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Application of the Ultimum Remidium Principle to Criminal Sanctions in Environmental Law Enforcement

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Abstract. This article explains the application of the ultimum remedium principle to criminal sanctions in environmental law enforcement. Based on Law Number 23 of 1997 concerning Environmental Management which places criminal law enforcement only as ultimum remedium, so that criminal sanctions are not dominant and less clear. The problem is whether the ultimum remedium principle can be set aside in the investigation of environmental law cases? and how can the ultimum remedium principle be set aside? This study uses a normative research method with a legislative and conceptual approach. The results of this study are that the ultimum remedium principle can be set aside if it can be resolved and requires an administrative and repressive approach that is in line with criminal law enforcement.

Keywords: Criminal; Environment; Remedium; Ultimum.

1. Introduction

The environment is one of the sources of human life that if not managed and protected is feared will threaten the lives of future generations. On that basis, we often find community groups that voice and campaign for the importance of preserving the environment where we live. Based on Law Number 32 of 2009 concerning Environmental Protection and Management in Article 1 letter 1 defines the environment as a unity of space, with all objects, power, conditions, and living things, including humans and their behavior, which affect nature itself, the continuity of life, and the welfare of humans and other living things.

That environmental problems are becoming increasingly complex, then a regulation is needed to handle and overcome these problems including criminal law. Criminal law not only protects nature, flora and fauna (the ecological approach), but also the future of humanity that may suffer from environmental degradation itself (the anthropocentric approach). This the term "the environmental laws carry penal sanctions that protect a multimedia of interest"

emerged.[1] Discussion of environmental issues brings us to complex problems, the interconnectedness of various factors, and new problems and perceptions that require us to abandon obsolete views. This development immediately brings us to an important fundamental issue, namely how the legal system must be able to effectively respond to problems arising from conflicts of interest arising from the use of the environment that have occurred recently.[2].

The enactment of Law Number 32 of 2009 concerning Environmental Protection and Management ("UUPPLH") brings new hope in the enforcement of criminal law in the environmental sector, because the enforcement of criminal law in this law applies the principle of minimum and maximum penalties, expansion of evidence, criminalization for violations of quality standards, integration of criminal law enforcement, and regulation of corporate crimes. The enforcement of environmental criminal law still pays attention to the principle of ultimum remedium which requires the application of criminal law enforcement as a last resort after the application of administrative law enforcement is deemed unsuccessful. The application of this ultimum remedium principle only applies to certain formal crimes, namely criminalization for violations of wastewater quality standards, emissions, and disturbances.[3]

The criminal law provisions in the UUPPLH in Articles 97 to 120, expressly stipulate that environmental crimes are crimes. For example, Article 98 paragraph (1) of the UUPPLH stipulates that violations of quality standards are punishable by imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah).

Enforcing environmental management laws is currently still difficult due to the difficulty of providing evidence and determining standard criteria for environmental damage.[4]The environment is a complex system in which various factors influence each other and the plant community.[5]Environmental law enforcement efforts through criminal law are how the three main problems in criminal law are stated in laws that more or less have a role in carrying out social engineering, namely those that include the formulation of criminal acts, criminal liability, and sanctions, both criminal and disciplinary. In accordance with the objective that is not only as a tool of order, environmental law also contains the

[1]Novalina Romauli Sirait, "Corporate Criminal Liability in the Environmental Management Law", Melayunesia Law Vol. 2, No. 2 (2018), p. 12
[2]M. Daud Silalahi, 2001, "Environmental Law in the Indonesian Environmental Law Enforcement System", Bandung: Alumni, pp. 1-2.
[3]Sutrisno, "Legal Politics of Environmental Protection and Management", Jurnal Hukum, No. 3 Vol. 18 July 2011, p. 444-464.
[4]Ibid.
[5]Suroto, Gunarto, "Impact of Iron Sand Mining in Bandungharjo Village, Banyumanis and Ujungwatu, Jepara Regency According to Law No. 32 of 2009 Concerning Environmental Protection and Management", Jurnal Daulat Hukum, Vol. 1 No. 1 (2018), p. 258. Access via:https://jurnal.unissula.ac.id/index.php/RH/article/view/2644/1988.

objective of social engineering. Law as a tool of social engineering is very important in environmental law.[6]Environmental law enforcement is an instrument for creating a good and healthy environment.[7]

The old Law Number 23 of 1997 concerning Environmental Management ("UUPLH") placed criminal law enforcement in environmental law enforcement only as ultimum remidium, so that the content of criminal sanction enforcement was not dominant.[8]The principle of ultimum remedium in the explanation of the old UUPLH, turned out to be very unclear and unclear. The general explanation is actually an effort to clarify the meaning of the consideration of a law. The consideration contains the philosophical values of a law. Thus, the general explanation is actually an effort by the law maker or legislator to emphasize the philosophical values contained in a consideration. The philosophical values in the consideration of a law are concretized in the body in the form of articles of the law.[9]The weakness of the concept of the subsidiarity principle in the formulation of the old UUPLH resulted in the elimination of the subsidiarity principle. In the UUPPLH, the subsidiarity principle is replaced by the ultimum remedium principle, which is limited to certain formal crimes, namely violations of wastewater quality standards, emissions, and disturbances only. The rest of the formal crimes of criminal law are used as premum remedium.

Environmental problems are complex and interesting problems to study in depth, this is what attracts the author to conduct research on the application of criminal sanctions in an effort to enforce environmental law in Indonesia. The author's starting point in this research is an in-depth study of the UUPPLH towards solving the problem, namely whether the principle of ultimum remedium can be set aside in the investigation of environmental law cases? and how can the principle of ultimum remedium be set aside in the investigation of environmental law cases?

2. Research methods

A method is a well thought out and orderly way to achieve a particular goal.[10]Furthermore, the term legal research itself comes from English, namely legal research, meaning re-search. The search in question is a search for true (scientific) knowledge, because the results of this search will be used to answer

[6]Helmi, "Environmental Law in a Welfare State to Realize Sustainable, Innovative Development", Journal of Legal Studies, Vol 4. No. 5 (2011), p. 93-103.
[7]Unification Journal, ISSN 2354-5976 Vol. 03 Number 01 January 2016, via: file:///C:/Users/101216/Downloads/404-818-2-PB.pdf. Accessed on 20-04-2018.
[8]Wahab, Rajab, Kristi and Hadi, "Implementation of Criminal Sanctions Against Exploitation in Forest Areas". Justice, Vol. 8 No. 2 (2022), p. 128.
[9]Syahrul Machmud, Enforcement of Indonesian Environmental Law, Yogyakarta: Graha Ilmu, 2011, p. 169.
[10]Salim HS and Erlies Sepetiana Nurbani, Application of Legal Theory in Thesis and Dissertation Research, Jakarta: Rajawali Pers, 2016, p. 8.

certain problems.[11]The type of research that will be conducted by the researcher is normative legal research. The definition of normative legal research or also called library legal research is: "legal research conducted by examining library materials or secondary data alone".[12] Based on the scope of the legal issues to be studied, this study uses two approaches, namely the legislative approach and the conceptual approach. The legislative approach is carried out by examining and reviewing the norms of laws and regulations governing environmental crimes. Meanwhile, the conceptual approach is carried out to understand the concepts regarding the principle of ultimum remedium in investigating environmental law cases. In this study, the legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials. The primary legal sources used are all laws and regulations related to environmental crimes. The secondary legal material sources referred to are: legal books/literature, legal research results (thesis, dissertation, research reports, law journals), opinions of legal experts. Tertiary legal materials are legal materials that provide explanations regarding primary legal materials and secondary legal materials, such as legal dictionaries, language dictionaries, encyclopedias, and others. Legal materials are obtained through document searches or library research, namely by studying and reviewing laws and regulations, legal books and other official and written documents related to the problems studied, then the legal materials will be inventoried, identified and classified critically, logically and systematically according to type, form and level. The analysis used in this study is qualitative analysis, namely an analysis that does not use numbers, but rather to obtain suggestions for solving certain problems (Prescriptive), and prioritizes quality rather than quantity.

3. Results and Discussion

3.1. Ultimum Remedium Principle Can Be Overridden in Environmental Law Case Investigations

Law Number 4 of 1982 concerning Basic Provisions on Environmental Management (hereinafter referred to as "UUPPLH") is the initial step in the policy for enforcing environmental law. UUPPLH contains principles of environmental management that serve to provide direction for the national environmental law system, and after 15 (fifteen) years, this law was finally revoked because it was considered less appropriate to realize sustainable development as envisioned, namely with the Law on Environmental Management Law Number 23 of 1997 and replaced again by Law Number 32 of 2009 on the grounds that it would better guarantee legal certainty and provide protection for the rights of every person to obtain a good and healthy environment, through the imposition of quite severe criminal sanctions in Law Number 32 of 2009. The old UUPPLH placed criminal law enforcement in environmental law enforcement only as an ultimum remidium, so

[11]Amiruddin and Zainal Asikin, Introduction to Legal Research Methods, Jakarta: PT Raja Grafindo Persada, 2012, p. 19.
[12]Op Cit, p. 12.

that the content of the criminal sanction enforcement was not dominant. The principle of ultimum remedium in the explanation of the old UUPPLH, turned out to be very unclear and unclear. The general explanation is actually an effort to clarify the meaning of the consideration of a law. The consideration contains the philosophical values of a law.[13]Thus, in fact, a general explanation is an effort by the legislator to emphasize the philosophical values contained in a consideration. The philosophical values in the consideration of a law are concretized in the body in the form of articles of the law. The weakness of the concept of the principle of subsidiarity in the formulation of the old UUPPLH resulted in the elimination of the principle of subsidiarity. In the UUPPLH, the principle of subsidiarity is replaced by the principle of ultimum remedium, which is limited to certain formal crimes, namely violations of wastewater quality standards, emissions, and disturbances only. As a supporting facility in environmental management, in order to achieve good legal arrangements and also meet its requirements, the most basic and important thing to fulfill first is to clearly outline the environmental management policies in question.

UUPPLH brings fundamental changes in the regulation of environmental management in Indonesia. If observed carefully, there are several differences in the regulation between UUPPLH 1997 and UUPPLH 2009. First, UUPPLH 1997 formulates criminal acts as actions that result in environmental pollution and/or damage (as regulated in Article 41), while UUPPLH 2009 formulates criminal acts as actions that result in exceeding ambient air quality standards, water quality standards, seawater quality standards, or environmental damage criteria (as regulated in Article 98). Second, UUPPLH 1997 formulates criminal acts with maximum penalties, while UUPPLH 2009 formulates criminal acts with minimum and maximum penalties. Third, UUPPLH 2009 regulates matters that are not regulated in UUPPLH 1997, including criminal penalties for violations of quality standards, as regulated in Article 100, expansion of evidence, integration of criminal law enforcement, and regulation of corporate crimes. The explanation of the 2009 UUPPLH also explains the fundamental difference with the 1997 UUPPLH, namely the strengthening contained in this Law regarding the principles of environmental protection and management based on good governance because in every process of formulating and implementing instruments for preventing environmental pollution and/or damage as well as mitigation and law enforcement, it is mandatory to integrate aspects of transparency, participation, accountability, & justice. The UUPPLH, in its general explanation, views criminal law as a last resort (ultimum remedium) for certain formal criminal acts, while for other criminal acts regulated other than Article 100 of the UUPPLH, the ultimum remedium principle does not apply, the premium remedium principle applies (prioritizing the implementation of criminal law enforcement). The ultimum remedium principle places criminal law enforcement as the last legal option. Law

[13] Alvi and Shyarin. 2009. Several Criminal Environmental Law Issues, Jakarta: Sofmedia. Page 42.

enforcement carried out on environmental problems is carried out with administration, civil and criminal sanctions.[14]. The criminal threat is not the same or lighter than the maximum criminal limit regulated in the Criminal Code, and especially in Article 97 to Article 115 of the 2009 UUPPLH, it is actually still possible/allowed for a lighter sentence. This causes confusion in the enforcement of environmental criminal law, especially in the judge's decision in an effort to deter the perpetrator (deterrence effect).

Currently, the enforcement of environmental management law is still difficult to do because of the difficulty of proving and determining standard criteria for environmental damage. Criminal law enforcement to realize an integrated criminal justice system.[15]Environmental law enforcement efforts through criminal law are how the three main problems in criminal law are stated in laws that more or less have a role in carrying out social engineering, namely those that include the formulation of criminal acts, criminal liability, and sanctions, both criminal and disciplinary. In accordance with the objective that is not only as a tool of order, environmental law also contains the objective of social engineering. Law as a tool of social engineering is very important in environmental law.

Environmental crimes are regulated in Chapter XV, which consists of 23 articles, starting from Article 97 to Article 120 of the UUPPLH. Article 97 states that the criminal acts referred to in Chapter XV are crimes. Thus, crimes against the environment are regulated in this chapter. In addition to the UUPPLH, crimes against the environment are also regulated in the Criminal Code (KUHP), for example in Article 187, Article 188, Article 202, Article 203, Article 502, and Article 503 of the Criminal Code. Crimes against the environment are also found in laws and regulations outside the Criminal Code and outside the UUPLH. For example (among others) in: Article 52 paragraph (1) of Law No. 5 of 1960 concerning Basic Agrarian Principles/UUPA; Article 31 of Law No. 11 of 1967 concerning Mining; Article 11 of Law No. 1 of 1973 concerning the Indonesian Continental Shelf; Article 15 of Law No. 11 of 1974 concerning Irrigation; Article 16 paragraph (1) of Law No. 5 of 1983 concerning the Exclusive Economic Zone (EEZ) of Indonesia; Article 27 of Law No. 5 of 1984 concerning Industry; Article 24 of Law No. 9 of 1985 concerning Fisheries; Article 40 of Law No. 5 of 1990 concerning Conservation of Biological Natural Resources and their Ecosystems; Article 78 of Law No. 41 of 1999 concerning Forestry; and Article 94 paragraph (1) and (2) in conjunction with Article 95 paragraph (1) and (2) of Law No. 7 of 2004 concerning Water Resources. Environmental crimes or criminal acts are contained in various laws and regulations other than the Environmental Management Law and the Criminal

[14]Arif Kristiawan, "Perspective of Administrative Criminal Acts on Mining Crimes Without a Permit", Jurnal Daulat Hukumm, Vol. 1 No. 1 (March 2018), p. 98, accessed through:https://jurnal.unissula.ac.id/index.php/RH/article/view/2623/1973.
[15]Achmad Budi Waskito, "Implementation of the Criminal Justice System in an Integration Perspective", Jurnal Daulat Hukum, Vo1. 1 No. 1 (2018), p. 228, accessed through:https://jurnal.unissula.ac.id/index.php/RH/article/view/2648/1992

Code.[16]. Therefore, the accuracy of law enforcers, especially investigators, public prosecutors and judges is very necessary in finding laws and regulations related to environmental crimes in various laws and regulations. In other words, which laws and regulations will be used, depends on what resources the environmental crime was committed against. Environmental protection and management are essentially the application of ecological principles in human activities towards and/or those that have an environmental dimension.

The general explanation of Law No. 32 of 2009 concerning Environmental Protection and Management (UU PPLH) states that the enforcement of environmental criminal law still observes 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 deemed unsuccessful. However, the principle of ultimum remedium only applies to certain formal crimes, namely criminal penalties for violations of wastewater quality standards, emissions, and disturbances, as regulated in Article 100 of the Law on PPLH. Thus, for other crimes (other than those in Article 100) the principle of ultimum remedium does not apply. This means that law enforcement for crimes other than those in Article 100 applies the principle of premium remedium (prioritizing law enforcement through criminal law means). This is different from the previous law, namely Law No. 23 of 1997 concerning Environmental Management. General explanation of Law No. 23 of 1997 states that as a support for administrative law, the application of criminal law provisions still takes into account the principle of subsidiarity, namely that criminal law should be utilized if sanctions in other legal fields, such as administrative sanctions and civil sanctions, and alternative resolution of environmental disputes are ineffective and/or the level of the perpetrator's guilt is relatively serious and/or the consequences of his actions are relatively large and/or his actions cause public unrest. Thus, law enforcement against criminal acts in the environmental sector based on this law adheres to the principle of ultimum remedium. Before the enactment of Law No. 23 of 1997, there was Law No. 4 of 1982 concerning Basic Provisions on Environmental Management. In Law No. 4 of 1982 there are regulations regarding compensation and recovery costs (which can be included as administrative sanctions) and criminal sanctions. However, this law does not expressly determine the subsidiarity of criminal sanctions over administrative sanctions.

There are several sectoral laws related to the environmental sector containing criminal provisions and some of them also contain civil sanctions and administrative sanctions. These sectoral laws include: Law No. 5 of 1960 concerning Agrarian Principles, Law No. 5 of 1990 concerning Conservation of Biological Natural Resources and Ecosystems, Law No. 41 of 1999 concerning

[16]Wahyu, "Implementation of Environmental Conservation in the Field of Criminal Law Enforcement Against Illegal Logging Cases", Khaira Ummah Law Journal, Vol. 17 No. 2 (June 2022), p. 81, accessed through:https://jurnal.unissula.ac.id/index.php/jhku/article/viewFile/2593/199.

Forestry, Law No. 22 of 2001 concerning Oil and Natural Gas, Government Regulation in Lieu of Law No. 1 of 2004 concerning Amendments to Law No. 41 of 1999 concerning Forestry, Law No. 7 of 2004 concerning Water Resources, Law No. 4 of 2009 concerning Mineral and Coal Mining, Law No. 18 of 2013 concerning Prevention and Eradication of Forest Destruction, and Law No. 39 of 2014 concerning Plantations. However, several laws containing administrative sanctions as well as criminal sanctions do not contain provisions that emphasize the subsidiarity of criminal sanctions over administrative sanctions. The Criminal Code also contains articles that can be classified as criminal acts in the environmental sector, namely criminal acts that cause fires, eruptions, and floods, which are regulated in Articles 187 - 189. In the Draft Criminal Code (RUU KUHP), all regulations on environmental and natural resource crimes spread across several sectoral laws are included in the articles of the RUU KUHP. This means that the legislators want to resolve environmental cases through criminal law. In other words, this is in line with the direction of the UUPPLH policy. According to Drupsteen, from an environmental law perspective, it is quite clear that the possibility of regulating environmental problems with the help of criminal law is very limited. Regulation of environmental problems must primarily be achieved through the implementation of environmental policies by parties Based on Law No. 12 of 2011 concerning the Formation of Legislation, criminal provisions contain a formulation stating the imposition of criminal penalties for violations of provisions containing prohibition norms or command norms. 2 The Constitutional Court (MK) Decision No. 85/PUU-XI/2013 removed the existence of all articles in Law No. 7 of 2004 submitted by the Muhammadiyah Central Leadership (PP) et al., this law is considered not to guarantee restrictions on water management by the private sector, so it is considered to be in conflict with the 1945 Constitution. With the cancellation of the existence of the law, the Constitutional Court revived Law No. 11 of 1974 concerning Irrigation to prevent a legal vacuum until the formation of a new law of the authorities. These environmental policies, for the most part, are formulated in legal norms or laws and regulations. Others are formulated outside legal norms, for example through environmental education and the creation of environmental awareness.If environmental policies are not formulated in the form of legal norms, then law enforcement cannot be carried out through the use of criminal law. On the other hand, for legal norms relating to the environment, law enforcement efforts through criminal law are more of a complement than a regulatory instrument.

Environmental pollution can cross national borders in the form of river water pollution, air emissions, forest fires, oil pollution at sea, and so on.[17]What is more concerning is that environmental crimes in the form of illegal disposal of dangerous waste in various countries have led to organized transnational crimes and this was seriously discussed at the World Ministerial Conference on Organized

[17]Ibid. Page 5

Transnational Crimes in Naples on 21-23 November 1994. Conceptually, this is in line with the understanding that criminal acts that violate provisions on environmental protection are criminal crimes. This is related to the fact that environmental crimes often have international or transnational impacts.[18]

Therefore, environmental issues, when linked to human rights issues, are not only issues of countries, but also regional and even international (between nations). This is evident from the work program of The Commission on Crime Prevention and Criminal Justice 1992-1996 which specifically highlights the relationship between environmental issues and the criminal justice system. Therefore, the 9th UN Congress on Crime Prevention and the Development of Offenders on April 29-May 8, 1995 in Cairo, made environmental issues one of the main agendas. In the draft resolution submitted, which later became a resolution, as far as "environmental protection" is concerned, there are several things as follows:

"(1) The right to enjoy an adequate environment and the duty to preserve the environment should be established in all legislation at the national level; (2) A chapter concerning environmental offenses should be included in penal codes; (3)The necessary measures should be introduced to ensure that damage to the environment is repaired, either by the transgressors themselves or by the State; (4) Cooperation agreements should be established between states, including provisions for the exchange of experiences on prevention programs and legislative effectiveness; (5) The subject of environmental protection should be included at all levels, and specifically in curricula for the study of criminal law and human resources should also be developed to deal with these new problems, by means of degree courses, post graduate courses, seminars and any other form of training; (6) Not only should environmental offenses be established as a class of offense in penal codes, but also, in the administrative area, offending enterprises should be subject to financial penalties; (7) Regarding penal sanctions themselves , the principle of subjective culpability should be maintained."

What is formulated in the resolution is not excessive, because the right to obtain a healthy environment is one of the basic rights regulated in the Universal Declaration of Human Rights, 1948 (Art. 25) in conjunction with Art.11 International Covenant on Economic, Social and Cultural Rights (1966). Likewise in Paragraph 1 of the UN Conference on the Environment in Stockholm in 1972, The Optional Protocol of the International Covenant on Economic, Social and Cultural Rights, Art. 12, and the Final Report (1985) of the World Expert Group on Environmental Law to the Brundtland Commission (Art. 1 and 2), the right to obtain a healthy environment is always emphasized. Global affirmation occurred at the UN Conference on Environment and Development in Rio de Janeiro, in 1992.

[18]Bambang Tri Bawono, and Anis Mashdurohatun, "Criminal Law Enforcement in the Field of Illegal Logging for Environmental Sustainability and Efforts to Overcome It", Jurnal Hukum Vol Xxvi, No. 2, (August 2011), p. 601.

The right to obtain a good and healthy environment is also emphasized in Article 28H of the 1945 Constitution of the Republic of Indonesia.

General Explanation of several Laws related to the environment illustrates how environmental problems have become 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. General Explanation of Law No. 18 of 2013, for example, states that forest destruction has reached a very worrying level for the survival of the nation and state. Several laws related to the environment also contain administrative sanctions, civil sanctions, and criminal sanctions, some contain provisions that emphasize the subsidiarity of criminal sanctions over administrative sanctions or civil sanctions.[19]

Considering the level of damage caused, is it still appropriate/proper to apply the ultimum remedium principle that places criminal law as the ultimum remidium against perpetrators of environmental destruction? Can the administrative sanctions given deter environmental destroyers? Because the ultimum remedium principle places criminal sanctions as the ultimum remidium. This means that criminal sanctions are the last resort to punish environmental destroyers. The purpose of the ultimum remedium principle is to prioritize the repair of the environment damaged by the activities of the person/business entity. In reality, the perpetrators of destruction who are corporations are people who have very large capital. The amount of fines they have to pay to fulfill administrative sanctions is not a big problem for them.

3.2. Waiver of the Ultimum Remedium Principle in the Investigation of Environmental Law Cases

That before being ratified and becoming Law Number 32 of 2009, the Bill on amendments or replacement of Law Number 23 of 1997 concerning Environmental Management. However, in the development of the discussion, it was decided to add the word Protection so that it became the Bill on Environmental Protection and Management. The addition of the word "protection" before the word "management" is to convey the message that this Bill is intended to protect the territory of the Republic of Indonesia from environmental pollution and/or destruction.

The title change from just management to protection and management further strengthens the message that the environment may be utilized but its sustainability must be maintained.[20]This is in line with the development of modern international environmental law which not only gives humans the right to use the environment but also burdens humans with an obligation to maintain, protect and preserve it.[21]

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[19]Sahat, "The Effectiveness of Criminal Sanctions in Environmental Law Enforcement", Jurnal Res Nullius, Vo1. 1 No. 2 (2019), p. 143.
[20]Takdir Rahmadi. 2014. Environmental Law in Indonesia, RajaGrafindo Persada, Jakarta. Pg. 1
[21]Ibid. Page 3

Environmental protection and management based on Article 1 number 2 of Law Number 32 of 2009 is a systematic and integrated effort carried out to preserve environmental functions and prevent environmental pollution and/or damage which includes planning, utilization, control, maintenance, supervision, and law enforcement. As explained in this Law, preventive efforts in the context of controlling environmental impacts need to be implemented by maximally utilizing supervision and licensing instruments. However, in the case of environmental pollution and damage that has occurred, repressive efforts need to be made in the form of effective, consistent, and consistent law enforcement against environmental pollution and damage that has occurred. The explanation of Law Number 32 of 2009 also states that in relation to this, it is necessary to develop a clear, firm, and comprehensive legal system for environmental protection and management in order to guarantee legal certainty as a basis for the protection and management of natural resources and other development activities.

Thus, law enforcement on environmental protection and management based on Law Number 32 of 2009 through 3 (three) systematic law enforcement steps, namely starting with administrative law enforcement, dispute resolution outside the court and investigation of environmental crimes. According to Rangkuti, in the environmental sector, administrative sanctions have an instrumental function, namely controlling prohibited acts and are primarily aimed at protecting the interests protected by the violated provisions.[22]Meanwhile, civil law provisions include the settlement of environmental disputes outside the court and in the court. Settlement of environmental disputes in court includes class action lawsuits, environmental organization lawsuits, or government lawsuits. Through this method, it is hoped that in addition to creating a deterrent effect, it will also increase the awareness of all stakeholders about the importance of environmental protection and management for the lives of present and future generations.

Criminal law enforcement in this Law still pays attention to the principle of ultimum remedium which requires the application of criminal law enforcement as a last resort after the application of administrative law enforcement is deemed unsuccessful. The application of this ultimum remedium principle only applies to certain formal criminal acts, namely criminal penalties for violations of wastewater quality standards,[23]emission,[24]and disturbance.[25]In other words, violations other than wastewater quality standards, emissions and disturbances are subject to the premium remedium principle (prioritizing criminal law enforcement).

In this case, the meaning of ultimum remedium is interpreted classically; criminal law is specifically a special law enforcement instrument. It must be prevented that

[22]Op.Cit, Bambang, p. 601.
[23] Op. Cit, Andi, p. 58
[24]Muladi. 2002 Democratization, Human Rights, and Legal Reform in Indonesia, The Habibie Center, Jakarta. P. 91
[25]Ibid. Page 94

the remedy is heavier than the crime. Criminal law is a very heavy tool because the characteristic of crime is the misery that is deliberately imposed. Therefore, criminal law must be viewed as ultimum remedium.[26]Second, ultimum remedium according to De Bunt is literally, namely the last tool (medicine). This was stated by the Dutch Minister of Justice De Ruiter who stated that criminal law is the last tool. Criminal law becomes the last medicine because it brings adverse side effects. Criminal law touches deeply on the personal life of the convict (deprivation of liberty, the process of proceedings with coercive instruments, and stains).[27]Criminal law as a last resort was also put forward by Sudarto. According to Sudarto, criminal law should only be applied if other means (efforts) are inadequate, so it is also said that criminal law has a subsidiary function (subsidiarity principle).[28]Third, the meaning of ultimum remedium is that administrative officials are the first to be responsible. If administrative officials are seen as the first to be responsible, and therefore it means that judicial power is placed as ultimum remedium. Administrative officials must react first. Officials who grant permission must first impose sanctions if the permission is violated.[29]

Environmental crimes in the past could be considered as ultimum remedium but international demands require that the function of criminal law in environmental crimes (echo-crime) become primum remedium.[30]The Council of Europe Resolution 77 (28) emphasized the need for criminal law to contribute to environmental protection. UN General Assembly Resolution No. 45/121 of 1990 also adopted a resolution on environmental protection with criminal law proposed by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders. Likewise, the Recommendation of the AIDP Preparatory Colloquium on the Application of Criminal Law to Crime Against the Environment in Ottawa, Canada (1992) emphasized the need to consider the use of criminal law to protect environmental sustainability. Furthermore, in March 1994, in Portland, Oregon, USA, the International Meeting of Experts on Environmental Crime was held. The meeting discussed the use of criminal sanctions within the framework

[26]Proceedings of the "Seminar on Thoughts on Amendments to Law No. 23 of 1997 on Environmental Management", Ministry of Environment, Jakarta, Hotel Indonesia, 15 December 2003, p. 40

[27]Report of the Leadership of Commission VII of the Indonesian House of Representatives in Decision Making in the 6th Plenary Meeting of the Indonesian House of Representatives for Session Period I of Session Year 2009-2010 on 8 September 2009, in the Minutes of the Discussion Process of the Bill on Environmental Management

[28]Final Opinion of the PKS Faction in Decision Making in the 6th Plenary Meeting of the People's Representative Council of the Republic of Indonesia, Session Period I, Session Year 2009-2010 on 8 September 2009, in the Minutes of the Discussion Process of the Bill on Environmental Management

[29]Sukanda Husin. 2009. Enforcement of Indonesian Environmental Law, Sinar Grafika, Jakarta. P. 20

[30]PAF Lamintang, Basics of Indonesian Criminal Law, Citra Aditya Bakti, Bandung, 1997, pp. 17-19

of environmental protection in the international, regional and domestic scopes, which then resulted in The Portland Draft.[31]

According to Muladi, the role of criminal law in protecting the environment is increasingly important. Even in cases of serious environmental pollution and destruction, its nature as a "primum remedium" is increasingly apparent.[32]Likewise, Alvi Syahri stated that ultimum remedium can be set aside if the criminal act committed constitutes a violation of subjective rights or the interests of the wider community.[33]Even in the Netherlands, the view that the application of criminal law is the ultimum remedium has been abandoned, because it gave rise to quarrels between administrative officials and public prosecutors about when it is appropriate to use the ultimum remedium (criminal law).[34]

In reality, criminal sanctions and administrative sanctions cannot be clearly distinguished, thus bringing certain consequences as follows. First, according to G. Drupsteen and CJ Kleijs Wijnnobel, the principle of priority cannot be applied, in the sense of prioritizing law enforcement efforts through administrative law over law enforcement efforts through criminal law means. Van der Bunt has shown that the basic nature of criminal law as ultimum remedium has various meanings.[35]However, regardless of the effectiveness of sanctions and the element of imposition of suffering, administrative sanctions can still be quite clearly distinguished from criminal sanctions. In addition, practical considerations also need to be considered, for example the capacity/ability of environmental law enforcement. In relation to this, the provision of limited capacity/ability to conduct investigations and prosecutions means that priority must be determined. According to Drupsteen and Wijnnobel, in this case, ultimum remedium does not have to be placed in the last order. Factors that determine the determination of priorities are, among others, the level of seriousness of the crime, the nature/character of the crime and the possibility of law enforcement by the government or the prosecutor's office.[36]Second, the consequence of the relative difference between administrative sanctions and criminal sanctions is that in the simultaneous imposition of both sanctions, the principle of ne bis in idem is no longer so easy to ignore or deviate from by pointing to the difference in scope of the two types of sanctions. In this case, it must be seen on a case-by-case basis. However, we cannot say that the possibility of implementing coercive measures in addition to the imposition of a criminal court decision will be closed. The first method aims to eliminate the effects of environmental damage, for example

[31]Ibid. Page 20
[32]Jan Remmelink, Criminal Law. Commentary on the Most Important Articles of the Dutch Criminal Code and Their Equivalents in the Criminal Code, Gramedia Pustaka Utama, Jakarta, 2003. P. 15.
[33]Ibid. Page 16
[34]Op.Cit, Andi Hamzah, p. 69.
[35]Ibid. Page 70
[36] Sudarto. 2007. Law and Criminal Law, Alumni, Bandung,. P. 22

through an order to remove illegally dumped waste. The second method adds additional suffering through the imposition of a fine or imprisonment. According to the prevailing view, the prohibition of ne bis in idem does not concern the simultaneous imposition of criminal and administrative sanctions for the same crime. This principle applies to criminal prosecution for the second time for the same case. Conversely, the resolution of a case through the imposition of administrative sanctions will not prevent criminal prosecution for the same case.[37]

Likewise, Muladi stated that the utilization of administrative justice and criminal law would not be ne bis in idem, but it should be done after considering the level of the perpetrator's guilt and the severity of the damage to the environment due to the crime committed. This is where the role of civil servant investigators (PPNS) is important. However, according to Drupsteen and Wijnnobel, this view is not quite right and a distinction must still be made based on the nature of the administrative sanctions. If these sanctions do not contain a reparatory nature, but are retributive, meaning that the sanctions are punitive and cause suffering, then the possibility of imposing this punishment together with criminal sanctions should be closed.[38]Third, the consequence of the relative difference between administrative sanctions and criminal sanctions is that the time period for resolving cases and the suggestion that judges, by paying attention to the general principles of good governance, can assess the suitability/balance between the act committed (the crime) and the sanction to be imposed on the perpetrator.[39]

4. Conclusion

Based on the Explanation of Law No. 23 of 1997 which states that the utilization of various legal provisions, both administrative law, civil law and criminal law and efforts to make the resolution of environmental disputes effective alternatively, namely resolving the environment outside, or carrying out representative lawsuits. While the application of criminal law provisions based on this law, still pays attention to the principle of subsidiarity, namely that criminal law should be utilized if sanctions in other legal fields, such as administrative sanctions and civil sanctions and alternative resolution of environmental disputes are ineffective and/or the level of the perpetrator's guilt is relatively severe and/or the consequences of his actions are relatively large and/or his actions cause public unrest. Therefore, ideally the principle of ultimum remedium can be set aside if the environmental law case can be or is resolved in accordance with the applicable legal provisions, however, seeing current developments and the increasingly complex modus operandi in environmental crimes that are not only committed by Indonesian citizens but have also been committed by business entities and foreign citizens, it is seen that environmental crimes today have entered into white collar

[37]Op.Cit, Andi Hamzah. Page 71
[38] Sudarto. 1998. Criminal Law and Community Development, in Barda Nawawi Arief, Several Aspects of Criminal Law Enforcement and Development Policy, Citra Aditya Bakti, Bandung. P. 44.
[39]Barda Nawawi Arief, Several Aspects of Criminal Law Enforcement and Development Policy, Citra Aditya Bakti, Bandung, 1998, p. 44

crimes, so that the law enforcement approach is not only based on the conventional approach, but also relies on administrative law by starting to think so that there is a deterrent effect for those who commit criminal crimes in the environmental sector, especially since these actions have a wide impact on society and the sustainability of the environment itself, so that there must be responsive steps that are able to improve the damaged conditions, so that the waiver of the principle of ultimum remedium against certain environmental crimes, still and structured must be carried out with a repressive approach without ignoring administrative efforts so that administrative and civil law enforcement can go hand in hand and in line with criminal law enforcement.

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