

The Implementation of Administrative Sanctions on Violations of Environmental Law

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Abstract.

This study aims to analyze how the application of administrative sanctions in violations of environmental law is based on the ideal side of the law and its application in the field. So based on this objective, this research uses a method based on legal studies with the type of research in the form of sociological juridical. From this study, the results obtained in the form of an ideal application in an effort to enforce environmental law through administrative witnesses must of course be based on the applicable laws and regulations by adjusting to the conditions of the area concerned so that with this fact, the regulations regarding the application of sanctions can of course be adjusted either in the form of violations. , the duration of the violation, to obedience in the fulfillment of coercion on an aspect for the sake of health and common welfare.

Keywords: Administrative; Environmental; Sanctions.

1. Introduction

Based on the laws and regulations in force in Indonesia, the establishment of a business or activity related to production and impacting on environmental damage must of course obtain a permit in the form of an environmental permit. This is done as a means to seek environmental balance and minimize environmental damage. Environmental law is one of the juridical instruments that contains the principles of environmental protection and management. In Act No. 23 of 2009 concerning Environmental Protection and Management (PPLH), hereinafter referred to as UUPPLH. In law enforcement efforts in UUPPLH, there are several types of sanctions that can be applied, including administrative sanctions, civil sanctions, and criminal sanctions.¹

In the application of administrative sanctions, there are several sanctions that are categorized according to the severity or not of a violation, as well as the length of time a violation occurs. This can then be subject to sanctions, either in the form of written warnings, temporary suspension of activities, to the heaviest sanction, namely revocation of environmental permits which then the activity can no longer run.²

Furthermore, environmental law enforcement is closely related to the ability of the apparatus and public/community compliance with applicable regulations. So that prevention efforts can be carried out by conducting outreach to the community,

¹Act No. 32 of 2009 concerning Environmental Protection and Management.

²Nagara, Grahat. (2017) *Perkembangan Sanksi Administratif Dalam Penguatan Perlindungan Lingkungan Terkait Eksploitasi Sumber Daya Alam (Studi Kasus : Sektor Perkebunan, Pertambangan, Dan Kehutanan)* Jurnal Hukum Lingkungan Vol. 3 Issue 2, Maret 2017. p.33.

while enforcement efforts are carried out through investigative actions. In this effort there are several obstacles, namely the presence of irresponsible individuals, limited facilities and infrastructure and exacerbated by public awareness that still does not understand the applicable law.³

Management and enforcement of environmental law can be successful if the administrator/government bureaucracy functions effectively and in an integrated manner in order to provide legal protection to stakeholders, which consist of the community, businessmen, government and the environment itself.⁴In terms of administrative law enforcement, it covers aspects of supervision and enforcement of sanctions. Supervision is a preventive measure to enforce compliance, while the application of sanctions is a repressive measure to force compliance.⁵

Environmental pollution in the provisions of UUPPLH is defined as the entry or inclusion of living things, substances, energy, and/or other components into the environment caused by human activities, thus exceeding the environmental quality standards that have been set. The elements of environmental pollution include:⁶

- The existence of living things, substances, energy or other components that enter or are included in the environmental media that causes the environment to be polluted.
- There are environmental quality standards that are violated based on the results of laboratory tests.
- Clarity of who did or the legal subject of the perpetrator.
- Such activity, entry or inclusion is carried out due to negligence or intentionally.
- The nature of the impact.

In State Administrative Law, the use of administrative sanctions is the application of government authority, where this authority comes from written and unwritten administrative law rules. Furthermore, according to JJ. Oostenbrink argues that administrative sanctions are sanctions that arise from the relationship between the government and citizens and are carried out without third party intermediaries.⁷

A variety of serious problems arise ranging from violations of the law and damage uncontrolled environment, which leads to business practices that neglect the welfare of the community. Based on the description above, this study aims to analyze how the application of administrative sanctions in violations of environmental law is based on the ideal side of the law and its application in the field.

³Harinda, Nur (2021) *Penegakan Hukum Lingkungan Terhadap Penambangan Ilegal*, *Jurnal Daulat Hukum*, Volume 3 Issue 4 , December 2021.

⁴Nugroho, Wahyu. (2011) *Penegakan Hukum Lingkungan Dalam Menanggulangi Pencemaran Dan Kerusakan Lingkungan Hidup Kawasan Industri Kota Semarang Berbasis Peningkatan Pembangunan Berkelanjutan*, Program Magister Ilmu Hukum Program Pascasarjana, Universitas Diponegoro, Semarang.

⁵Mina, Risno & Andini, Desita (2020) *Instrumen Administrasi Dalam Penegakan Hukum Atas Pelaksanaan Izin Lingkungan*, *Jurnal Yustisiabel*, Volume 4 Nomor 2, Oktober 2020.. p. 132.

⁶Priyanto, Sugeng. (2012) *Aspek Sanksi Pengawasan dan Sanksi Administrasi berdasarkan UU No. 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup*, 2012.

⁷Tri Srilaksmi, Ni Ketut. (2021) *Penegakan Hukum Lingkungan Dengan Sanksi Administrasi Bagi Pelaku Pencemaran Lingkungan Di Masyarakat*, Vol.5 No.2 Tahun 2021, p. 3.

2. Research Methods

This research is based on legal studies with the type of research in the form of sociological juridical which then uses a mixed method approach. Because this type of research is a field study, the specifications of this research are based on the regional secretariat office which is part of law enforcement in environmental law. The data collection method in this study used interviews with resource persons, observation, quoting, and analyzing field materials and library materials, while the data analysis method in this study used qualitative analysis methods.

3. Results and Discussion

3.1. Application of Administrative Sanctions in Enforcement of Environmental Law

Sanctions are the application of power tools (*machtsmiddelen*) as a reaction to violations of administrative law norms with the characteristic of coercion (*dwang*).⁸ In various laws have emphasized that administrative officials can impose administrative sanctions in the form of coercion (*bestuur dwang*), as well as environmental law.

Basically, administrative sanctions are sanctions in the form of coercion intended to force the person in charge of businesses and/or activities to restore polluted environmental conditions. The sanction is in accordance with the legal objective to restore the damaged environment to its original condition.⁹

Based on the provisions in Article 80 UUPPLH forms of government coercion can be in the form of: Temporary suspension of production activities; Transfer of production facilities; Closure of sewerage or emission of waste water; Demolition; confiscation of goods or equipment that has the potential to cause violations; and Temporary suspension of all activities: or other actions aimed at stopping violations and restoring environmental functions.

Furthermore, the pollution category is divided into several, namely light, medium and heavy pollution. In the imposition of administrative sanctions in the form of coercion by the government, it can be imposed without a warning if the violation has resulted in:¹⁰A very serious threat to humans and the environment; A bigger and wider impact if the pollution and/or destruction is not immediately stopped; Greater loss to the environment if the pollution and/or destruction is not immediately stopped.

The application of administrative sanctions applied by the Temanggung Regency Government to PT. TEXTILE SMA in the case of environmental law was carried out based on the Decision of the Temanggung Regent Number 660.1/400 of

⁸Hadjon, PhilipusM. (1996) Penegakan HukumAdministrasi Dalam Kaitannya Dengan Ketentuan Pasal 20 Ayat (3) dan (4) UU No. 4 Tahun 1982 TentangKetentuan- Ketentuan Pokok PengelolaanLingkungan Hidup, Yuridika, Majalah Fakultas Hukum Univ. Airlangga, No. 1 Tahun XI, Januari 1996.p.6.

⁹Ibid. p. 7

¹⁰Amiq, Bachrul, (2013), *Sanksi Administrasi dalam Hukum Lingkungan*, Yogyakarta: Laksbang Mediatama.p. 6-7

2020 concerning Administrative Sanctions in the context of environmental protection and management in the form of government coercion on the person in charge of the textile industry company PT. Sumber Makmur Anugrah Jalan Magelang-Semarang KM. 16.1 Pringsurat Village, Pringsurat District, Temanggung Regency.¹¹

Based on the results of the supervision, it was proven that PT. SMA has violated laws and regulations in the field of environmental protection and management which has the potential to cause water pollution and can pose a serious threat to humans and the environment.

Violations of laws and regulations in the field of industrial waste management and environmental pollution control by PT. high school in the form of:

In terms of the management of industrial wastewater in WWTPs that do not meet environmental quality standards and have the potential to cause environmental pollution. This violates: first, the obligations stipulated in Article 37 of Government Regulation Number 82 of 2001 concerning Water Quality Management and Water Pollution Control, that every person in charge of businesses and/or activities that discharge waste into water or water sources is obligated to prevent and overcome the occurrence of water pollution.

Second, obligations regulated in Article 8 letter a of Central Java Provincial Regulation Number 10 of 2004 concerning Wastewater Quality Standards as amended by Central Java Province Regulation Number 5 of 2012 concerning Amendments to Central Java Province Regional Regulation Number 10 of 2004 concerning Water Quality Standards Waste, that every person in charge of a business and/or activity that discharges waste water into the environment is obligated to treat wastewater so that the quality of the waste water discharged into the environment does not exceed the established Wastewater Quality Standard; and Obligations regulated in Article 22 paragraph (1) letter b Regional Regulation of Central Java Province Number 5 of 2007 concerning Environmental Control in Central Jawa Province.

The follow-up of the Temanggung Regency Government in handling cases of violations of environmental law by the textile company PT. SMA, with administrative sanctions in the form of coercion to: first, Immediately carry out technical management of wastewater by treating all waste water produced from industrial and domestic processes technically through WWTP adjusted to capacity so that the quality of wastewater discharged into the environment does not exceed Wastewater Quality Standards that have been established, as well as anticipating environmental pollution/water pollution; second, immediately apply for a permit to discharge wastewater into surface water through the Regency Online Single Submission agency; third, Recovery in environmental law cases conducted by PT. SMA does not carry out environmental restoration due to pollution of the river. You only rely on natural recovery from nature, namely rain.

3.2. Factors Affecting the Application of Administrative Sanctions in Enforcement of Environmental Law

¹¹Interview with the Head of Legal Subdivision of the Temanggung Regional Secretary in Temanggung, 22 July 2022

Lawrence M. Friedman, in his theory states that there are three theories that affect the effectiveness of the law. First mentioned is the substance of the law. Discussing the legal substance, the HAN norms are general and abstract. In a regulation, orders, prohibitions and legal sanctions have been explained. The Legal Basis used by the Temanggung Regency Government in applying Administrative Sanctions to PT. high school are:

- Act No. 13 of 1950 concerning the Establishment of Regency Areas within the Central Java Province;
- Act No. 32 of 2009 concerning Environmental Protection and Management.
- Act No. 23 of 2014 concerning Regional Government as amended several times, most recently by Act No. 9 of 2015 concerning the Second Amendment to Act No. 23 of 2014 concerning Regional Government.
- Government Regulation Number 82 of 2001 concerning Water Quality Management and Water Pollution Control (State Gazette of the Republic of Indonesia of 2011 Number 153, Supplement to the State Gazette of the Republic of Indonesia Number 4161.
- Government Regulation Number 27 of 2012 concerning Environmental Permits.
- Central Java Provincial Regulation Number 10 of 2004 concerning Water Quality Standards as amended by Central Java Provincial Regulation Number 5 of 2012 concerning Amendments to Central Java Province Regional Regulation Number 10 of 2004 concerning Water Quality Standards.
- Central Java Provincial Regulation Number 5 of 2007 concerning Environmental Control in Central Java Province.
- Temanggung Regent Regulation Number 32 of 2017 concerning Duties and Functions of the Environmental Service.

PT's response. SMA against the application of administrative sanctions given by the Government of Temanggung Regency is very good, even PT. SMA also makes a statement of fulfillment of administrative sanctions.¹² Based on the statement letter of fulfillment of administrative sanctions Number 003/PTSMA/I/2021, PT. SMA represented by Welly Luxza Pradana as President Director of PT. SMA stated:¹³

- Make efforts to repair the WWTP in accordance with the action plan that has been planned by PT. Sumber Makmur Anugrah as attached as a unit in the statement letter;
- In the process of repairing the WWTP PT. Sumber Makmur Anugrah, is obliged to manage industrial wastewater and domestic wastewater so that it meets the required quality standards and does not dispose of production and domestic wastewater that exceeds the quality standards. PermenLHK: No. P.16/menihk/setjen/kum.1/4/2019 concerning the Second Amendment to the Regulation of the Minister of the Environment Number 5 of 2014 concerning Wastewater Quality Standards, Appendix I and Appendix II concerning Wastewater Quality Standards for Textile Industry Businesses for the Transition Period.
- Willing to carry out monitoring of own laboratory water quality at the outlet every day at 08.00 WIB and 14.00 WIB to the Public Housing Service for

¹²Interview by the chairman of the DPRKPLH in Temanggung, 22 July 2022

¹³Interview with the Chairman of the DPRKPLH, Op.Cit

Settlement and Environment Areas of Temanggung Regency. (If not using Sparing then willing to report every day).

- Willing to install Sparing equipment according to applicable regulations, installed before the end of the administrative sanction bag.
- Parameters that must be carried out every day are COD, Temperature, pH, TSS and Color Parameters.
- Willing to cooperate with the Task Force for Supervision and Guarding SK Administrative Sanctions issued by the TEMANGGUNG REGENCY Number: 1660.1/400 of 2020 concerning Administrative Sanctions in the Context of Environmental Protection and Management in the Form of Government Coercion to the Responsible Textile Industry Company PT. Sumber Makmur Anugrah Jalan Magelang-Semarang Km 16.1 Pringsurat Village, Pringsurat District, Temanggung Regency in carrying out their duties.
- Able to fulfill the technical requirements required in the process of obtaining an IPLC Permit as regulated in Permen LHK Number P.102/menihk/setjen/kum.1/11/2018 concerning Procedures for Licensing for Wastewater Disposal through Electronically Integrated Business Licensing Services until before the term the administrative sanction ends, as the fulfillment of the IPLC permit commitment.
- If you do not implement the provisions of points 1 to 7 as mentioned above, then you are willing to make provisions to stop the activity of disposing of waste water into water bodies.

3.3. Ideal Application in Enforcement of Environmental Laws through Administrative Witnesses

The administrative law aspect in enforcing environmental law has an important role as a legal effort aimed at preventing and overcoming environmental pollution and destruction through the utilization of administrative authority in accordance with the mandate given. Administrative law enforcement instruments include two things, namely supervision and enforcement of sanctions.

UUPPLH, and UUCK as well as implementing regulations have clearly and in detail explained various things regarding administrative sanctions and the relationship between these types of administrative sanctions, to the relationship between administrative sanctions and criminal sanctions. Efforts to clarify the types of administrative sanctions are carried out by referring to government coercive sanctions.¹⁴

Efforts to clarify the relationship between types of administrative sanctions are carried out by regulating when and under what conditions the various types of administrative sanctions are applied, for example sanctions for freezing and revocation of environmental permits are carried out if the perpetrators do not carry out government coercion. Meanwhile, efforts to clarify the relationship between administrative sanctions and criminal sanctions are carried out by regulating:

- The application of administrative sanctions does not mean freeing the perpetrators from the application of criminal sanctions

¹⁴Interview with the Head of the Legal Subdivision of the Temanggung Regional Secretary, Op.Cit

- Implementation of criminal threats for violations of quality standards if the administrative sanctions that have been imposed are not complied with or violations of quality standards are carried out more than once, and
- The threat of criminal sanctions for perpetrators who do not carry out government coercion.

In addition, UUPPLH also regulates objects that are used as administrative lawsuits to the state administrative court. This arrangement is a form of giving access to the public to correct state administrative decisions in the environmental sector that are contrary to the laws and regulations.

Ensuring that environmental permits are truly utilized as a monitoring and control tool to ensure that the person in charge of the business complies with the regulations and obligations in the context of environmental protection and management. This departs from the fact that often the granting of permits is not balanced with the supervision efforts carried out by the permit givers. Therefore, permit issuers should also consider their capacity in conducting supervision before issuing permits, in addition to considering the carrying capacity and carrying capacity of the environment.¹⁵

Administrative sanctions are part of law enforcement efforts that function as an effort to protect the environment and provide a deterrent effect. Within the framework of environmental law enforcement, administrative sanctions in the form of government coercion (*bestuursdwang*) are one of the most effective and widely used, apart from revocation of permits.

The application of these sanctions is preceded by light administrative sanctions to the heaviest sanctions. If the written warning is not complied with, the implementation of the next more severe administrative sanction will be increased, namely government coercion or permit suspension. If the government's coercive sanctions or permit suspension are not adhered to, even more severe sanctions can be imposed, namely the revocation of permits.

This free application of administrative sanctions provides flexibility for officials authorized to impose sanctions to determine the choice of types of sanctions based on the level of violation. If the violation committed by the person in charge of the business and/or activity has caused pollution and/or damage to the environment, the government may immediately be subject to coercive sanctions. Furthermore, if government coercion is not implemented, then the sanction of revocation of the permit can be carried out without being preceded by a written warning.

The application of administrative sanctions consists of internal and external cumulative. Internal cumulative is the application of sanctions carried out by combining several types of administrative sanctions for one violation. For example in the PPLH Law which combines government coercion sanctions with administrative fines (*administratief boete/bestuurlijke boete*) namely stating that any delay in the implementation of government coercive sanctions will be subject to a fine. Thus, fines are imposed for every delay in the implementation of government coercion, resulting in the imposition of cumulative administrative sanctions by combining government coercion sanctions with fines. The imposition of fines in the

¹⁵Interview with the Head of the Pollution and Environmental Damage Control Division, July 18, 2022

external cumulative is the application of sanctions carried out by combining the application of one type of administrative sanction with the application of other sanctions. Institutions authorized to impose administrative sanctions must consider the following points in determining the imposition of administrative sanctions in stages or cumulatively, namely:

- The level or severity of the type of violation committed by the person in charge of the business and/or activity;
- The level of compliance of the person in charge of the business and/or activity towards the fulfillment of the orders or obligations specified in the administrative sanctions;
- Track record of compliance with the person in charge of the business and/or activity: and/or Level of influence or implication of the violation on the environment.

4. Conclusion

In an effort to maintain balance and minimize environmental damage, of course the government takes various strategic steps, including the establishment of a law on environmental protection and management or UUPPLH. In order to keep the purpose of these regulations being enforceable and having a real effect, of course there are several implementing regulations and various other regulations from the central to the regional realms. Furthermore, environmental law enforcement is closely related to the ability of the apparatus and public/community compliance with applicable regulations. So with this, a firm apparatus is needed, coupled with a cooperative community in carrying out all the demands that must be met for the common good. Based on the above, it is recommended that the Government in implementing administrative sanctions regarding applicable environmental law should pay more attention to preventive implementation. Preventive application is considered better because it can prevent violations of administrative legal norms, so that environmental pollution is easier to avoid with maximum preventive law enforcement.

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