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## COMPARISON OF EFFECTIVENESS OF CRIMINAL SANCTIONS AND ADMINISTRATIVE SANCTIONS IN ENVIRONMENTAL LAW ENFORCEMENT POLICY

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**Abstract:** *The effectiveness of criminal sanctions in environmental law enforcement according to the author is still very ineffective compared to administrative sanctions, because administrative sanctions aim to restore environmental functions or repair environmental damage, and will be more effective if administrative sanctions are imposed, while the purpose of criminal sanctions is not to restore the function of the environment, but only to create a deterrent effect and Only for individual legal subjects, because in fact criminal sanctions in environmental law are felt to be very far away in punishing corporations as subjects of environmental crimes, so it is more effective if administrative sanctions are applied in environmental enforcement.*

**Keywords:** *Comparison, effectiveness, criminal sanctions, administrative sanctions, environmental law.*

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### INTRODUCTION

Continuous exploitation of nature will further aggravate the existing damage and take a very long time to repair it. The more severe the damage, the less suitable it will be for humans to live in, because the adverse effects will be felt directly by humans themselves. Humans have an important role in the use and maintenance of nature, because only humans can do this as the only creatures who have reason (Subyakto, 2015). In this case, the role of humans as a community is an important part of environmental management, Sherry R. Arnstein said that the highest level of environmental management participation is citizen control (Arnstein, 1969).

Errors that exist in terms of the use of natural resources, the enforcement of existing regulations in this case by the perpetrators has been violated must be given sanctions that are commensurate with what they have done. Today, the policy of using criminal sanctions is more often used to be able to regulate and regulate society through various kinds of existing laws and regulations (Muslim & Najicha, 2022).

The general explanation of Law Number 32 of 2009 concerning Environmental Protection and Management states that environmental criminal law enforcement still pays attention to the principle of *ultimum remedium* which requires the implementation of criminal law enforcement as a last resort after the implementation of administrative law enforcement is considered unsuccessful. The term *ultimum remedium* according to the Dutch Minister of Justice, Mr. Modderman who states that what can be punished, first is that these violations of the law are consequences that can be determined by causes and each cause has an influence on the occurrence of an effect. Basically, a punishment cannot be eliminated, but in its provisions it is still used as a last resort (Widayati, 2015).

Talking about sanctions, it means that there must be a legal subject who violates laws and regulations or other written regulations, in this case the author focuses on corporate liability as a legal subject for environmental destruction or environmental pollution. According to Ismid CSJ, there are several types of natural resource destruction in Indonesia, one of which is caused by sectoral policies and excessive exploitation in natural resource management (Suhartono, 2017). The most fundamental question in this paper is why the author prefers corporate liability as a legal subject in seeing the effectiveness of criminal sanctions in environmental law enforcement, because almost all violations of existing environmental laws are committed by and to benefit corporations (Suhartono, 2017).

## **MATERIALS AND METHODS**

The methodology in this writing is normative juridical, namely by analyzing legal problems through legal norms contained in laws and regulations in Indonesia. In terms of writing, it is a descriptive analysis that aims to describe, inventory, and analyze the actual conditions of legal developments related to the effectiveness of criminal sanctions in environmental law in Indonesia.

## **RESULTS AND DISCUSSION**

### **Environmental pollution and destruction**

The definition of the Environment according to the PPLH Law, namely the environment is the unity of space with all objects, forces, conditions, and living things, including humans and their behavior, which affect nature itself, the survival of life, and the welfare of humans and other living things. A more understanding of the environment according to the PPLH Law is the unity of space with all objects or the unity of living things including humans and all their behavior in order to carry out the life and welfare of humans and other living things around them. The PPLH Law states that environmental protection is a systematic and integrated effort made to preserve environmental functions. Because basically environmental protection is not a luxury that can only be done by developed countries (Aden, 1974).

Environmental pollution and destruction are things that always threaten life from time to time, the ecosystem of an environment can be disturbed by sustainability due to pollution and environmental destruction. The terms pollution and destruction of the environment are often mixed, even though both have their own realities, namely (1) environmental pollution is the entry or inclusion of living things, substances, energy, or other components into the environment by human activities so as to exceed the applied environmental quality standards. (2) Environmental destruction is an action carried out by a person that can cause changes either directly or indirectly to the physical, chemical, and/or damage to the environment.

The difference between pollution and destruction of the environment is basically not too basic because everyone who does environmental destruction, means that he has also polluted the environment or vice versa. The difference between the two lies only in the seriousness of the actions committed against the environment and the intensity of actions committed against the environment and the degree of consequences suffered by the environment as a result of these actions. The term pollution is used to describe how natural conditions are heavier than mere fouling, in its development the term environmental pollution has become specific as (Erwin, 2015) "Water pollution, land pollution, space and others. Environmental pollution causes losses that can occur in the form of economic and social losses, as well as sanitary disturbances".

The definition of Environmental Destruction according to Article 1 paragraph 16 of the PPLH Law states that "Environmental destruction is defined as causing direct and/or indirect changes to the physical, chemical, and/or biological properties of the environment that exceed the standard criteria for environmental damage". Environmental destruction means that the environment can no longer be used as its true function, with the destruction of an environment it will be less useful or in other words close to extinction, or maybe even extinct. Environmental damage can occur due to human actions. Environmental degradation is a serious environmental problem, if we understand carefully that a good and healthy environment is the basic right of every Indonesian citizen as stipulated in Article 28 H of the 1945 Constitution (Widodo & Hossain, 2022).

The Indonesian government has basically made efforts to reduce the impact of environmental destruction as stated in the form of laws and regulations. In this case, the government has been serious in addressing environmental destruction as stated in Law Number 32 of 2009 concerning Environmental Protection and Management (hereinafter referred to as the PPLH Law), considering that environmental problems are in public jurisdiction so that the government or state has the function and capacity to make policies or planning for environmental systems and management.

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### **Effectiveness of Criminal Sanctions in Environmental Law Enforcement**

Environmental problems for humans can be seen in terms of decreasing environmental quality regarding environmental values for health, welfare and human peace. Loss and reduction of environmental value due to certain utilization by humans. According to Drupsteen, environmental problems are deterioration of environmental quality which involves disturbances to the environment between humans and the environment. (Araya, 2013) The Law on PPLH divides environmental problems into two forms, namely Environmental Pollution and Environmental Destruction. Problems arising from pollution and destruction of the environment can be seen and felt by humans as well as disruption of the balance of natural resources and damage to ecosystems that experience environmental problems.

In a general explanation of the law that discusses problems regarding the environment which has worsened and threatens the lives of people and nature itself. There are some laws that contain

environmental issues, administrative, civil and criminal sanctions. The provision confirms that the subsistence of the sanctions imposed on the violation. Herbert L. Packer explains in his book entitled *The Limit Of Criminal Sanction*, which discusses a criminal justification concluded that the provision of criminal sanctions is one of the best means available to be able to deal with the problems that occur. (Araya, 2013) (Fisse & Braithwaite, 1993).

Referring to the discussion of the previous chapter that most perpetrators of environmental destruction involve corporations, the author needs to explore that there is corporate responsibility in environmental problems. Fisse and Braithwaite divide three of the most fundamental things in realizing fair and effective law enforcement for corporate crime, namely: First, part of corporate crime accountability must be based on the fact that the actions committed by the corporation are not merely acts committed by individuals but by the corporation itself. Second, that the division of corporate crime liability is carried out by all parties concerned. Third, individual accountability must be avoided so that there are no victims of such corporate crimes (Suhartono, 2017).

Meanwhile, according to Sutan, corporate criminal liability can be carried out if corporate actions meet several elements or conditions as (Amiq, 2018) (1) Actions are carried out and ordered by members / personnel of the corporation in the organizational structure of the corporation; (2) The criminal act is committed within the framework of the intention and purpose of the corporation; (3) The criminal offence is committed by the offender or based on an order given by a corporation; (4) The criminal act is committed with the intent to benefit the corporation; (5) The offender cannot escape criminal liability; (6) Criminal acts require both acts and mistakes, both of which must not be found in one person.

As one example of a case, namely what happened to PT. Stanindo Inti Perkasa in Bangka Belitung who has been found guilty of violating the Environmental Protection and Management Law in its verdict. As is known, the case in Bangka Belitung began with a tin mining operation with an unlicensed Production Suction Ship in the tourist destination area of Pasir Padi Beach. The company is suspected of violating Article 109 of the PPLH Law. Article 116 paragraph (1) point a with a maximum penalty of imprisonment of 3 (three) years and a maximum fine of Rp. 3,000,000,000.00 (three billion rupiah). However, in the prosecution, the Prosecutor did not demand confinement, only demanded a fine, so in its decision the Pangkal Pinang District Court only sentenced a criminal fine of Rp. 1,100,000,000.00 (one billion one hundred million rupiah) without imprisonment of owners or leaders of companies that have been legally and convincingly proven to have committed environmental crimes. In this case, the surrounding community considers that the verdict that has been handed down by the Pangkalpinang District Court has not fulfilled the sense of justice to the community. Given the damage caused by the company's activities can damage the supporting ecosystems of coastal areas such as coral reefs, seaweed, marine biota and even mangrove forests cannot develop properly due to degradation. However, not only that, tin mining can cause coastal abrasion and can damage the sea in it, so that it can also affect the economy of the surrounding community where the livelihood is as fishermen.

In response to the above, the author's opinion is that criminal sanctions regarding corporate responsibility in environmental problems are considered still ineffective in solving or reducing environmental destruction, and cannot be fully implemented properly. The above case examples are only a small part that is visible, corporate crimes regarding the environment are like the iceberg phenomenon that is visible on the surface, but only a small part, while in the base so much is not visible, Article 116 of the PPLH Law has very clearly stated that: (1) If environmental crimes are committed by, for, or on behalf of business entities, criminal prosecution and criminal sanctions imposed on (a) Business entities; and/or (b) The person who gave the order to commit the crime or the person acting as the leader of the activity in the criminal act. (2) If an environmental crime as referred to in sub-article (1) is committed by a person based on an employment relationship or based on other relationships acting within the scope of work of a business entity, criminal sanctions shall be imposed against the order-giver or leader in the crime without regard to the crime committed alone or jointly. Even in Article 117 of the PPLH Law, it gives weight to the sanctions given if environmental crimes are directed at the order-giver or leader who states that: If criminal charges are filed against the order-giver or leader of the criminal act as referred to in Article 116 paragraph (1) point b, the criminal threat imposed is in the form of imprisonment and a fine of one-third.

If you look at the provisions in the PPLH Law in this matter, the Pangkal Pinang District Court should be able to provide sanctions as much as possible, both criminal sanctions and other additional sanctions in order to have a deterrent effect on perpetrators of environmental destruction and also at the same time reduce the occurrence of wider environmental damage. If the sanctions imposed are not firm and do not contain other additional sanctions in the form of fines and freezing or revoking business licenses, the author views that the corporation will never be deterred, because it still considers that such a judge's decision will not worry or be feared by the corporation because it will not cause significant losses to the company and its business can still run, And from the results of these efforts, corporations still have the ability to take other efforts, including paying fines, without having to think about how efforts to restore the environment that has been damaged by their actions, while the impact of environmental damage can occur in a very long period of time.

If we examine more deeply the court decisions in prosecuting perpetrators of environmental destruction through the application of criminal sanctions, they tend to still prioritize the Premium Remedium Principle, while the principle implied in the PPLH Law strongly prioritizes the Ultimate Remedium Principle which prioritizes administrative solutions. So criminal sanctions against perpetrators of environmental destruction are the last resort or remedy if administrative sanctions and civil sanctions are no longer possible to apply. According to the author, administrative sanctions for corporations that have committed environmental destruction will be more effective than civil sanctions and criminal sanctions, because administrative sanctions in the form of freezing and revoking company business licenses will be very feared by corporations, where the freezing of business licenses and or revocation of business licenses from environmentally damaging companies makes the company no longer able to carry out its business activities, So that the company will no longer get income or profits from it, and this is certainly very feared by every corporation. Thus the corporation will think twice about doing or repeating actions in the form of environmental destruction. Therefore, the author argues that the application of criminal sanctions for corporations that carry out environmental destruction is still considered ineffective, because in addition to less law enforcement, special handling is also needed and takes a long time. The tendency to do and or redo the same act is very high as it is happening today.

Having previously discussed environmental issues that use criminal sanctions and the verdict is felt not to provide a sense of justice for the community, the author argues that administrative sanctions can be applied first, because basically the enforcement of administrative sanctions is part of environmental law enforcement. (Santosa, 2001) Moreover, in the face of sustainable development activities that become one of the spirits in the environmental management system, environmental administration instruments are functioned to ensure the preservation of environmental capabilities, so that future generations still have natural resources that support their welfare and quality of life.

In addition, administrative law enforcement has several advantages when compared to civil and criminal law enforcement, namely: (Ten Berge, 2001) : (1) Enforcement of administrative law in the field of environment as a preventive device; (2) Administrative law enforcement (which is preventive) when viewed from a financing point of view, administrative law is more efficient than civil law enforcement. Financing for administrative law enforcement includes the cost of field surveillance carried out routinely and laboratory testing is cheaper when compared to efforts to collect evidence, field investigations, present experts to prove causality (causality) aspects in criminal and civil cases; (3) Administrative law enforcement has more ability to invite public participation. Community participation is carried out starting from the licensing process, monitoring structuring/supervision, and participation in raising objections and asking state administrative officials to impose administrative sanctions.

Administrative sanctions are one of many means of law enforcement (Barda Nawawi Arief, 2016), In its implementation, administrative sanctions often resolve an act of violation of administrative provisions which by the PPLH Law has a criminal threat through the formulation of formal criminal offenses. Criminal sanctions do provide a deterrent effect for perpetrators of environmental destruction, where the sanctions are in the form of imprisonment, or fines. The criminal sanction has limitations including: (1) When viewed from the nature and function of punishment so far, namely individual or personal punishment and not structural or functional punishment. Individual or personal punishment has less of a deterrent effect on the other side that is closely related

structurally or functionally to the actions (and consequences of the actions) of the perpetrator; (2) Criminal sanctions are very rigid and limited types of crime (as drugs/remedium) that can be chosen to convict the accused. Unlike administrative law enforcement which is more flexible in nature, not a few in the legislation so far a very rigid and imperative criminal sanctions formulation system is used such as the formulation of criminal sanctions singly and cumulatively.

Therefore, the author argues that the implementation of administrative sanctions in environmental law enforcement is applied first, if the purpose to be achieved from the provision of sanctions is to restore environmental functions or repair environmental damage, it will be more effective if administrative sanctions are applied, because the purpose of criminal sanctions is not to restore the function of the environment but only to provide a deterrent effect and only targets individual legal subjects. In fact, criminal sanctions in environmental law are felt to be very far away in punishing corporations as subjects of environmental crimes. In addition, administrative sanctions are considered more effective because in law enforcement they can be carried out by organs or government agencies that specifically have duties, authorities, and functions in the environmental sector so that human resources in these government organs are indeed competent in the environmental sector. In contrast to criminal sanctions, where law enforcement officers are carried out by the police, which do not specifically deal with environmental problems, and the cases taken have an estimated time that is quite long, and at no small cost.

## CONCLUSION

The effectiveness of criminal sanctions in environmental law enforcement according to the author is still very ineffective compared to administrative sanctions, because administrative sanctions aim to restore environmental functions or repair environmental damage, and will be more effective if administrative sanctions are imposed, while the purpose of criminal sanctions is not to restore the function of the environment, but only to create a deterrent effect and Only for individual legal subjects, because in fact criminal sanctions in environmental law are felt to be very far away in punishing corporations as subjects of environmental crimes, so it is more effective if administrative sanctions are applied in environmental enforcement.

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