



THE ROLE OF ADMINISTRATIVE SANCTIONS IN ENVIRONMENTAL PROTECTION IN INDONESIA

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Abstract

This research aims to find out how administrative sanctions are applied in efforts to protect and manage the environment in Indonesia and what factors hinder the implementation of these sanctions. This research uses respectful legal research methods and achieves the following objectives: 1. Administrative sanctions in efforts to protect and manage the environment: written warnings, government coercion, freezing of environmental permits, revocation of environmental permits, and administrative fines imposed by the government without going through court proceedings against the perpetrators businesses or activities that violate environmental administration provisions. Administrative sanctions are used to prevent violations and enable the government to stop such violations and allow the government to stop such violations. 2. Legal regulations and law enforcement agencies prevent the application of administrative sanctions in efforts to protect and manage the environment. There are no guidelines for implementing administrative sanctions that regulate how fines are determined and how much fines are imposed for delays in implementing government coercion, so people are free to decide for themselves. This also applies to different law enforcement agencies that have the authority to apply administrative sanctions in environmental cases.

Keywords: *Sanctions, Administrative, Protection*

INTRODUCTION

Law Number 32 of 2009 concerning Environmental Protection and Management (UU PPLH 2009) regulates the government's authority to determine administrative sanctions. The application of administrative sanctions is part of administrative environmental law enforcement. Administrative environmental law enforcement itself can be carried out preventively and repressively. Preventive administrative environmental law enforcement is carried out through supervision, while repressive law enforcement is carried out through the application of administrative sanctions which aim to achieve public compliance with administrative environmental legal norms. 5 Apart from aiming to achieve compliance with the law, supervision can also identify violations early on, so that if a legal violation occurs, administrative sanctions can be implemented immediately. Thus, supervision as a preventive effort and the application of administrative sanctions as a repressive effort is a complete process in enforcing administrative environmental law in an effort to protect and manage the environment.

METHOD

This research uses a Normative method by reviewing documents using various secondary data such as statutory regulations, court decisions, and Legal Theory.

RESULTS AND DISCUSSION

Application of Administrative Sanctions in Environmental Protection and Management Efforts

Regulation of the Minister of Environment of the Republic of Indonesia Number 2 of 2013 concerning Guidelines for Implementing Administrative Sanctions in the Field of Environmental Protection and Management must be applied when implementing administrative sanctions in efforts to protect and manage the environment, as regulated in Article 76 of the PPLH Law. The types of administrative sanctions regulated in Minister of the Environment Regulation Number 2 of 2013 are almost the same as those regulated in Law Number 32 of 2009 and Government Regulation

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Number 27 of 2012 concerning Environmental Permits. However, because Minister of the Environment Regulation Number 2 of 2013 functions as a guideline, an explanation of the types of administrative sanctions is provided separately. Minister of Environment Regulation Number 2 of 2013 stipulates types of administrative sanctions, which include:

1. Written warning
2. Government coercion
3. Suspension of environmental permits
4. Revocation of environmental permits
5. Administrative fines.

1. Written Warning

Administrative sanctions in the form of written warnings are given to those responsible for businesses and/or activities if they have violated statutory regulations and the requirements specified in the environmental permit. However, the violation must be proven and ensured that it has not caused pollution or damage or other negative impacts on the environment. This means that the violation can still be corrected technically and in terms of governance. Violations must be proven and ensured that they do not have a negative impact on the environment such as pollution and destruction, for example:

- a. Administrative in nature, including:
 - 1) Not submitting reports;
 - 2) Does not have a log book and B3 waste balance sheet;
 - 3) Does not have B3 waste labels and symbols.
- b. It is technical in nature but the repairs are light, that is, repairs that can be done directly do not require a long time, do not require the use of high technology, do not require expert handling, and do not require high costs. These technical violations include, among others:
 - 1) The BODS parameter is less than 0.2 ppm which technically does not cause negative impacts or pollution to the environment;
 - 2) Has not demonstrated a violation of the standard criteria for environmental damage;
 - 3) There is damage or disruption to the waste water treatment plant and the person responsible for the business and/or activity does not report it to the authorized official;
 - 4) The occurrence of damage or disruption to production machines;
 - 5) Better technical handling to prevent environmental pollution and/or destruction;
 - 6) Other violations that could give rise to the potential for environmental pollution and/or destruction;
 - 7) Have not reported the implementation of RKL-RPL or UKL-UPL;
 - 8) Not recording daily debits;
 - 9) Not carrying out self-monitoring reporting;
 - 10) The testing laboratory used is not accredited;
 - 11) Have not recorded and reported B3 waste storage activities;
 - 12) Have not yet collected data on the type and volume of B3 waste;
 - 13) Do not install lighting, symbols, B3 waste labels;
 - 14) Not having SOPs for storage, collection, utilization, processing and stockpiling of B3 waste and not having a B3 waste log book;
 - 15) Have not recorded and reported B3 waste utilization and collection activities;

The aim of administrative sanctions is to prevent continued environmental violations. Administrative sanctions are used as a preventive (prevention) and non-judicial repressive juridical tool (action without going through court) to end and stop violations of environmental protection and management regulations regulated in Law Number 32 of 2009.

2. Government Coercion

After a written warning has been given first, government coercive sanctions can be applied to parties responsible for certain businesses or activities and are intended to stop or correct

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violations. Government coercive sanctions can also be applied without being preceded by a written warning if the violation causes the following problems:

- a. Very serious threat to humans and the environment;
- b. The impacts will be bigger and wider if pollution and destruction are not stopped immediately; and/or
- c. There will be greater losses for the environment if pollution and destruction are not stopped immediately.

Sanctions given by the government can be in the form of temporary suspension of production activities, relocation of production facilities, closure of waste water or emission channels, demolition, confiscation of goods or equipment that have the potential to cause violations, or temporary suspension of all activities; and/or other actions aimed at preventing violations and improving the environment. If the person responsible for the business and/or activity violates the requirements and obligations stated in the environmental permit and environmental laws and regulations, such as:

- a. Not building a Waste Water Treatment Plant (IPAL);
- b. Does not have a Temporary Storage Place (TPS) for B3 waste;
- c. Does not have a wastewater flow rate measuring device (flow meter);
- d. Not installing safety ladders on emission chimneys;
- e. Do not make sampling holes in the emission chimney; and many more.

3. Suspension of Environmental Permits

Administrative sanctions are given if an environmental permit, environmental protection and management permit, or environmental protection and management permit is cancelled, causing businesses and activities to stop.

- a. Removal of an environmental permit can be done with or without a time limit. Certain violations involve the suspension of environmental permits, for example: Failure to implement government coercion;
- b. Carrying out activities other than the activities listed in the environmental permit and/or environmental protection and management permit;
- c. Holders of environmental permits and/or environmental protection and management permits have not technically completed their obligations.

According to the 2009 PPLH Law, environmental permits are one of the legal means provided. The results and recommendations of the Environmental Impact Analysis (AMDAL) can be used to obtain environmental permits. To obtain a business or activity permit, you must have an environmental permit. According to Article 1 point 1 of Government Regulation Number 27 of 2002 concerning Environmental Permits, a person who carries out business or activities required by AMDAL, Environmental Management Efforts (UKL), or Environmental Monitoring Efforts (UPL) receives an environmental permit. Administrative sanctions for freezing environmental permits are concrete actions taken by the government that temporarily stop environmental permits, which stops businesses or activities. Because an environmental permit is not the final result of administrative law enforcement, it is not the final decision of state administrative officials. Those in charge of business still have the opportunity to improve the environment and facilities. If environmental repair and restoration is successful, the environmental permit will be revoked. Conversely, if there are no improvements, the environmental permit will be revoked.

4. Revocation of Environmental Permit

For violations, administrative penalties such as revocation of permits and/or Environmental Protection and Management permits can be applied. The following are some examples of violations:

- a. Not implementing government coercive administrative sanctions.
- b. Transferring the business license to another party without written approval from the business license giver.

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- c. Failure to carry out most or all of the administrative sanctions that have been applied within a certain time.
- d. The occurrence of a serious violation, namely an act that violates the law which results in relatively large pollution and/or damage to the environment and causes public unrest.
- e. Abusing waste water disposal permits for B3 waste disposal activities
- f. Storing, collecting, utilizing, processing and stockpiling B3 waste is not in accordance with what is stated in the permit.

Administrative sanctions for revoking environmental permits are imposed on those in charge of businesses and activities who avoid coercion from the government, hand over their business permits to other parties without written approval from the business permit giver, or remove part or all of the administrative sanctions that are applied within a certain time and cause pollution and/or destruction. An environment that endangers the safety and stability of the employer's activities and activities. Revocation of an environmental permit is the most dangerous administrative sanction for the person responsible for the business or activity, compared to the three previous types of sanctions. Revocation of an environmental permit not only stops the violation but also stops the business and all activities carried out by the person responsible for the business or activity. Written warnings and government coercion only serve to stop violations committed by the person responsible for the business or activity and take action to restore environmental functions.

5. Administrative Fines

Administrative sanctions of fines mean that people who carry out business or activities late in carrying out government coercion must pay a certain amount of money. Fines imposed for failing to carry out government coercion are calculated starting from the date when the coercion was not implemented. Administrative sanctions for payment of fines are imposed on people responsible for businesses or activities that do not carry out government coercion. If the person in charge of the business or activity does not carry out government coercion, they are subject to administrative fines as an alternative to government coercive sanctions. Article 81 of the 2009 PPLH Law stipulates that people responsible for businesses or activities that evade the implementation of government coercive sanctions may be subject to fines for any delay in implementation.

Administrative sanctions can be given by the government in terms of environmental management and protection without going through court proceedings against a person or business activity that violates the provisions of administrative environmental law. Administrative sanctions are used as a preventive means to prevent environmental violations and as a repressive means to stop and stop these violations. Administrative sanctions are imposed without going through a trial process because they are non-judicial law enforcement. BAPEDALDA Padang City carried out government coercion against Karet Valley, which is located on Jalan Padang By Pass Km. 22 Batipuh Panjang Subdistrict, Padang. This is one of the cases discussed here. This company works in the crumb rubber sector. In this case, people living around the PT Lembah Karet location submitted complaints to the Padang City Government regarding the impact caused by the PT Lembah Karet water dam which is located on the Batang Arau River. The people of Batipuh Panjang Village, Padang experienced losses due to frequent flooding because the dam was no longer used.

Factors Inhibiting the Implementation of Administrative Sanctions

The existence of human life is very dependent on its environment. Various needs that humans need to survive are provided by the environment for free. People need water, air and sunlight from the environment. Human life would not exist without water and air. This can be seen from the fact that, since there is no water and air outside the planet, there is no life on it. The gifts of God Almighty given to the nation and people of Indonesia must be maintained so that they remain healthy and beneficial for all people living in Indonesia. In addition, the right to a good and healthy living environment is the right of everyone, regardless of their ethnicity, race or religion.

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Every person living in Indonesia has the right to a good and healthy living environment. This must be done by the Indonesian state and government. The state is responsible for imposing sanctions on people who carry out or pollute bolting that damages or pollutes the environment. Administrative sanctions are a form of sanction that can be applied by the government. However, there are several things that hinder the implementation of administrative sanctions. Factors inhibiting the application of administrative sanctions in efforts to protect and manage the environment include:

1. Legal factors and statutory regulations.
2. Law enforcement agency factors.

In the following, the author will discuss the two factors inhibiting the application of the administrative sanctions mentioned above as follows:

1. Legal Factors and Legislation

According to Article 76 paragraph (2) of the 2009 PPLH Law, administrative sanctions such as written warnings, government coercion, freezing of environmental permits, and revocation of environmental permits are regulated. In addition, Government Regulation Number 27 of 2012 concerning Environmental Permits and Minister of the Environment Regulation Number 02 of 2013 concerning Guidelines for the Application of Administrative Sanctions in the Field of Environmental Protection and Management provide encouragement or encouragement to those in charge of businesses not to implement Government Coercive sanctions. If they don't, they will be fined. Administrative fines require parties responsible for businesses and/or activities to pay a certain amount of money if they are late in carrying out government coercion. This administrative sanction applies to delays in implementing government coercion and is valid until the government coercion is implemented.

There are no regulations in the Minister of Environment Regulation Number 02 of 2013 which regulate how to apply administrative sanctions. Therefore, this determination procedure has given the government complete freedom to decide technically on the determination of fines. In this case, ministers, governors and regents/mayors, who are part of the government, have the authority to take legal action. Article 1365 of the Civil Code regarding unlawful acts states that: "Every unlawful act that causes harm to another person, requires the person whose fault it was to cause the loss, to compensate for the loss." One step that can be taken is to file a lawsuit at the District Court. The legal logic for using these efforts is as follows:

- a. The action of the person responsible for not paying the government's coercive delay fine is an unlawful act, because it is contrary to the obligations stipulated by statutory regulations.
- b. Government-enforced late fees can be classified as losses.
- c. Failure to pay late fees imposed by the government even though there has been a warrant before taking concrete action is an indicator of deliberate failure to fulfill one's obligations. Deliberation is a form of error.
- d. The losses suffered by the Government were caused by the actions of those responsible for the business who violated their obligations. These losses will not occur if the person in charge of the business fulfills his obligations. This shows that there is causality between the losses incurred and the actions of the violators.

2. Law Enforcement Agency Factors

Legal factors or legal regulations are no less important than law enforcement factors. No matter how good the rules are, if they are not supported by appropriate law enforcement, they will not succeed in realizing the desired social order. The diversity of authorized agencies creates obstacles related to law enforcement or agencies authorized to apply administrative sanctions in environmental cases. The agency responsible for implementing violence by the government is one of them. According to the 2009 UUPPLH, Ministers, Governors and Regents/Mayors have the authority to implement government coercion. All violations of administrative environmental law, whether contained in statutory regulations or licensing requirements that have a negative impact on the environment, can face government sanctions. Apart from the 2009 PPLH Law, Government

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Regulation Number 20 of 1990 concerning Water Pollution Control and Republic of Indonesia Government Regulation Number 82 of 2001 concerning Water Quality Management and Water Pollution Control also provide the authority to apply government coercion for violations or actions that result in water pollution. In addition, this second Government Regulation gives authority to the Regent, Mayor or Minister to implement government coercion.

Therefore, for two violations related to UUPPLH, namely all violations that cause environmental pollution, three government institutions, namely the minister, governor, and regent or mayor, have the authority to enforce. In addition, there is authority granted by Government Regulation Number 20 of 1990 and Government Regulation Number 82 of 2001 for violations that cause water pollution. If ministers, governors and regents or mayors accept delegation of authority, this overlap can be resolved. This would allow the government to enforce the problem of water pollution and other environmental resources in one place. As regulated in Article 63 concerning duties and authorities between the government and regional governments, UUPPLH makes this possible.

Although normatively governors, regents and mayors have the authority to apply government coercion for all violations of administrative environmental regulations, including violations of licensing requirements, in practice violations such as collusion may occur. Prosper Prosper Prosper Prosper Prosper For example, Amdal and UKL-UPL criteria are established as requirements for the issuance of environmental permits and are also applied to permit suspensions carried out with or without a time limit. Law enforcers do not yet fully understand the development of ecosystems and the environment because improvements to environmental law in the 2009 UUPPLH include environmental instruments based on technological advances throughout the world, which can hinder administrative law enforcement. In addition, there is no law enforcement specialization in the environmental sector.

CLOSING

Conclusion

1. The application of administrative sanctions in efforts to protect and manage the environment in the form of written warnings, government coercion, freezing of environmental permits, revocation of environmental permits and administrative fines imposed by the government without going through a court process on business actors or activities that violate administrative provisions in the environmental sector. The application of administrative sanctions is a means to prevent violations and a means to stop and end violations of provisions in the environmental sector.
2. Factors inhibiting the application of administrative sanctions in efforts to protect and manage the environment are legal factors and statutory regulations and law enforcement agency factors. The guidelines for implementing administrative sanctions do not yet regulate the procedures for determining fines and the amount of fines for delays in implementing government coercion, thereby giving them free authority to determine for themselves. Likewise, the factor of law enforcement agencies is that there are still a variety of agencies that have the authority to apply administrative sanctions in environmental cases.

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