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LEARNING”**

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CRIMINAL AND ADMINISTRATIVE LAW ENFORCEMENT FOR BUSINESS ACTORS AS AN EFFORT TO MINIMALIZE ENVIRONMENTAL POLLUTION

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ABSTRACT

In life, human relies heavily on the environment. Environment as a place to survive must be able to support all the activities and needs of the organs inside, where health is one of the requirements. Today, we have encountered the pollution of the environment in various regions of the earth. The cause of pollution comes from various fields, which one of them was waste that dumped by factories. In fact, the existence AMDAL documents and supervisory roles often unable to accommodate the prevention of environmental pollution. Many businesses have the document, in fact, many of waste disposed are not in accordance with the AMDAL analysis. We must realize that problematic environment will cause problems for other living beings too. Thus, it takes an effort from the government in order to minimize the environmental pollution by implementing normative sanctions for business actors who allegedly pollute the environment. The sanctions that going to be enforced in an effort to minimize the the pollution of the environment that criminal sanctions and administrative sanctions. However, is the existence of these penalties can be enforced in order to minimize the environmental pollution?

Keywords: *administrative sanctions, criminal sanctions, business actor, environmental pollution*

INTRODUCTION

Environment is a place for man in implementing various activities in life. If an environment experience damage, for certain situation of mortal in it will also experience damage. In globalization era, environmental contamination problem become a thing that is often we met, where one of the contamination cause is because of man business activity like industry, transportation, and other.

To minimize the contamination of the environment, government had an obligation to protect its citizen. One of governmental effort for the agenda of minimalizes environmental contamination that is by forming regulation which in it arranges sanction stipulating. This meant that business perpetrator are made to obeying law order which has been specified, so that level of contamination can be minimized. Sanction is standing supporting facilities influences behavior of man. Applicable sanction in minimalizes

environmental contamination are criminal sanction and administrative sanction. This scientific paper will study straightening of criminal sanction and administrative sanction for perpetrator effort at corporation scope. With the existence of sanction applied, business perpetrators would expected to realize the long-range impact of damage of area as result of some business actions which they do.

MATERIAL(S) AND METHOD(S)

1.Material

Material applied in writing of this scientific paper refers to secondary material, where secondary material consist of primary law material, secondary , and tertiary.

1. Primary law material

Primary legal materials covers legislation related to environmental management.

2. Secondary law material

Book material comprising information about primary material , consisted of explanation of related [code/law] to explanation of inviters , seminar materials that related to environment.

3. Tertiary law material

Supporter law material that provide clues to primary law material and secondary law material, consisted of : legal dictionary Belanda-Indonesia, *Black's Law Dictionary*, and *Collin Dictionary*.

2.Method

The writing of this scientific paper applies method of law normative, that is by examining law area secondary data in the form of litelature data by using deductive¹ and coherent criterion of truth² method . Research character applied in this research done is a descriptive analysis which describes the matters relating to the implementation of the Mediation. While the approach that applied is conceptual research approach. In that case assessment and testing was conducted logically to the legal concepts (conceptual approach) regarding criminal penalties and alternative sanctions. The author will

¹ Deductive way of thinking is a way of thinking that the conclusion drawn from something of general nature which already proved right and the conclusion was addressed to something special, see further in Sedarmayanti dan Syarifudin Hidayat. *Metodologi Penelitian*. Bandung: Mandar Maju, 2002 hlm.23

² Coherent truth is a knowledge, theory, statement, proposition, or hypothesis considered true if aligned with knowledge, theory, statement, proposition or other hypothesis, that is if the proposition was confirmed and consistent with the previous proposition which is assumed true see further in A. Sonny Keraf & Mikhael Dua. *Ilmu Pengetahuan (Sebuah Tinjauan Filosofis)*. Yogyakarta: 2001, hlm.68.

conduct research with reference to the legal principles and doctrines that exist.

Factors of the Law Enforcement Legal System in Indonesia

According to the Lawrence M. Freidman, the legal system has three main components that is legal structure, legal substance, and legal culture. These three components determine each other, as well influence each other, these components consist of:

1. Legal structure includes elements of structure that portray the legal institutions of law enforcement duties and law making.
2. The substance of law includes the rules, norms, and principles of law.
3. Cultural law covers public trust in law, values, ideas, and expectations of society.

Based on these opinions, in the amongst substance of the law, legal structure, and legal culture must be mutually sustainable in order to create a comprehensive law protection that can be realized.

Application component of legal substances in an effort to create a legal protection in regulatory policy in the field of the

environment is influenced by the principles of common law, environmental law principles, and the principles of civil law. First, the principle of common law include justice, expediency, and certainty. Second, the principle of economic law includes the principle of state intervention. And third, the principle of freedom of contract includes civil law, konsensualitas principle, the principle of good faith, the principle of confidentiality, the principle of law equality and the principle of balance. Application components in an effort to create a legal structure relating to the law protection of officials / law enforcement agencies in implementing the regulation in the field of economic policy which is influenced by the general principles of good governance which includes the principle of legal certainty, the orderly administration of the state, public interest, transparency, proporsionalistas, professionalism, accountability, efficiency principle and the principle of effectiveness. Application of law relating to the culture of component of business people in an effort to create a legal protection in the field of the environment is influenced by the principles of business ethics and good corporate governance principles, including transparency, accountability principle, the principle of responsibility, the principle of

independence, and the principle of fairness.

Application component of legal substances in an effort to create a legal protection in regulatory policy in the field of the environment is influenced by the principles of common law, and the principles of environmental laws. First, the principle of common law include justice, expediency, and certainty. Application of law relating to the culture of component of business people in an effort to create a legal protection in the field of the environment is influenced by the principles of business ethics and good corporate governance.

Application of sanctions is part which can not be removed from the embodiment of law enforcement in a law system. As noted by Talcott Parson, the main function of the law system is integrative, it means to reduce the elements of potential conflict in the society and to smooth the process of social interaction. With obeying the legal system, social interaction system will function properly, without the possibility of turning into overt or covert conflict that is chronic. Further stated, for the legal system to run integrative function

effectively, there are four issues that must be resolved first, namely³:

1. Legitimacy, that is the factors that will be the foundation for compliance with the rules.
2. Interpretation, that is issues concerning factors . determining the rights and obligations of the subject, through the process of setting certain rules.
3. Sanctions, factors that define whether a sanction will arise if there is compliance and any kind of sanction that would arise in case of denial of the rule, and as well affirm who shall apply the sanctions.
4. Jurisdiction, that is factors that define the lines of authority ruling confirms legal norms.

Criminal and Administrative Public Policy In Indonesian Law System Related to Environment

One of the most important instrument in the enforcement of sanctions that is generated by the law itself. What is meant by a particular sanction is a result that arises or that may be caused by human behavior which can be applied to the perpetrator or actions that is concerned

³ Talcott Parson. *The Social System*. Newyork : The Free Press, 1951

regarding the obligation to abide by the rules of behavior. Legal sanctions are directly related to the effectiveness of the law, namely the ability of legal norms influence human behavior in daily life which rooted in the will of human itself.

The way to entry into force of the rules of law that occur through the imposition of possible law consequences of certain so-called law sanction to a particular person as a result of certain actions. So the law sanction is a certain legal consequences that can be imposed on a person or group of persons regarding the actions abide by or not abide by the rule of law. In general, law enforcement can be interpreted can be interpreted as action to apply peripheral supporting facilities for law that meant to guarantee adhering of applicable law rule.⁴

The element that exists in law enforcement can be divided into two major parts, that is, elements that have a level of relevance which between distant and close one. The element law enforcement can be summarized into three elements: lawmaker, law enforcement and the public. In a simple concept (positivistic understanding), law enforcement already begun by the time the legal regulations made or created (as input). About it, just

needs a bit explanation, and it can be concluded that the law enforcement is a process of realizing what is stated in the law to real life.⁵

Considering the imposition of sanctions may result deprivation of liberty (imprisonment), possessions (foreclosures), honor even one life (death penalty), hence in a state application of legal sanctions law was carried out according to the procedure (process) as outlined in the law criminal procedure. This is done so that the in a state exercised its right to enforce law obedient with regard to the rights of the accused as citizens and as human dignity. It is the embodiment of “Sila Prikemanusiaan” from Pancasila.⁶

In addition to the criminal penalties there are other sanctions are considered able to minimize deviation against norms stipulated in legislation, that is called the administrative sanctions. In the implementation of was rule contains commands, prohibitions, obligations. The rule law has meaning as if it can be imposed upon any person, in the form of action called with sanctions. Sanctions is very important in law, including in an

⁴ Asep Warlan Yusuf, *Penegakan Hukum Administrasi (Artikel)* : disampaikan pada September 2004

⁵ William J Cambliss & Robert B. Seidman. *Law; Order and Power*. Addison-Wesley: Reading Mass , 1971, page 12-14

⁶ Mochtar Kusumaatmadja dan B. Arief Sidharta. *Loc Cit.*

administrative law. The typical administrative law sanctions include:

1. Bestuurdwang (government coercion)
2. The recall decision (decree) favorable (permits, etc.)
3. Imposition of fines.
4. The Forcible imposition of money by the government (dwangsom).

Authority to implement administrative sanctions is basically a "discretionary power" or independent authority.

Therefore, the government was authorized to consider and evaluate whether to use or not of that authority. Government may not use the authority to impose sanctions (non-enforcement) with a variety of considerations, such as for some reason:

1. instrument of coercion is not sufficient;
2. no ability to cause the Forcible;
3. Other efforts which more effective and efficient for a deterrent effect for perpetrators, and;
4. Another reason that does not allow the application of administrative sanctions objectively rational.

However, position and action for "non-enforcement" nor position to apply sanction is not a position without

considering rational and objective measure. It means that "they" may specify sanction and may also don't apply sanction that is done subjectively and groundless (reason) strong, logical and responsible. Such attitude is a wrong attitude in applying the "discretionary power". The application of these powers should be done with extra caution and carefully, that in practice is often defined as a wise and prudent policy (discretion is the better part of valor), but without ignoring the function and purpose (enforcement) law itself.⁷

Administrative sanctions that can be shaped after the refusal to permits issued temporary licenses (preventive) or revoke permissions that have been granted (repressive), is much more effective to force people to comply with the provisions of law that govern business and industry and environmental protection than criminal sanctions.⁸

Sanctions are an important part in the law, which is to create consistency of law enforcement. Another aspect of the sanctions aimed at upholding the rule of law, adhered by everyone, so that law can be run in the manner intended, that is to create order, certainty and fairness. In the

⁷ Asep warlan Yusuf. *Sanksi Administrasi (Artikel)*. : disampaikan pada Agustus 2004

⁸ Mochtar Kusumaatmadja dan B. Arief Sidharta. *Op Cit*, hlm 47

implementation, the rule contains commands, prohibitions, obligations. The rule has the meaning as law when imposed upon any person, in the form of action that called by sanctions.

Criminal and Administrative Penalties Enforcement In Order To Minimize Environmental Pollution Related to Act No. 32 Year 2009 on Environmental Management.

According to the Act No. 32, criminal sanctions against business actors that conduct environmental pollution may be subject to criminal sanctions in the form of imprisonment and fines. Criminal sanctions is cumulative sanction, for example is the act contained in Article 97 to 120 Act No. 32 / 2009. Although the sanctions imprisonment and fines varies, it shows the government has the political will to enforce sanctions for business actors that pollute the environment.

Meanwhile, civil penalties stipulated in Law No. 32 of 2009 consists of: a written reprimand, government coercion, environmental license suspension, revocation of environmental permits. Administrative sanctions does not relieve management of the organization and activities of criminal responsibility and recovery. Imposition of administrative

sanctions in the form of suspension or revocation of environmental permits as referred to be done if the business is carrying out government coercion.

Government coercion as referred to in Article 76 paragraph (2) letter b of Law 32/2009 are:

1. temporary cessation of production activities;
2. transfer of production facilities;
3. sewerage or emissions closing;
4. demolition;
5. confiscation of goods or equipment that could potentially cause violations;
6. suspension of all activities, or
7. Other measures aimed at stopping violations and actions to restore environment function.

The imposition of government coercion can be imposed without prior reprimand when violation(s) pose

1. very serious threat to humans and the environment;
2. greater impact if not immediately stopped ; and
3. greater losses to the environment if not immediately stopped .

Keep in mind that the every person in charge of business and / or activities that do not implement the government coercion can be fined for any delays in the implementation of government-imposed sanctions.

CONCLUSIONS AND SUGGESTIONS

It was concluded that the enforcement of criminal and administrative sanctions are important, especially in efforts to minimize environmental pollution by business actors and so that people abide by the rules set by the government trying to start protecting the environment. The government must be serious in the enforcement of criminal and administrative sanctions involving elements of the apparatus and the role of the people so that criminal and administrative sanctions can be fully enforced. The Government needs to act decisively against the efforts towards collusion and corruption that hinder enforcement sanctions.

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