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Implications of the Ultimum Remidium and Primum Remidium Principles for Environmental Law Enforcement After the Issuance of Law Number 1 of 2023 concerning the Criminal Code

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Abstract.*The research entitled Implications of the Principles of Ultimum Remidium and Primum Remidium on Environmental Law Enforcement After the Issuance of Law Number 1 of 2023 concerning the Criminal Code aims to determine the application of the principles of ultimum remidium and primum remidium in enforcing environmental law and to analyze the implications of the principles. ultimum remidium and primum remidium towards environmental law enforcement after the issuance of Law Number 1 of 2023 concerning the Criminal Code. The method used in this research is the normative juridical method, which is a type of approach based on the main legal material by examining theories, concepts, legal principles and statutory regulations related to this research. The results of this research can be concluded that the application of the principles of ultimum remidium and primum remidium in enforcing environmental law applies simultaneously, where the principle of ultimum remedium is applied if administrative law is declared unsuccessful, then criminal law is utilized as a last resort in improving the environment. Meanwhile, the principle of Primum remedium is applied if an act is deemed to be truly detrimental to the interests of the state and the people, both according to the applicable law and according to the feelings of the community, then criminal sanctions are the main choice. The implications of the principles of ultimum remidium and primum remidium for environmental law enforcement after the publication of Law Number 1 of 2023 concerning the Criminal Code is the increasingly weakening of environmental law*

enforcement. Several existing articles have the potential to weaken criminal action against environmental damage even though criminal acts of environmental pollution have been removed from the Criminal Code and returned to Law No. 32/2009 concerning Environmental Management and Protection (PPLH). However, the provisions on corporate criminal offenses are regulated narrowly.

Keywords: *Code; Environmental; Principle; Primum Remidium; Ultimum Remidium.*

1. Introduction

Environmental protection is something that must be given serious attention to law enforcement, considering that environmental protection, especially forests, is one of the lungs of the world.[1]Environmental damage has a very detrimental impact on society, resulting in losses, both economic losses and losses in the form of health and even death,[2]The impact on human health, especially from environmental pollution, can be felt after several years or decades.[3]A good and healthy living environment is the human right of every Indonesian citizen as mandated in Article 28H of the 1945 Republic of Indonesia Constitution. Increasing global warming has resulted in climate change, thereby worsening the decline in the quality of the environment, therefore it is necessary to protect and manage the environment.[4]

In practice, the environment applies 2 (two) principles in criminal law, namely Ultimum Remedium and Primum Remedium. Ultimum Remedium is one of the principles contained in Indonesian criminal law which states that criminal law should be used as a last resort in terms of law enforcement. This means that if a case can be resolved through another route (kinship, negotiation, mediation, civil

[1]Y Demasto, "Application of the Primum Remedium Principle in the Crime of Forest Burning Perpetrated by Corporations," Adigama Law Journal 3, no. 1 (2018): 1340–65.
[2]Isya Anung Wicaksono and Fatma Ulfatun Najicha, "Application of the Principle of Ultimum Remedium in Law Enforcement in the Environmental Sector," Pagaruyuang Law Journal 5, no. 01 (July 2021): 47–56.
[3]Dian Adriawan Dg Tawang, "Application of the Principle of Ultimum Remedium in Environmental Criminal Law Provisions in Indonesia," Rule of Law 16, no. 1 (January 2020): 48–61.
[4]So Woong Kim, "Criminal Law Policy in Environmental Law Enforcement Efforts," Journal of Legal Dynamics 13, no. 3 (September 2013): 415.

or administrative law), that route must be followed first. The Ultimum remedium principle is implemented in Law Number 4 of 1982 concerning Basic Provisions for Environmental Management and Law Number 23 of 1997 concerning Environmental Management.

The Primum Remedium principle in criminal law is the first legal option or main legal remedy (the principle of prioritizing the implementation of criminal law enforcement) from a series of stages of enforcing a legal rule. However, in the development of criminal law in Indonesia, criminal sanctions in certain cases have shifted their position. Based on decision Number 487/Pid.B/LH/2019/PN Smr in practice, what is applied is not as an Ultimum Remedium but as a Primum Remedium (the main option). The position of Primum Remedium in the context of punishment is no longer a last resort, but rather a first effort to deter people who commit criminal offenses. Criminal punishment is the most important thing to punish perpetrators who can harm or disturb public peace. This Primum Remedium principle is in Articles 97 to Article 120 of Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH).[5]

The Primum Remedium approach in criminal norms in Law Number 32 of 2009 concerning PPLH is the answer to the challenges in protecting and managing the environment.[6]Based on a study of decisions, several perpetrators who polluted or damaged the environment, in decision Number 487/Pid.B/LH/2019/PN Smd, the defendant was not proven and convincingly guilty of committing the crime of "managing B3 waste without an authorized permit". The Supreme Court's decision does not apply the principle of primum remedium, the defendant is free from criminal threats, of course this makes law enforcement in the environmental sector weak.

However, after the Criminal Code was revised, this revision actually weakened existing environmental laws. Many substances have caused a decline in the legal order of this country. According to Raynaldo Sembiring, Executive Director of the Indonesian Center for Environmental Law (ICEL), the crime of environmental pollution has indeed been removed from the Criminal Code and returned to Law No.32/2009 concerning Environmental Management and Protection (PPLH).

[5]Kania Tamara Pratiwi, Siti Kotijah, and Rini Apriyani, "Application of the Primum Remedium Principle for Environmental Crimes," SASI 27, no. 3 (September 2021): 364.
[6]Fahriza Havinanda, "Legal Politics in Renewing the Environmental Criminal Law System and Its Impact on Law Enforcement for Environmental Crimes," Al-Hikmah Legal Journal: Communication Media and Information on Law and Society 1, no. 1 (2020): 106–21.

However, the provisions on corporate criminal offenses are regulated narrowly. So the only people who can be charged are corporate managers. Corporations as legal entities are difficult to prosecute because they do not fall under these provisions. In fact, in cases of forest and land fires (karhutla), corporations often try to abdicate responsibility and shift responsibility to corporate management. Plus environmental criminal sanctions will follow the first book of the Criminal Code with smaller sanctions than the Environmental Protection and Management Law.

Based on this background, the author is interested in conducting legal research with the title Implications of the Principles of Ultimum Remidium and Primum Remidium on Environmental Law Enforcement After the Issuance of Law Number 1 of 2023 concerning the Criminal Code. This research aims to determine the applicability of the ultimum remidium and primum remidium principles in enforcing environmental law and to analyze the implications of the ultimum remidium and primum remidium principles for enforcing environmental law after the publication of Law Number 1 of 2023 concerning the Criminal Code.

2. Research Methods

a. Approach Method

The research method that the author uses is the normative juridical method, which is a type of approach based on the main legal material by examining theories, concepts, legal principles and statutory regulations related to this research.

b. Research Specifications

The research specifications used are analytical descriptive, namely describing the research results with data that is as complete and detailed as possible. The description intended is for primary data and also secondary data relating to the Ultimum Remidium and Primum Remidium Principles of Environmental Law Enforcement. Next, an analysis of the research results was carried out using relevant laws and regulations.

c. Data Collection Method

The data collection technique used in this research is document study. Document study is a data collection technique by examining relevant documents. This was done with the aim of obtaining data and information sourced from literature in the form of books, magazines, reports, newspapers, bulletins, scientific writings and laws related to this research.

d. Data analysis method

In this research, the data analysis method used is qualitative data analysis, namely data that cannot be measured or assessed directly with numbers. Thus, after the primary data and secondary data in the form of documents are complete, they are then analyzed using the regulations relating to the problem under study.

3. Results and Discussion

3.1. Environmental Problems

The Law on PPLH divides environmental problems into two forms, namely environmental pollution and environmental destruction. Meanwhile, Stewart and Krier group environmental problems into: environmental pollution, land misuse, and natural resource depletion. The main difference between environmental pollution and depletion of natural resources is that pollution can occur due to the entry or presence of a substance, energy or component into the environment or a particular ecosystem. Thus, the substance, energy or component is something foreign or that does not initially exist in an environmental area and is then present in a certain quantity or quality because it is introduced by human activities. On the other hand, depletion of natural resources means that natural resources are located or live in their original context or area of origin, then taken by humans continuously and uncontrollably in a certain way and in certain quantities, thereby causing changes and a decline in the quality of the environment.[7]

Environmental pollution can cross national boundaries in the form of river water pollution, air emissions, forest fires, oil pollution in the sea, and so on.[8]What is more worrying is that environmental crime in the form of illegal disposal of dangerous waste in various countries has led to organized transnational crime

[7]Takdir Rahmadi, Environmental Law in Indonesia (Jakarta: Raja Grafindo Persada, 2014), 1–3.
[8]Andi Hamzah, Environmental Law Enforcement (Jakarta: Sinar Graphics, 2008), 58.

and this was seriously discussed at the World Ministerial Conference on Organized Transnational Crimes in Naples on 21-23 November 1994. Conceptually, this is in line with the understanding that criminal acts that violate provisions regarding environmental protection are criminal crimes. This is related to the fact that environmental crimes often have international or transnational impacts.[9]

Law enforcement is one of the efforts aimed at maintaining and improving order and ensuring legal certainty in society, especially in matters of environmental crime. The General Explanation of several Laws related to the environment illustrates how environmental problems are becoming increasingly worrying and have threatened the survival of humans and other living creatures, so that several of these Laws mention the importance of paying attention to environmental principles.

3.2. Applicability of the Ultimum Remidium and Primum Remidium Principles in Environmental Law Enforcement

Principles are the basis or essence of a truth which is then used as a basis for thinking or arguing. Legal principles are the basics (general in nature) contained in legal regulations. These basics contain ethical values recognized by a society. From these legal principles, concrete (real) legal regulations are then made. If this legal principle has been made into a real legal regulation, then it can be used to regulate an event. However, if it has not been made in the form of a real legal regulation, then it cannot be used or applied in an event.

Relating to environmental crimes in Law Number 32 of 2009 concerning Environmental Protection and Management. The first, Ultimum remedium, is the enforcement of criminal law as a final law enforcement effort because criminal law actually brings suffering. The principle of Ultimum Remedium is one of the important principles in criminal law. In the relationship between criminal law and other fields of law, criminal law is the Ultimum Remedium or last resort. The meaning is that criminal law is only implemented if sanctions in other areas of law are inadequate. Ultimum means the last or last, while the word remedy is found to come from the word remedy which means medicine or repair.

[9]Muladi, Democratization, Human Rights, and Legal Reform in Indonesia (Jakarta: The Habibie Center, 2002), 94.

*The principle of ultimum remedium*associated with the enforcement of criminal law in the environmental sector, it is interpreted that administrative law is declared unsuccessful and then criminal law is utilized as a last resort in improving the environment. In general, the regulation of legal principles in environmental law is regulated in Law No. 4 of 1982, amended to Law No. 23 of 1997 and further amended by Law No. 32 of 2009 concerning Environmental Protection and Management, the most significant of which is the final regulation on the application of the primum remedium principle.

Then secondly, Primum Remedium, an act is considered to be truly detrimental to the interests of the state and the people, both according to the applicable law and according to the feelings of the community, then criminal sanctions are the main choice or Primum Remedium. Primum Remedium is the opposite of Ultimum Remedium where enforcement of criminal law through criminal sanctions in the form of imposing suffering on individuals or corporations is given priority in law enforcement including environmental law enforcement.[10]

Law enforcement in the environmental sector is closer to primum remidium, the application of the principles of criminal law in the environmental sector, namely Ultimum remedium and Primum remedium, can be classified in several Supreme Court decisions in environmental cases processed in court. For example, in decision Number 404K/Pid.Sus-LH/2016. In this case, PT Indo Hasasi Tekstil was proven to have violated Article 100 of Law Number 32 of 2009 concerning Environmental Protection and Management and was sentenced to 7 (seven) months in prison and a fine of Rp. 150,000,000,- provided that the fine was not paid. then replaced with imprisonment for 6 (six) months.

The Supreme Court's decision first requires the perpetrator's compliance to carry out the administrative sanctions that have been imposed first. When administrative sanctions are implemented, the possibility of criminal prosecution is closed. On the other hand, if administrative sanctions are not carried out, then this can be used as sufficient initial evidence for criminal proceedings. Second, criminal prosecution uses Article 100 paragraph (1) of the PPLH Law. Violation of Article 100 paragraph (1) of the PPLH Law. This can be done immediately, if the perpetrator violates it more than once. This means that after the perpetrator is

[10]K Subyakto, "Ultimum Remedium Principle or Primum Remedium Principle Adopted in Criminal Law Enforcement in Environmental Crimes in Law Number 32 of 2009 concerning Environmental Protection and Management," Journal of Legal Reform 2, no. 2 (2015): 209–13.

proven to have violated Article 100 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management for the first time, then repeats the action, then criminal prosecution can be carried out immediately.

In practice, the criminal procedure appears to be inefficient, if the perpetrator of a crime or environmental crime commits certain formal criminal acts more than once then criminal law enforcement can be imposed directly as regulated in Article 100 paragraph (2) of the PPLH Law, in Decision Number 404K/Pid.Sus-LH/2016 seen from the formal offense itself, if you have made repeated mistakes and the repetition becomes more numerous and has greater influence, you will receive administrative sanctions in the form of a written warning 5 (five) times, so that criminal law enforcement can be imposed immediately after This act has been carried out more than once, meaning that the emphasis on the principle of primum remedium is not visible because it still pays attention to the principle of ultimum remedium with administrative sanctions. In fact, criminal sanctions are an environmental law enforcement procedure after administrative sanctions are considered or are unsuccessful in handling certain formal criminal cases, namely violating waste water quality standards. The application of criminal law as a primum remedium is regulated in the PPLH Law, basically still paying attention to the principle of ultimum remedium in the provisions of Article 100 of the PPLH Law for certain formal criminal acts, namely waste water quality standards, odor emission quality standards or nuisance quality standards.

3.3. The implications of the ultimum remidium principle and the primum remidium principle for environmental law enforcement after the publication of Law Number 1 of 2023 concerning the Criminal Code

After the revision of the Criminal Code, environmental law has become increasingly weakened. Several existing articles have the potential to weaken criminal action against environmental damage. Many substances have caused a decline in the legal order of this country. According to Raynaldo Sembiring, Executive Director of the Indonesian Center for Environmental Law (ICEL), the crime of environmental pollution has indeed been removed from the Criminal Code and returned to Law No.32/2009 concerning Environmental Management and Protection (PPLH). However, the provisions on corporate criminal offenses are regulated narrowly. So the only people who can be charged are corporate managers. Corporations as legal entities are difficult to prosecute because they do not fall under these provisions. In fact, in cases of forest and land fires

(karhutla), corporations often try to abdicate responsibility and shift responsibility to corporate management. Plus environmental criminal sanctions will follow the first book of the Criminal Code with smaller sanctions than the Environmental Protection and Management Law.

The Criminal Code appears to be weak in prosecuting environmental criminals. In the provisions of Law No.32/2009 PPLH, there are heavy sanctions, a minimum of one year to a maximum of three years in prison with a fine of Rp. 1-Rp. 3 billion. In the Criminal Code, there is only a minimum provision for punishing corporate environmental criminals for a maximum of two years, a maximum fine in category VI of IDR 200 million. Of course, this is quite odd because the Criminal Code only provides lower sanctions compared to the Environmental Law. In fact, under the Environmental Law, the conditions for imposing sanctions are actually easier because for a formal offense, there is no need for consequences. Meanwhile, in the Criminal Code for material offenses, there must be consequences, but the sanctions imposed are actually lower.

The Criminal Code also explains what theory is regulated, namely derivatives. This means that corporate responsibility implies criminal acts by humans, whether workers or administrators. So, corporations can simply abdicate responsibility. For example, in preventing forest fires. Based on the theory, corporate error is considered a corporate error, but because this is not recognized in the Criminal Code and only recognizes derivative liability, it is not a basis for corporate punishment. In fact, the corporation should be considered a real entity, not a fictitious one. If this is not the case, it will be difficult to prove that the corporation is responsible. If you use the logic of the Criminal Code, it will be difficult to find corporate criminal acts because the person must actually commit the crime or there are elements of mens rea (evil intent) and actus reus (evil act), and for him these conditions are difficult. Once the elements of mens rea and actus reus are fulfilled, everyone can be punished, including corporations, perpetrators, administrators who don't know anything, they can also be punished. This is different from the Environmental Law which does not regulate, so there is more freedom to apply any theory in the Environmental Law.

Andri G Wibisana, an environmental law expert at the University of Indonesia, assesses that the theory about corporations in the Criminal Code is very wrong and quite a fatal error. The management cannot be responsible for the

corporation's actions, the management can be responsible if it is their own actions. He suggested that administrators must have special conditions to be charged, for example, they did it themselves, ordered them, helped them or knew there was a violation but let it go. This conceptual error can have fatal consequences. The theory of corporate responsibility cannot be applied to humans, it can only be applied to corporations. Because corporations and humans are two different things. If humans are legal subjects, corporations are legal entities.

According to Raynaldo Sembiring, Executive Director of the Indonesian Center for Environmental Law (ICEL), in this Criminal Code there is controversy, including the formulation of environmental criminal acts, the criminal punishment system and environmental criminal liability. The formulation of the elements of a criminal act still contains an element of unlawfulness, this has the potential to result in unclear principles adopted, ultimum remedium (criminal as the last tool in law enforcement) or primum remedium (criminal as the main option). This can lead to unclear sanctions and the purpose of punishment for environmental criminal violations. In addition, both norms and sanctions in the formulation of criminal acts have been weakened. The maximum threat in the Criminal Code is lower than the PPLH Law. Likewise, criminal sanctions, through the Criminal Code, show how judges increasingly do not have guidelines for minimum punishment limits, only using maximum sentences. Meanwhile, in the PPLH Law, criminal sanctions have a minimum and maximum period. So depending on the judge's interpretation, he wants to decide what the minimum sentence is, and this has the potential for there to be disparities in punishment regarding the minimum and maximum. To formulate alternative sanctions, the Criminal Code uses the word 'or', criminal or fine. Meanwhile, in the PPLH Law cumulatively, the word "and" is used which shows the seriousness of the crime as a special prevention. This formulation step in the Criminal Code clearly does not have a deterrent effect for perpetrators of environmental crimes.

4. Conclusion

After the revision of the Criminal Code, which is now Law Number 1 of 2023 concerning the Criminal Code, environmental law in Indonesia is now increasingly weakening. This happens because the formulation of the elements of a criminal act still contains the element of unlawfulness in the Criminal Code, which has the potential to result in unclear principles adopted, ultimum

remedium (criminal as the last tool in law enforcement) or primum remedium (criminal as the main option). This can lead to unclear sanctions and the purpose of punishment for environmental criminal violations. In fact, enforcement of environmental law should be able to provide a deterrent effect for the perpetrators and also force them to determine how to restore the damaged or polluted environment.

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