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## ADMINISTRATIVE SANCTION IN ENVIRONMENTAL LAW

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### Abstract

Enforcement of administrative sanctions is part of the enforcement of administrative environmental laws. Law enforcement of the administrative environment itself can be done in a preventive and repressive manner. Administrative law enforcement that is preventive is done through supervision, while repressive law enforcement is done through the application of administrative sanctions. Supervision and application of administrative sanctions aims to achieve the adherence of the public to the legal norms of the administrative environment. Good supervision as part of preventive environmental law enforcement will prevent the violation of administrative law norms. Thus, environmental pollution resulting from such breaches can be avoided. This is better than the enforcement of repressive administrative sanctions after the offense. However, it does not mean that the review of enforcement of administrative sanctions is unimportant.

**Keywords:** Environmental; Sanction; Administrative; Law.

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### 1. Introduction

When preventive law enforcement does not achieve the goal or in other words still violations despite strict supervision, repressive law enforcement through the implementation of administrative sanctions is absolutely necessary. It aims to provide forcible attempts to violators of administrative law for its actions that cause pollution or environmental damage.

So, even if supervision is done very well, it is still very possible that the violation occurs, while the offense must be followed by the application of sanctions. Without the application of administrative sanctions, the rules are merely writings that have no meaning, which can be violated by anyone. The application of administrative sanctions is also part of consistency in enforcement of environmental law.

In addition to aiming to achieve compliance with law, supervision can also identify the occurrence of violations early, so that if there is a violation of law then the implementation of administrative sanctions can be done immediately. Thus, between supervision as a preventive effort and the

application of administrative sanctions as a repressive effort is a whole process in enforcing environmental administration law.

In relation to the prevention of environmental pollution, the application of administrative sanctions has several advantages when compared with other types of sanctions, both criminal sanctions and civil sanctions. Criminal sanctions are directed at violators to cause a sense of deterrent or sorrow. Civil sanctions namely the payment of compensation is directed to the victim for the loss suffered as a result of the unlawful act. Indemnification for victims can not restore the contaminated environment. In contrast to the objectives of these two sanctions, administrative sanctions are directed to the prevention and cessation of violations as well as the restoration of the environment which is damaged or polluted by the actors' acts.

Law enforcement of administrative environment in the form of supervision and implementation of administrative sanction in UUPPLH has been regulated in Chapter XII of the second part covering Article 76 to Article 83 UUPPLH, as follows:

Article 76

- 1) The minister, governor or regent / mayor shall impose administrative sanction to the party responsible for the business and/or activity if under surveillance found violation of the environmental permit.
- 2) Administrative sanctions consist of:
  - written warning;
  - government coercion;
  - freezing of environmental permits; or
  - Revocation of environmental permits.

Implementation of administrative sanctions as set forth in the above article is the authority possessed by administrative officials, in this case the Minister as the official of the Central Government. In addition, local officials (Governors and Regents / Mayors may also apply - in the sense of imposing administrative sanctions in accordance with their powers.) Even if the authority of local officials (Governors or Regents / Mayors) is not used or not implemented, then the application of such administrative sanctions may be Minister as the official of Central Government This is regulated in Article 77 UUPPLH which states:

*“The Minister may apply administrative sanctions to the party responsible for the business and/or activity if the Government considers the local government to intentionally not impose administrative sanctions on serious violations in the field of environmental protection and management”.*

Implementation of administrative sanctions imposed by administrative officials does not eliminate the responsibility of employers and / or activities that violate environmental law for environmental restoration and / or criminal responsibility. This means that if in the acts or activities that cause damage or environmental pollution there are elements of criminal, then still be accounted for criminally.

In addition to the company as a legal entity conducting activities or businesses that cause damage and pollution of the environment, can also be subject to administrative sanctions in the form of

freezing or revocation of permits. Freezing or revocation of permits is made if the employer or person in charge of the activity does not exercise government coercion as one form of administrative sanction that has previously been imposed. It is stated in Article 79 of UUPPLH which states:

*"The imposition of administrative sanctions in the form of freezing or revocation of environmental permit as referred to in Article 76 paragraph (2) letter c and letter d shall be done if the party responsible for the business andlor activity does not exercise the government's coercion".*

The use of the Government's free authority in imposing administrative sanctions as stipulated in the old UUPPLH, is very likely to result in arbitrary acts or abuse of authority. Moreover the application of administrative sanctions is a governmental act that is giving the burden to the community or the offender. Therefore, the application of sanctions must be done properly and accurately, that is based on the law, both written in legislation, and on the law that is not written in this case the Principles of Good Governance (AAUPB). The improper application of sanctions allows for administrative suits from the public or violators against the Government.

Implementation of administrative sanctions in cases of environmental pollution is one form of governmental acts committed in the framework of enforcement of environmental law. Therefore, the theoretical study on the application of administrative sanctions can not be separated from the discussion of the acts of government. The acts of government include all acts committed by the administrative organs in order to carry out government duties. Government duties include all state activities beyond the formation of laws and the judiciary. This is parallel to the notion of "besturen" or government in the strict sense. Governance in the broad sense (regering) includes making regulations (regel geven), government in the sense of narrow (besturen), and judge (geschil beslechting).

In relation to the legal hearing into public and private law, the Government's legal actions can be divided into two, namely public legal action and private legal action. Furthermore, public legal acts are divided into two, namely the public legal act of one-sided (eenzijdige publiekrechtelijke handelingen) and the act of public law of a square (tweezijdige publiekrechtelijke handelingen).

In relation to the application of administrative sanctions, the related governmental act is a one-sided public legal act. Implementation of administrative sanctions is an act that is based on public authority and is an act unilaterally committed by the Government. As suggested by Van der Wel as quoted by E. Etrecht that the act of one-sided public law is an act of government carried out on the basis of a special power owned by the Government. This action is named "beschikking". In the Indonesian language has been used officially in Law No. 5 of 1986 on the State Administrative Court in terms of state administrative decisions.

In the midst of the demands of clean government, it is very relevant to note here that clean government can be seen from the actions taken. Governance is a concrete form of government duties. From the aspect of the relationship between the government and the people, the act of government is the root of the dispute between the government and the people.

Based on this, a clean government must be realized in every action based on the law (*rechtmatig*). Every act of government should be "*rechtmatig*" so that every act in decision-making in the form of administrative sanctions, the government should pay attention to the principle of legitimacy of government (*rechtmatigheid van bestuur*). Thus, as far as possible avoid the occurrence of disputes between the government and the people.

## **2. Administrative Sanctions in the Protection Laws and Management of the Living Environment**

Implementation of administrative sanctions can not be separated from the general environmental policy aimed at realizing environmentally sustainable development by ensuring legal certainty and providing protection to the right of everyone to get a good and healthy environment as the objective in UUPPLH (Law Number 32 Year 2009). In Article 3 UUPPLH mentioned that environmental protection and management aims [17]:

- protect the territory of the Unitary State of the Republic of Indonesia from pollution and / or environmental damage;
- ensure safety, health, and human life;
- ensure the survival of living beings and the preservation of ecosystems;
- preserving environmental functions;
- achieve harmony, harmony, and environmental balance;
- ensuring the fulfillment of justice of present and future generations;
- guarantee the fulfillment and protection of the right to the environment as a part of human rights;
- controlling the wise use of natural resources;
- realizing sustainable development; and
- Anticipating global environmental issues.

The environmental policy as regulated in Article 3 of the above UUPPLH can be pursued by various means or instruments that are both prevention of pollution and environmental restoration. In UUPPLH, several environmental policy instruments have been partially supported by implementing regulations, such as environmental permits and environmental standards, and environmental restrictions and obligations.

In legal theory, it has become a standard formulation that applies to prototype rule of law which consists of two parts namely legal requirements and consequences. The terms section contains about a particular event, while the second contains the legal consequences associated with that particular event. Such a rule of law is called a hypothetical provision, because the legal effect of the second activity will occur only if the conditions in the first part are met (IBID).

Implementation of administrative sanctions is one form of Government action based on a distinct administrative authority, because no judicial procedure is necessary to implement it and is unilateral. Such actions in administrative law are called decisions. As stated by Van der Pot and Van Vollenhoven that: "Decisions are unilateral legal actions in the sphere of government, carried out by a body of government on the basis of its extraordinary authority" (W.F. Prins, Kosim Adisapoetra, 1983: 42) [8]. The characteristic characteristic of a decision is its individual-concrete nature (Philip M. Hadjon, 1993: 124) [2]. Individual means that decisions are directed only at

specific people who are explicitly mentioned in them, whereas concrete relates to events or deeds that occur.

### **Government Coercion**

Government Coercion is regulated in article 80 of UUPPLH. Under the aforementioned article, the meaning of government coercion may be the temporary suspension of production activities, the transfer of production facilities, the closure of sewerage or emissions, dismantling, seizure of potentially provoking goods or devices, violations, suspension of all other activities and aims to stop violations and restore environmental functions.

The meaning of government coercion is what is known in Article 143 of Law Number 32 Year 2004 regarding Regional Government with the term "Coercion of Law Enforcement or the Coercion of Legal Maintenance". Elucidation of Article 143 paragraph (1) confirms that the meaning of "law enforcement cost" in this provision constitutes additional sanction in the form of imposition of fees to violators of Regional Regulations other than the provisions set forth in the criminal provisions.

Regardless of the different terms mentioned above, there are several attributes attached to government coercive sanctions as follows:

- 1) Government coercion is basically a concrete act (feitelijke handeling) in order to stop the violation and / or restore the situation that is against the law.
- 2) Government coercion is a law enforcement authority owned by a government whose application does not require judicial procedures.
- 3) The costs of terminating violations and / or restoring the conflicting circumstances shall be borne by the offender.

The concrete form of the violation committed by the responsible person of business which enables the implementation of government coercion such as violation of the obligation to have EIA (Article 22 UUPPLH), business and / or activity that is not wajib equipped with environmental management effort and environmental monitoring effort hereinafter called UKL -UPL, shall prepare a letter of statement on environmental management and monitoring (Article 35 UUPPLH) as well as violation of obligations or restrictions that are expressly stipulated in environmental legislation.

### **Freezing Environmental Permit**

The freezing of environmental permit is stipulated in UUPPLH and Government Regulation Number 27 Year 2012 regarding Environmental Permit. However, in the regulation, there is no mention and explanation regarding the freezing of environmental permits in both UUPPLH and government regulations, only mentioned as one form of administrative sanction after the application of governmental coercion sanction. The freezing of environmental permit is a concrete action from the government in the form of not temporarily imposing environmental permit which result in the cessation of a business and / or activity. To determine when an act is considered as a government action that is:

- 1) The action is carried out by the government apparatus in its position as ruler and as a tool of government (bestuurorganen);
- 2) Such action shall be carried out with the intent of being a means of causing legal consequences in the field of administrative law;

- 3) The action concerned is carried out in order to carry out government functions and maintenance of the interests of the state and the people.

The freezing of this environmental permit is not a final decision of the state administrative official, since it is not the end result of administrative law enforcement. Hence, the responsibility of the business is still given the opportunity to improve the facilities and restoration of the environment and complete the environmental permit requirements and / or environmental protection and conservation permit. If the repair and recovery of the environment is successful, the environmental permit will be redeemed. Conversely, if there is no improvement, then the environmental permit is revoked.

### **Revocation of Environmental Permit**

The revocation of environmental permit is one of the forms of administrative sanction as stipulated in Article 76 paragraph (2) of UUPPLH which stipulates that administrative sanction consists of: written warning, government coercion, freezing of environmental permit, or revocation of environmental permit.

Government Regulation No. 27 of 2012 on Environmental Permits shall sanction environmental permit holders violating the provisions as referred to in Article 53, which shall be liable to administrative sanctions comprising: written warning, government coercion, freezing of environmental permit, or revocation of environmental permits [16]. The application of this revocation of environmental permits applies to those responsible for businesses and activities that do not exercise government coercion. Article 79 of the UUPPLH affirms that: "The imposition of administrative sanctions in the form of freezing or revocation of environmental permit as referred to in Article 76 paragraph (2) letter c and letter d shall be done if the party responsible for the business and / or activity does not exercise government coercion."

Spoken by A.M. Donner that the possibility of lifting a decision depends on the type of decision in question. Is it a legal decision (*rechtsvastellende beschikking*) or a decision that creates the law (*rechtsscheppende beschikking*). Decisions that are to declare a law or declaration are bound by the laws and regulations on which the decisions are based. This type of decision is difficult to remove unless the basic rules permit. On a decision that creates a law or constitutive possibility of a larger retraction (Victor Situmorang: 129-130) [9].

### **Administrative Fines**

Administrative fines are an alternative sanction of the application of government coercion if the party responsible for business and / or activities that do not compel the government will be fined for the delay in the implementation of government coercion sanction. This is evident from the formulation of Article 81 UUPPLH which reads: "Any person in charge of business and / or activities that do not exercise government coercion may be fined for any delay in the implementation of governmental coercion sanction."

Administrative fines are the imposition of an obligation to make payment of a certain amount of money to the party responsible for business and / or activity because it is too late to compel the government. The imposition of penalties for the delay in carrying out government coercion is calculated from the time the implementation of government coercion is not implemented (Bruggink, 1996: 100) [1].



### 3. Severity of Administration Sanction Application

#### Scope of Legal Implementation of Administrative Sanctions

Implementation of administrative sanctions is one form of state administrative decisions that allow the emergence of lawsuits from the affected decision. This should serve as a warning to law enforcement officials to do so carefully considering all aspects, juridical and sociological.

The juridical issue to be considered is the validity of the decision on the implementation of sanctions to be taken. This is a consequence of the conception of the state of Indonesia as a state of law that upholds the principle of "rechtmatigheid van bestuur". Based on the principle, every decision must meet its legal requirements, so that the decision is legally enforceable and may apply lawfully.

Law No. 5 of 1986 concerning the State Administrative Court (and all its amendments) does not expressly stipulate the legal requirements of a decision [19]. However it can be interpreted *acontrario* from the provisions of Article 53 paragraph 2 and the explanation of Law No. 9 of 2004 on Amendment to Law No. 5 of 1986 concerning the State Administrative Court which regulates the basis for filing a lawsuit invalid decision, as follows:

- 1) The defendant's State Administration Decision is contrary to applicable laws and regulations (with respect to authority, procedure and substance).
- 2) The defendant's State Administration Decision is contrary to the general principles of good governance. Referred to as general principles of good governance include the following principles: legal certainty, orderliness of state administration, transparency, proportionality, professionalism, accountability, as referred to in Law Number 28 Year 1999 concerning Clean and Corrupt State Officials, Collusion, and Nepotism.

In line with the above, Philipus M. Hadjon argued that the implementation of the principle of rule of law (*rechmatig bestuur*), especially concerning publication of the library of state administration includes:

- 1) Principle acts in accordance with legislation (*wetmatigheid*). The suitability concerns the authority, procedure and substance of the decision.
- 2) The principle of "not misusing authority for other purposes" (prohibition of "detournement de pouvoir").
- 3) The principle of acting rationally, reasonably or can be formulated as the principle of "not acting arbitrarily".
- 4) Act in accordance with the good general principles of government. (Paul Effendi Lotulung, 1994: 119) [4].

#### Authority for Implementing Administrative Sanctions

Administrative sanctions shall be imposed by the competent administrative organs. In this case the official concerned must have legitimate authority under the laws and regulations. Without a legitimate authority, a person can not take public legal action. This is in line with the provisions of Article 1 number (8) of Law Number 51 of 2009 concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Courts which states that: "The Agency or State Administration Officer is the body or official which carries out government affairs under applicable laws and regulations ". This provision, in addition to containing the meaning of the

legality principle of every governmental act, also indicates that only laws and regulations alone provide the authority possessed by state administrative officials.

In general, the authority to take government action comes in two ways, namely attribution and delegation. At attribution occurs the granting of new authority by sutau provisions in the legislation. While in the delegation there is delegation of authority from government officials who have obtained the authority of attribution to other government officials. The delegation of authority is also followed by the shift of responsibility and accountability. Delegation of authority can only be done by legislation (Indroharto: 91) [3].

The authority of government organs has limited territory, substance and time. It was proposed by Philipus M. Hadjon that:

Every authority is limited by content, region and time. Defects in these aspects create defects of authority (onbevoegdheid) concerning:

- 1) Contents defects (onbevoegdheid razione materiae).
- 2) Defect area (onbevoegdheid razione loci).
- 3) Time defect (onbevoegdheid razione temporis) (Philipus M. Hadjon, 1994: 9) [2].

### **Procedures for Implementing Administrative Sanctions**

Every act of government including the application of administrative sanctions shall be made in accordance with the procedures outlined. Without such a procedure, the application of administrative sanctions will contain procedural defects. This is one of the reasons for the judge to declare such action null and void.

Good procedures should reflect the three main elements of administrative law, the principles of the rule of law, the principles of democracy and the instrumental principle. The principle of a state of law in procedure relating to the protection of fundamental rights. The principle of democracy requires openness in governance, while the instrumental principle includes the principle of efficiency (doelmatigheid) and the principle of effectiveness (doelsterffendheid) (Philipus M. Hadjon) [2].

### **3.1. Procedures for Implementation of Governmental Coercion**

As described in the previous chapter, government coercion is essentially a concrete action. This should be distinguished from legal actions that are clearly undertaken by the Government to cause a specific legal effect. Government coercion is a concrete action to stop violations of administrative environmental law norms that are violated by businessmen responsible. For example, the person responsible for the business violates the waste water quality standard, the Governor terminates it by closing the sewerage.

UUPPLH provides restrictions on the procedure of applying government coercion preceded by reprimand, as stipulated in Article 80 Paragraph (1) of UUPPLH which affirms that:

Government coercion as referred to in Article 76 paragraph (2) letter b in the form of:

- 1) temporary suspension of production activities;
- 2) transfer of production facilities;



- 3) closure of sewerage channels or emissions;
- 4) demolition;
- 5) seizure of potentially infringing goods or devices;
- 6) suspension of all activities; or
- 7) Other measures aimed at stopping violations and restoring environmental functions.

Government coercion may be exercised without any specific reprimands for the offenses that have enormous environmental effects and losses. Article 76 paragraph (2) of UUPPLH affirms that:

The imposition of government coercion may be imposed without a warning if the offense breeds:

- 1) a very serious threat to humans and the environment;
- 2) greater and wider impacts if not immediately stopped pollution and / or destruction; and / or
- 3) greater damage to the environment if not immediately stopped pollution and / or destruction.

### **3.2. Environmental License Revocation Procedure**

UUPPLH provides no guidance on the environmental permit revocation procedure. Therefore, a review of the revocation procedure of a license is made against the rules on which the license is based. Neither in UUPPLH or Government Regulation Number 27 of 2012 on Environmental Permit is not regulated on the revocation guidelines. In 2013, a guideline for implementation of administrative sanctions was implemented through the Regulation of the Minister of Environment No. 02 of 2013 on Guidelines for Implementing Administrative Sanctions in the Field of Environmental Protection and Management.

Article 53 of Government Regulation Number 27 of 2012 concerning Environmental Permits stipulates the possibility of revocation of environmental permits for the following reasons [16]:

- 1) The Environmental License Holder violates the terms and obligations contained in the Environmental Permit and the environmental protection and conservation permit;
- 2) Not make and submit implementation reports on the requirements and obligations in the Environmental Permit to the Minister, governor or regent / mayor; and does not provide a guarantee fund for the restoration of environmental functions in accordance with the laws and regulations.
- 3) Not perform periodic reporting every 6 (six) months of implementation of the requirements and obligations in the Environmental Permit.

In line with the possibility of revocation of the environmental Permit mentioned above, the Regulation of the Minister of the Environment No. 02 of 2013 in Article 4 paragraph (5) also raises the reasons for the revocation of environmental permits and stipulates that [12]:

Revocation of Environmental Permit and / or Environmental Protection and Enforcement Permit as referred to in paragraph (1) letter d shall be applied if the party responsible for the business and/or activity:

- 1) transfer the business license to another party without the written consent of the licensor;

- 2) not implementing most or all of the government coercion that has been implemented within a certain time; and / or
- 3) has caused pollution and / or damage to the environment that endanger human health and safety.

Seeing these reasons, the removal of environmental permits is a very effective sanction in tackling environmental pollution and destruction. As soon as environmental Permits that pollute the environment or violate the licensing requirements (which are none other than Environmental Impact Assessment and UKL-PKL) are revoked, then the company's activities are suspended. Thus, the negative impact on the environment does not happen again. As mentioned in Article 36 of UUPPLH which requires every business and activity to have AMDAL or UKL-UPL is obliged to have environmental license. Government Regulation No. 27 of 2012 also regulates the order of obtaining environmental permit stipulated in Article 2 paragraph (2) Environmental Permits obtained through the stages of activities covering the preparation of Amdal and UKL-UPL, AMDAL assessment and UKL-UPL examination and the application and issuance of Environmental Permit.

### **3.3. Substance Implementation of Administrative Sanctions**

The substantive aspect is the content aspect of the administrative sanction decision. Generally, the laws and regulations that form the basis of a decree have regulated substantial material concerning the subject matter and the purpose of the action. The content of the decision is none other than the determination of the rights and or obligations of the subjects directed by the decision. Substantially, therefore, the decision must clearly state what the (object) and the subject of the decision and for what (goal) the decision was made.

It was proposed by Philipus M. Hadjon that any governmental power which contains the authority of the regulation and control of public life is substantially restricted in terms of "what" and "for what". A substantial defect concerning "what" is an arbitrary act, while a substantial flaw that involves "for what" is an act of abuse of authority (Ibid: 10).

Substantially the revocation of environmental permits is also limited by "what" and "for what" the revocation of such permits is stipulated. In the revocation decision of the environmental permit should be affirmed about which permit is revoked. This is due to the variety of environmental permits in the field of business owned by the responsible business. In addition must also be contained violations of what has been done by the responsible person of the business.

The revocation of this environmental permit has implications for both the government and the business or activity responsible. The implications include the following:

- 1) Revocation of business license as an effort to protect and preserve the function of the environment;
- 2) The operation of business license revocation shall be based on good general governance principles (AAUPB);
- 3) Revocation of business licenses is an obstacle for businessmen who complicate business or investment activities in Indonesia.

Gather all relevant facts, eg evidence of violations committed by the responsible person (sampling of waste and inspection results).

Consider all the interests associated with the decision to be issued, such as the aspect of investment from the responsible business, the impact of the impact on labor and others.

#### **4. Infringement Factors of Administration Sanctions**

##### **Barriers are Factors or Legislation**

The following description discusses the obstacles in enforcing administrative sanctions in environmental law, both regulated in UUPPLH, Government Regulation No. 27 of 2012 on environmental permits and Minister of Environment Regulation No. 02 of 2013 on Guidelines for Implementing Administrative Sanctions in the Field of Environmental Protection and Management. The legislation provides impulse to businessmen who do not carry out Government Coercion with a penalty sanction for any delay in the implementation of Government Coercion sanctions.

Efforts that can be made is to file a lawsuit to the District Court pursuant to Article 1365 of the Civil Code on unlawful acts, namely: "Any unlawful act which carries harm to another person, obliges the person who because of the wrong to issue the loss, ". The legal logic of the use of such efforts is as follows:

- 1) The responsible act of not paying the penalty of government coercion is a violation of the law, as it is contrary to the obligations established by law and regulation (Abdul Kadir Muhammad 1982: 145 - 146) [7].
- 2) Fines of government coercion may be classified as a loss.
- 3) Not paying a penalty for late government coercion even though there has been a warrant before any real action is an indicator of intent to not fulfill its obligations. Deliberation is one form of error (Moeljanto, 1985: 157) [6].
- 4) The losses suffered by the Government are caused by the actions of businessmen who violate their obligations. Such losses will not occur if the responsible person fulfills his / her obligations. This shows the existence of causality between the losses that occur with the offender's actions.

##### **Obstacles are Factors of Law Enforcement Agencies**

In addition to legal or regulatory factors, which is not less important is the factor of law enforcement. No matter how legal norms are established, without proper law enforcement support, it will not result in the order of society directed by that law. Constraints relating to law enforcement agencies or agencies authorized to apply administrative sanctions in the case of the environment are still varied by authorized institutions. One of them is the agency authorized to apply government coercion.

UUPPLH affirms that the application of government coercion becomes the authority of the Minister, Governor and Regent / Mayor. Government coercion may be applicable to all violations of the administrative environmental law norms, whether contained in legislation or in licensing terms that have a negative impact on the environment. In addition to UUPPLH, in Government Regulation No. 20/1990 on Water Pollution Control and Government Regulation No. 82/2001 on

Water Quality Management and Water Pollution Control, it also gives the authority to apply government coercion for violations or acts that cause water contamination. In both the Government Regulations are also given authority to the Regent / Mayor / Minister to apply government coercion.

Thus, the government's coercive power is owned by three institutions, namely the Minister, the Governor, and the Regent / Mayor for two violations stemming from UUPPLH, namely all violations of the administrative environmental law norms that cause the effects of contamination of the environment. In addition, the authority sourced from Government Regulation No. 20 of 1990 and Government Regulation No. 82 of 2001 for violations that cause water pollution. This creates an overlapping of authority in the application of government coercion between the Minister, Governor, and Regent / mayor.

## **5. Comparison of Arrangement between UUPPLH and UUPPLH**

### **Urgency of Right to Environmental Arrangement**

The environment is a resource for human life, bringing benefits and plays an important role in health, economy and social. Regarding to include the environment as a resource, then in principle the environment is a resource that is needed by other creatures, especially humans. On this basis, Otto Soemarwoto (in Supriadi) divides the needs in 3 (three) major sections, namely basic needs for biological survival, basic needs for humane survival and basic needs to choose (Supriadi, 2010: 5) [10].

Human life will never escape from the environment. The existence of human life is very dependent on the environment. The environment has provided free of charge for various human needs which is an absolute requirement for people to maintain their lives. The environment provides water, air and sunlight that it is an absolute necessity of man. Without water and air there would be no human life (A'an Efendi, 2011: 31-32). It can be seen from the existence of planets outside the earth that have no water and air, so there is no life inside the planet.

Natural resources must be utilized properly, because otherwise it will cause disturbance and damage. Environmental utilization from the economic side in the form of production processes, such as river water utilized by factories to transport waste residues of production and household needs, is certainly cause dampat on environmental damage or pollution. The use of the environment should be wise and prudent in view of the fact that natural resources are renewable and some are non-renewable eg petroleum, natural gas and other mining materials.

In Southeast Asia the form of awareness of nations to implement environmental protection and preservation is applied in cooperation, such as "tripartite agreement" and the Manila Declaration. The result of the Manila Declaration was the formation of cooperation among ASEAN countries in 1976 that resulted in the ASEAN Contingensy Plan as well as the "Action Plan". The main target is the development and protection of the marine environment and coastal areas for the advancement, welfare, and health of present and future generations.

Development in various aspects of life, not always bring a positive impact for the progress of the state and government. It is precisely the development of science and technology that leads to

negative development. One of the instruments of state development is development in the economic field. Economic development efforts depend on economic growth. In order for the growth can be said to be healthy then it must be supported by investment activity or investment. The better known forms of investment are property and company. Moreover, the bureaucracy is too flexible on the business licensing process, which does not rely on the assessment of EIA and UKL-PKL, so that environmental issues become neglected. The result is a negative impact on the environment that is pollution and environmental damage. Considering the impact, it is necessary to enforce environmental law enforcement instruments through environmental law arrangements.

## **6. Environmental Permissions As Administration Sanctions Instruments**

### **Analysis of Government Regulation No. 27 of 2012 on Environmental Permits**

The development process undertaken by the nation of Indonesia should be organized based on the principle of sustainable development and environmentally friendly in accordance with the mandate of Article 33 paragraph (4) of the 1945 Constitution of the State of the Republic of Indonesia. Utilization of natural resources is still the basic capital of development in Indonesia at this time and still dependable in the future. Therefore, the use of natural resources must be done wisely and wisely.

The utilization of natural resources should be based on three pillars of sustainable development, which is economically viable, socially acceptable, and environmentally sound. The development process organized in this way is expected to improve the welfare and quality of life of present and future generations. Development activities carried out in various forms of business and / or activity will essentially have an impact on the environment.

## **7. Guidelines of Administrative Sanction Implementation**

### **Anatomy of Minister of Environment Regulation No. 2 of 2013**

From the review of administrative sanctions as described in the previous chapter, the sanctions provide effectiveness and efficiency in enforcing environmental laws. The Government considers it necessary to impose administrative sanctions as an important instrument in enforcing environmental law, leaving no other legal instruments, such as criminal sanctions and civil sanctions, if indeed in the act of environmental pollution and destruction there is an element of criminal offense or violation of law in the perspective of civil law.

### **Types of Administrative Sanctions**

The application of administrative sanction in the Regulation of the Minister of Environment Number 2 Year 2013 regarding the types of administrative sanctions basically has the same meaning as Law Number 32 Year 2009 and Government Regulation Number 27 Year 2012 About Environmental Permit, but due to the Regulation of the Minister of Environment Life Number 2 Year 2013 is a guideline so the explanation of the type of administrative sanctions is done in more detail.

The types of administrative sanctions stipulated in Minister of Environment Regulation No. 2 of 2013 include sanctions in the form of: (1) written warning, (2) government coercion, (3) freezing of environmental permit, (4) revocation of environmental permit, and (5) administrative fines.

### **Written Reprimands**

Administrative sanctions in the form of written warning shall be the sanction applied to the party responsible for the business and / or activity in the event that the party responsible for the business and / or activity has violated the laws and requirements specified in the environmental permit. However, these violations, both in terms of good environmental governance and technically, can still be improved and also have no negative impact on the environment. Such violation must be proven and ascertained not to have a negative impact on the environment in the form of pollution and / or destruction.

### **Government Coercion**

Government coercion is an administrative sanction in the form of concrete action to stop the offense and / or recover in its original state. Implementation of governmental coercion sanctions may be made against the party responsible for the business and / or activity with prior written warning. The application of governmental coercion sanctions can be imposed also without preceded by written warning if the violations committed cause:

- 1) A very serious threat to humans and the environment;
- 2) Greater and more extensive impacts if not immediately stopped pollution and / or destruction; and / or
- 3) Greater losses to the environment if not immediately stopped pollution and / or destruction.

### **Freezing Environmental Permit**

Administrative sanctions for the freezing of environmental permits and / or environmental protection and conservation permits are sanctions in the form of legal action not to temporarily impose environmental permits and / or environmental protection and environmental protection permits, resulting in the cessation of a business and / or activity. This environmental permit freeze can be done with or without a time limit. Implementation of administrative sanctions in the form of freezing of environmental permit applied to violation.

### **Revocation of Environmental Permit**

Administrative sanctions in the form of revocation of permits and / or Environmental Protection and Enforcement Permits applied to violations, for example:

- 1) does not impose administrative sanctions of government coercion;
- 2) transferring its business license to another party without written approval from the licensor;
- 3) does not carry out most or all of the administrative sanctions that have been applied for a certain period of time;
- 4) the occurrence of serious violations of unlawful acts which result in the contamination and / or destruction of the environment which is relatively large and cause public unrest;
- 5) misusing waste water disposal permits for B3 waste disposal activities;
- 6) Store, collect, utilize, process and accumulate B3 waste is not suitable as contained in the permit.

### **Administrative Fines**

What is meant by administrative sanction of a fine is the imposition of an obligation to make payment of a certain amount of money to the party responsible for the business and / or activity because it is too late to compel the government. The imposition of penalties for the delay in



carrying out government coercion is effective from the time the implementation of government coercion is not implemented.

## 8. Conclusion

Enforcement of administrative sanctions is an integrated action with national environmental policy aimed at realizing sustainable development. To achieve the intended target, the enforcement of administrative sanctions becomes a supporting facility that can improve the effectiveness of existing environmental policy means, such as licensing, other environmental quality standards. In UUPPLH Tahun 2009 there are four kinds of administrative sanctions, namely written warning, government coercion, freezing of environmental permit and sanction of revocation of environmental permit. This law is a refinement of UUPPLH Year 1997 so it is in accordance with the concepts of administrative law. A review of each of the four administrative sanctions indicates that government sanctions and permit revocation can be effectively used to tackle environmental pollution through recovery and restoration of environmental conditions by the party responsible for the business.

Implementation of administrative sanctions as one form of government action in the form of state administrative decisions should be based on the principle of legitimacy in government (*rechtmatigheid van bestuur*). As the exercise of free authority, the basis of the validity of the application of administrative sanctions is not sufficient only based on legislation, but must also consider the principles of Good Governance (AAUPB). The scope of legitimacy based on legislation covers the aspects of authority, procedure and substance of the application of administrative sanctions. AAUPB relevant to the implementation of administrative sanctions include the principle of prohibition of abuse of authority, the principle of arbitrary prohibition, the principle of accuracy, the principle of reasoning, the principle of equality, the principle of equilibrium and the principle of legal certainty.

The enforcement of administrative sanctions under UUPPLH still faces many obstacles both from legal factors and law enforcement agencies. From the legal factors caused by the lack of complete implementation regulations that support the implementation of administrative sanctions. Some provisions contained in the UUPPLH can not be operationalized due to the absence of implementing regulations. On the other hand the barriers of its law enforcement officers are caused by overlapping regulation of administrative organs authorized to apply sanctions with other devices. In addition there are sometimes inconsistencies in enforcement and enforcement of administrative sanctions against violations of administrative environmental laws. The inconsistency of law enforcement may weaken the effectiveness of administrative sanctions in enforcing environmental laws. Regarding the problems arising from the application of administrative sanctions in environmental law enforcement, the authors recommend several alternatives, first, in order to avoid actions that do not support environmental policies and to avoid the occurrence collusion between officials and employers, it is necessary to immediately establish a government regulation governing the provisions of the procedure for the imposition of penalties for the delay in the implementation of government coercion and collection. The absence of regulations on the procedures for the imposition of late fines has granted free authority to government officials to determine for themselves the technical determination of the fine. Secondly, in order to avoid the lawsuit of the responsible party of the sanctioned business, in every sanctioned

application must be obeyed both written governance norms as well as the unwritten General Principles of Good Governance (AAUPB). By reference to AAUPB in the application of administrative sanctions it will prevent state administration officials or State Administration officials from acts of abuse of authority, or arbitrary action, inaccurate acts, and unauthorized action. In addition, with reference to AAUPB, the taking of action by TUN officials in the application of administrative sanctions to the enforcement of environmental law will always be based on the principle of equality, the principle of equilibrium and the principle of legal certainty. Thus, the actions of TUN officials in the application of administrative sanctions have obtained legal restraints, so avoid the lawsuit of the aggrieved parties due to the imposition of administrative sanctions in environmental law enforcement.

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