law regulation. The research method used is normative juridical, describing the synchronization of legislation that applies in a particular field, whether it contradicts or not between one another. There are still many problems regarding environmental law regulation, especially in the punishment system, the normative framework that provides lighter sanctions to environmental criminals; this is contrary to the PPLH Law, which makes punishment the primary legal remedy.

Keywords: Environmental Crime; Law Enforcement; Primum Remedium

1. Introduction

Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that every citizen has the right to a good and healthy environment, and the community should have the right to enjoy and obtain a healthy and sound environment. The state should be obliged to fulfill the community's right to a healthy and sound environment. However, many violations and environmental damage still occur, derogating the community's rights.¹ The occurrence of environmental violations is undoubtedly due to weak law enforcement and policies issued by the government, which are considered weak and less able to answer or deal with problems and environmental violations.

Environmental law policy has undergone several changes, such as Law No.4 of 1982 concerning Basic Provisions for Environmental Management, Law No. 23 of 1997, and Law No.32 of 2009 concerning Environmental Protection and Management (UUPPLH). Even after the changes in the law that occurred still experienced ups and downs and the regulations were not able to answer various existing problems, then there were several changes to the UUPPLH which caused problems precisely in several articles in Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law

¹ Lona Puspita, "Optimalisasi Penegakan Hukum Pidana Di Bidang Lingkungan Hidup Melalui Prinsip Primum Remedium," 2018, 1–7.



which even weakened environmental legal protection, Several articles in UUPPLH that previously used the threat of criminal punishment have now changed to administrative sanctions, precisely in Article 82A and Article 82B, these two articles provide administrative sanctions for several environmental crimes such as violations of business licenses without Amdal, violations of compliance with UKL-UPL standards, violations of hazardous and toxic waste management, disposal of waste into environmental media without permission, to dumping violations, these crimes are included in unconditionally punishable acts, contained in Chapter XV concerning criminal provisions of UUPPLH. This differs from the Job Creation Law, which only provides administrative sanctions. If you want to be criminalized, there must be victims/damage to health, safety, and/or the environment.

This new norm contradicts the UUPPLH, oriented towards the Premium Remedium principle, while the Job Creation Law prioritizes the Ultimium Remedium principle. It can be seen that this sanction provision is getting lighter, this can increase environmental violations even more rampant even though the environment should be protected; the Job Creation Law, which makes it easier for business licenses but fails to protect the environment, can be seen from several judge decisions that give light sentences to perpetrators of B3 waste and dumping violations. The difference between the old and new norms in environmental law regulation is a serious problem and must be resolved. This provides legal certainty and strengthens environmental protection by restoring the Premium Remedium principle.

2. Research Method

The research method used is normative juridical, describing the synchronization of legislation that applies in a particular field, whether it contradicts one another or not.² The specifications in this research use a legislative approach (statute approach) and a conceptual approach that leads to existing doctrine.

3. Discussion

Concept of Criminal Procedure in Environmental Law

Many environmental problems still occur, including land and forest environment, water environment, and air. This problem must be handled both in terms of prevention and law enforcement. Satjipto Rahardjo said law enforcement is an effort to realize ideas and concepts into reality. Law enforcement is discovering the wishes of legal desires and turning them into reality. Legal desires are the thoughts of the legislature formulated in legal regulations.³ In environmental regulation, there are two aspects of punishment; the first is administrative sanctions, which are usually given to companies that commit damage and pollution; this is regulated in Article 76 paragraph 2 UUPPLH, then the second is criminal sanctions, which are sanctions to educate companies and provide protection for the community.

² Ali zainudin, *Metode Penelitian Hukum*, ed. leny wulandari, pertama (Jakarta: Sinar Grafika Offset, 2009), https://www.google.co.id/books/edition/Metode_Penelitian_Hukum/y_QrEAAAQBAJ?hl=id&gbpv=1.

³ Satjipto Raharjo, *Penegakan Hukum: Suatu Tinjauan Sosiologis*, ed. Ufran, Cet.1 (Yogyakarta: Genta Publishing, 2009).

3. 1 Environmental Criminal Regulation in Laws and Regulations

Criminal law focuses on acts that violate norms and harm the public interest. As for the criminal procedure law, some regulations specialize in certain offenses, namely Special Crimes.⁴ One of the special criminal laws is environmental law, aimed at someone who damages and pollutes the environment or commits ecological crimes. As a state of the law, Indonesia has the spirit of development and environmental protection; it can be seen that there are environmental norms in the constitution precisely in article 28H paragraph 1, which essentially guarantees protection for citizens to get a good and healthy environment. In addition, Article 33, paragraph 4 of the 195 Constitution of the Republic of Indonesia, guarantees an environmentally sound state economy.

These two articles show that Indonesia is concerned about the environment, K.C. Where states that the constitution is a picture of the entire state system, the whole state system must uphold the green aspects when the constitution is green.⁵ Law No. 4 of 1982 was the first environmental regulation concerning Basic Provisions for Environmental Management. There were also other more specific regulations, such as Law No. 5 of 1960, concerning Basic Agrarian Principles. Law No.44 of 1960 concerning Oil and Gas Mining and many more. All these regulations remain centered on the 1982 PPLH Law. To ensure that the law continues to advance with the times, it is necessary to make changes to date, namely Law No.32 of 2009 concerning Environmental Protection and Management.

3. 2 The Applicability of Criminal Law Principles in Environmental Law Regulation

Principles in Black's Law Dictionary, namely things that are basic or principal. These basic things are used to find doctrine or truth in law.⁶ Legal principles according to Sudikno Mertokusumo, he presents legal principles are general basic thoughts that are or are the background of every legal system that is manifested in legislation and judges' decisions, which are positive law and can be determined by looking for general characteristics in these concrete regulations. In Sudikno Mertokusumo's opinion, we know that legal principles are the beginning of forming fundamental legal principles. If legal principles are contained in actual legal regulations, they can be used to regulate an event. But if not, it cannot be applied in an event.

Referring to environmental crimes contained in Law Number 32 of 2009 concerning Environmental Protection and Management, the first principle of *ultimum remedium* makes criminal sanctions the last legal remedy because criminal law brings suffering. *Ultimum Remedium* principle, which makes criminal sanctions the last resort. In this case, maximized means when other legal remedies do not work effectively to reduce a criminal offense or if sanctions in other fields of law are inadequate.⁷ Two syllables are listed in the *Ultimum Remedium* principle, including *Ultimum*, which means the last, and *Remedium*, which comes from the word *remedy*, which means medicine or repair. In environmental law enforcement

⁴ Ruslan Renggong, *Hukum Pidana Khusus : Memahami Delik-Delik Di Luar KUHP*, ed. Irfan Fahmi, first edit (Jakarta: Kencana, 2016), <https://lib.ui.ac.id/detail?id=20471695&lokasi=lokal#parentHorizontalTab3>.

⁵ Wheare, K.C., 1975, *Modern Constitution*, Oxford University Press, London, hlm.33.

⁶ Salim Hs, *Penghantar Ilmu Hukum*, ed. yayat sri hayati, edt 1 (Depok: Rajawali Pers, 2019).

⁷ Moningka, C. (2017). Tindak Pidana Membahayakan Nyawa atau Kesehatan Orang (Pasal 204 dan 205 Kuhp) dalam Kaitannya dengan UU Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen. *Lex Crimen*, 6(5). 66-74

efforts, the *Ultimum Remedium* principle can be used if administrative law is declared unsuccessful or if criminal law is a last resort to sanction the perpetrators and prevent potential perpetrators.⁸

Then the second is the principle of *primum remedium*, where an act is genuinely considered detrimental to the interests of the state or the people, both according to the applicable law and according to the people who are victims.⁹ If this happens, criminal sanctions are the leading choice given to the perpetrators, both individuals and corporations, to create a deterrent effect for the perpetrators so that the perpetrators and other people do not commit criminal acts.

3.3 Setting the Principle of *Primum Remedium* in Environmental Law

The *primum remedium* principle in environmental law is regulated in Law No. 4 of 1982, which was later amended to Law No.2 of 1997 and amended again in Law No.32 of 2009 concerning Environmental Protection and Management. Which is complete in comparison in the following table:

Comparison of Law No. 4 of 1982, Law No. 23 of 1997, Law No. 32 of 2009

Law No. 4 of 1982	Law No. 23 of 1997	Law No. 32 of 2009
The content of this law has eight chapters with 24 articles	The content of this law is 11 chapters with 52 articles	The content of this law is 17 chapters with 127 articles
Apply the principle of <i>ultimum remedium</i>	Apply the principle of <i>ultimum remedium</i>	Apply the principle of <i>primum medium</i>
The criminal sanctions in this law are very far from the value of money that has developed now, and the fines are also very low. The fines threatened in this law range from millions of rupiah to one hundred million rupiah.	Overall, the criminal sanctions applied in this law have been left behind and are no longer relevant to the development of Indonesian society today. In general, the fines threatened in this law range from tens of millions to hundreds of millions of rupiah.	The criminal sanctions in this law are generally more severe than those in other laws. The fines threatened in this law range from hundreds of millions of rupiah to tens of billions of rupiah.

It can be seen that the three laws certainly have their style. As an opening regulation of Environmental Law, namely Law No.4 of 1982 and Law No. 23 of 1997, this Law protects and manages the environment. Still, the punishment system has not been strictly regulated and is *Ultimum Remedium*. Law No. 32 of 2009 is different from the previous law because Law No. 32 of 2009 not only protects and manages the environment but also suppresses cases of violations. After all, formulating the PPLH Law to determine criminal sanctions based on the

⁸ Machmud Syahrul, *PROBLEMATIKA PENERAPAN DELIK FORMIL DALAM PERSPEKTIF PENEGAKAN HUKUM PIDANA LINGKUNGAN DI INDONESIA*, 1st ed. (Bandung: Mandar Maju, 2012).

⁹ Kukuh Subyakto, "Azas *Ultimum Remedium* Ataupun Azas *Primum Remedium* Yang Dianut Dalam Penegakan Hukum Pidana Pada Tindak Pidana Lingkungan Hidup Pada Uu Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup," *Jurnal Pembaharuan Hukum* 2, no.2 (2015): 4–6, <http://jurnal.unissula.ac.id/index.php/PH/article/view/1431>.

principle of *Primum Remedium* is the right thing to ensure environmental protection. One of the Supreme Court Judges, Takdir Rahamadi, stated that the PPLH Law is a strict regulation that protects the environment.¹⁰ It is concluded that Law No. 32 of 2009 is more effective in suppressing the problem of environmental violations. However, society continues to develop, and the law must follow developments. Therefore, there will undoubtedly be changes or replacements for the PPLH Law.

We know that Law No.32 of 2009 concerning Environmental Protection and Management (PPLH Law) was officially amended by the Job Creation Law on March 31, 2023. The Job Creation Law or Law No.6 of 2023 concerning the Stipulation of Government Regulation instead of Law No.2 of 2022 concerning Job Creation (Job Creation Law). Several regulations in the PPLH Law articles have been amended and eliminated through the Job Creation Law, which uses the concept of Omnibus Law; approximately 38 articles have been amended in the law. Most of the PPLH and Job Creation Law changes are related to environmental permits and include sanctions.

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4. Changes in the Environmental Criminal System in the Job Creation Law

The renewal of the PPLH Law contained in the Job Creation Law through the Omnibus Law method happened to support employment in Indonesia. One of them is providing jobs and ease of business licenses.¹¹ This can be seen in article 21 of the Job Creation Law, where changes to the PPLH Law were made to make it easier to obtain environmental approval, and at least 10 articles were deleted. 26 articles were amended, and four articles regulated new norms. Some of the provisions of the article include:

- Changes to general provisions, namely Article 1 number 11 (definition of EIA), number 12 (UKL-UPL), number 35 (environmental approval), number 36 (central government), number 37 (local government), and number 38 (minister)
- Amendment to Article 20 paragraph (3) letter b on the granting of a license to discharge waste into environmental media;
- Amendments to Article 24, Article 25 letter c, Article 26, Article 27, Article 28, and Article 32 related to EIA Documents;
- Deleting Articles 29, 30, and 31 regarding the EIA assessment commission;
- Amendments to Article 34 and Article 35 concerning UKL and UPL standards;
- Deleting Article 36 and Article 40, Article 63, Article 69 on Environmental Permits;

¹⁰ Takdir Rahamadi, "Perkembangan Hukum Lingkungan di Indonesia," t.t., <http://www.mahkamahagung.go.id/rbnews.asp?bid=2949>.

¹¹ Fatkhul Muin and M LI, *Monograf IMPLIKASI HUKUM PEMBERLAKUAN UU NO . 13 TAHUN 2022 TENTANG PERUBAHAN KEDUA ATAS UU NO . 12 TAHUN 2007 ATAS PUTUSAN MAHKAMAH KONSTITUSI NOMOR 91 / PUU-XVIII / 2020 PENGUJIAN FORMIL UNDANG-UNDANG NOMOR 11 TAHUN 2020 TENTANG CIPTA KERJA TERHADAP UNDA, 2022, 264–65.*

- Amend Article 37 and Article 38 regarding the conditions for canceling a business license;
- Amendment of Article 39 on announcement of environmental feasibility;
- Amendment to Article 55 regarding environmental approval;
- Amendment to Article 59 on Hazardous Waste Management;
- Amendment of Article 61 and Addition of Article 61A regarding dumping permit;
- Amendment of Article 71, Article 72, Article 73, Article 76, Article 77, Article 82 paragraphs (1) and (2), then delete Article 79 on supervision;
- Addition of Article 82A, Article 82B and Article 82C on types of administrative sanctions;
- Amendment of Article 88 on absolute responsibility;
- Deleting Article 93 and Article 102 on administrative lawsuits over violations of environmental permits;
- Deleting Article 109, Article 110, then amending Article 111 and Article 112 regarding criminal sanctions in terms of environmental permits

Based on the changes above, most of them are related to business licenses and environmental approvals that affect other norms, such as government authority, EIA, UKL-UPL, and sanction provisions.¹² It can be said that the amendments to the PPLH Law in the Job Creation Law have changed around 50% of the content material, which is the central norm. Then, there was a shift in the punishment system; some provisions threatened with criminal sanctions were changed to administrative sanctions. This change means that functional environmental criminal law no longer leads to the Primum Remedium principle but is more oriented toward the Ultimum Remedium principle.¹³ The choice of a punishment system in regulation is undoubtedly essential and will also affect the enforcement of environmental crimes in the future.

The visible change is that the PPLH Law applies more criminal law or applies the principle of Primum Remedium. It can be proven that 18 articles contain criminal sanctions, namely in articles 97-115. In comparison, in administrative sanctions, there are seven articles, namely article 76 to article 83, and for civil sanctions, around 9 articles, namely articles 84 to 93. It can be said that the PPLH Law is more oriented toward the principle of Primum Remedium. Still, changes to the Job Creation Law partly change the system of punishment for environmental law and make punishment the last legal remedy, one of which is the amendment to article 99 paragraph 1, which reads,

“Every person who due to his negligence results in the exceedance of ambient air quality standards, water quality standards, seawater quality standards, or standard criteria for environmental damage, shall be punished with imprisonment for a minimum of 1 (one) year

¹² Andri Gunawan Wibisana, “Catatan Kritis Atas Ketentuan Mengenai Lingkungan Hidup Dalam Pasal 23 Rancangan Undang-Undang Cipta Kerja 2020,” no. April (2020): hlm.4, <https://tractionenergy.asia/wp-content/uploads/2020/05/Catatan-Kritis-atas-Ketentuan-mengenai-Lingkungan-Hidup-dalam-Pasal-23-RUU-Cipta-Kerja.pdf>.

¹³ Anih Sri Suryani, “Perizinan Lingkungan dalam Undang-Undang Cipta Kerja dan Dampaknya Terhadap Kelestarian Lingkungan,” Info Singkat, Kajian Singkat Terhadap Isu Aktual dan Strategis, Vol. XII, Pusat Penelitian Badan Keahlian DPR RI, 2020.

and a maximum of 3 (three) years and a fine of at least Rp1. 000,000,000.00 (one billion rupiah) and a maximum of Rp3,000,000,000.00 (three billion rupiah)”

There are additional articles 82, namely Article 82A, article 82B, and Article 82C; these three articles contain provisions for administrative sanctions. If you focus on article 82B, paragraph 3, which reads:

“Any person who, due to negligence, performs an act that exceeds ambient air quality standards, water quality standards, seawater quality standards, or standard criteria for environmental damage not by his business license is subject to administrative sanctions.”

In the comparison between Article 99, paragraph 1 of the PPLH Law, and Article 82B, paragraph 3, these two articles are seen to have the same arrangement, which can trigger legal dualism.

Then, suppose it is examined that the Job Creation Law favors business actors and does not prioritize environmental protection. In that case, it can be seen in Article 82B paragraph 3 of the Job Creation Law where if an action has an impact on exceeding quality standards if the perpetrator violates administrative or his actions are not by the provisions of business licensing, he is only threatened with administrative sanctions, this is what has been changed from article 99 paragraph 1 of the PPLH Law which provides criminal sanctions to people who commit violations”.

Then secondly, the deletion of Article 102 of the PPLH Law in the Job Creation Law and the deletion of Article 102 does not directly eliminate the provisions of the norm content. It is contained in article 82, precisely article 82A, letter a of the Job Creation Law. Article 102 of the Environmental Law reads: “Any person who conducts B3 waste management without a permit, as referred to in Article 59 paragraph (4), shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp3,000,000,000.00 (three billion rupiah).”

In Article 82A letter a which reads:

“Every person who conducts business and/or activities without having a business license or approval from the Central Government or Regional Government as referred to in Article 24 paragraph (5), Article 34 paragraph (3) or Article 59 paragraph (4) is subject to administrative sanctions.”

Based on the sound of the two articles above, they have one thing in common: regulating the management of B3 waste. Still, there are differences between the two sounds of the article on the imposition of sanctions in article 102 of the PPLH Law, which still imposes criminal sanctions. Still, article 82A letter A does not impose criminal sanctions but only provides administrative sanctions. Whereas B3 waste not only causes environmental damage but can cause victims due to dangerous toxic substances if only given administrative sanctions, it is less effective in providing coercion to the perpetrators.

Then, article 110 of the PPLH Law, which was replaced by Article 82B paragraph 2 of the Job Creation Law, this article is similar to the previous one, which eliminates criminal sanctions and only imposes administrative sanctions. Based on the three articles above, it can be seen that

the Job Creation Law is more directed or uses the Ultimum Remedium Principle, which indirectly excludes criminal sanctions in environmental law. Also, administrative sanctions in Article 81 of the PPLH Law, which, if violators are late in carrying out government coercion or fines based on Article 79, will immediately be subject to sanctions of freezing or revoking business licenses. This differs from that in the Job Creation Law, where when violators do not pay coercion money or are late in paying administrative payments or government coercion, violators only need to pay, and there are no additional sanctions.

This is because the provisions of Article 78 of the PPLH Law have been abolished. Based on the above regulations, the sanctions for perpetrators in the Job Creation Law are lighter. It is feared that if the imposition of sanctions on violators is lighter, this may not have a deterrent effect. The criminal sanctions can only be carried out if they cause losses/victims. This differs from the existing arrangements in the PPLH Law, where there are no special conditions for criminal sanctions for violators. For example, when someone runs a business without a permit, they will be threatened with criminal sanctions. It can be seen that environmental use permits in the regulation of the PPLH Law are essential, but in the Job Creation Law, this is not the case. The deterioration of environmental law regulations that are more favorable and easier for business actors or investors raises concerns and poses a serious threat to ecological sustainability. If it is because of the ease, it may bring up irresponsible elements in the future.

Repositioning punishment as the first or reusing the Primum Remedium principle as the main one is the right effort. However, at this time, the Job Creation Law uses the old concept in the Environmental Law, which uses more administrative sanctions even though, factually, the determination of these sanctions is considered unable to suppress environmental problems, which in turn are changed to use criminal sanctions or the Primum Remedium principle in the Environmental Law which is more effective in suppressing existing ecological problems. In comparison, through the discussion of the International Meeting of Experts on Environmental Crime in Portland, Oregon, US in March 1994, Portland requires using Premium Remedium-based sanctions in environmental protection internationally, regionally, and domestically.¹⁴

Based on this, The Portland Draft from several countries applies punishment as the main one in dealing with environmental crimes. Using the Primum Remedium principle in the PPLH Law is appropriate; it can be concluded that the Job Creation Law prioritizes economic development over environmental protection. The initial step of returning to a system based on Primum Remedium is a necessary step to guarantee and protect the environment, which is worrying if it is too late to revise the Job Creation Law, which could lead to environmental degradation, the threat of the right to a good and healthy environment for the community and the decline of ecological management. Prof. Achmah Ali stated that ineffective law is a disease, so legal effectiveness will not be created if handled as soon as possible.¹⁵ So, optimizing the principle

¹⁴ Muhammad Amin Hamid, "Penegakan Hukum Pidana Lingkungan Hidup Dalam Menanggulangi Kerugian Negara," *Jurnal Legal Pluralism* volume 6, no. 1 (2016): 98–100.

¹⁵ Achmad Ali, *Menguak Teori Hukum (Legal Theory) Dan Teori Peradilan (Judicial Prudence) Termasuk Interpretasi Undang-Undang (Legisprudence)*, 1st ed. (Jakarta: Kencana, 2009), <https://lib.ui.ac.id/detail?id=20164064&lokasi=lokal>.

of *Primum Remedium* in environmental law can be realized if there is an increase in the effectiveness of all legal systems.

5. Conclusion

To strengthen the *Primum Remedium* principle in the field of environmental law regulation, it is very necessary to place criminal sanctions as the first or the main one. The optimization of the punishment system is also carried out to strengthen the policy ambition of environmental law regulation by the mandate of the 1945 Constitution of the Republic of Indonesia, which applies the concept of the Green Constitution. Then, reducing the Legal Substance and the Legal Structure aspects is necessary. This effort can be realized if all groups are assisted.

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