

APPLICATION OF THE ULTIMUM REMEDIUM PRINCIPLE IN LAW ENFORCEMENT OF ENVIRONMENTAL CRIMES IN THE PERSPECTIVE OF *ECONOMIC ANALYSIS LAW*

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ABSTRACT

The environment greatly affects the quality of human life, so very important to maintain the environment to maintain quality and provide maximum benefits for the lives of all living things including humans, but the ongoing development process may have a negative impact on the environment, so to disturb the balance of the ecosystem and to prevent further damage it is necessary to make optimal law enforcement efforts.

This research aims to analyze the application of environmental crime punishment and the application of ultimum remedium principle in environmental crime prosecution from the prespective of ekonomic analysis law, using normative legal methods.

The conclusion is that the application of criminal sanctions in environmental cases with a rational economic approach in environmental criminal law enforcement efforts, can be more effective and efficient so efforts must be made to reform environmental criminal law so that law enforcement efforts can run optimally.

INTRODUCTION

The advancement of science, the development of technology and the development process, one of which is characterized by the development of the industrial sector, occurs very massively. The growth of the industrial sector raises positive things such as economic movement and absorption of human resources and other resources which will ultimately improve the welfare and standard of living of humans, but on the other hand it will also have a negative impact, including a decrease or even severe environmental damage which will be very difficult to recover and require enormous costs to rehabilitate it, so that optimal efforts are needed from stakeholders and various sectors so that the environment can still provide maximum benefits for humans without causing significant negative impacts and so that this can be achieved, of course, various efforts are needed, including the existence of a common view that is translated into a vision and mission both nationally and vision and mission in local governments, as well as by maximizing environmental law enforcement.

The issuance of Law Number 32 of 2009 (UUPLH) is a systematic and integrated process to preserve environmental functions and as an effort to prevent damage and pollution, which includes aspects of planning, utilization, maintenance, supervision, control and law enforcement efforts , related to the process of environmental law enforcement in Indonesia which is currently still not in accordance with what should be so that it needs to be given serious attention and handling.

Environmental pollution is defined as human activities that cause the entry of substances, energy, living things and / or other components into the environment resulting in the exceeding of established

environmental standards, besides industrial activities can also have an impact in the form of a decrease in the quality of river water and groundwater , while the indicators of environmental quality standards include water quality standards so that the value of the water quality standards cannot exceed the predetermined value and if it exceeds the predetermined value then it is an environmental pollution crime as stated in Article 98 of the UUPPLH, according to the provisions of this article if you commit an act that results in exceeding water quality standards, you will be sentenced to imprisonment of at least 3 (three) years and a minimum fine of Rp3.000,000,000.00 (three billion rupiah) and a maximum of Rp10,000,000,000.00 (ten billion rupiah).

The occurrence of environmental violations in Indonesia is very high, the data shows that from 2015 to 2021 there were 6,143 complaints that have been handled and 2,185 cases have been given administrative sanctions, while the civil lawsuits processed have resulted in compensation of 20.7 trillion. Throughout 2021, there were 941 cases that had been handled, consisting of 488 companies and 453 non-companies, while the administrative sanctions given were 518 cases in the form of government coercion in 207 cases, 279 warning letters and 14 written warnings. These data imply that environmental law enforcement in the process needs to be carried out very seriously, especially in criminal law enforcement efforts so that these cases can be suppressed and not repeated and can have a deterrent effect on the perpetrators.

The use of the *ultimum remedium* principle in environmental pollution cases has several weaknesses in law enforcement efforts in environmental criminal cases so that it is felt that it is not optimal in its implementation, for this reason several approaches are needed, including by taking an economic analysis approach to criminal law enforcement so that it can be implemented optimally. The economic analysis approach in the field of law or *Economic Analysis Law* is a method that studies the impact of a legal regulation by applying economic theory which includes evaluating the formation, structure and measuring the impact of a legal regulation on society. So that effective and efficient decisions can be made and produce an optimal positive impact on criminal law enforcement.

Problem Formulation

- How is the application of punishment in environmental crimes?
- How is the application of the ultimum remedium principle in law enforcement efforts in environmental criminal cases from the perspective of *Economic Analysis Law*?

Purpose

The purpose of this research is to:

- Analyze the extent of the application of environmental crime punishment.
- Analyze the application of the ultimum remedium principle in law enforcement efforts in environmental criminal cases from the perspective of *Economic Analysis Law*?

RESEARCH METHODS

The normative juridical method is the method chosen in conducting this legal research by conducting legal searches, reviewing literature and examining secondary data and studying positive law, especially Law Number 32 of 2009 relating to the material and substance of the research.

DISCUSSION

The Application Of Punishment For Environmental Crimes

Criminal law has been applied to the process of environmental law enforcement in Indonesia, but from various literature, data and facts found, it can be said that its application is not optimal, this can occur due to the existence of various conflicts of interest so that in the process of law enforcement there are many "shifts" from what should be criminal elements to "shifting" to civil and even administrative, even though law enforcement efforts should be carried out optimally in order to realize protection as well

as preventive efforts and minimize negative impacts on the environment in order to realize ecological, social and economic balance . The above certainly has a negative impact on the law enforcement process and furthermore it can injure the sense of justice, where the perpetrators of these violations do not get a deterrent effect while the environmental damage that has occurred is not rehabilitated so that the impact is very broad and felt in a very long period of time.

Law enforcement can be influenced by various factors, both direct and indirect, so it is necessary to pay attention to these factors, as follows:

- The law itself
Positive law or legislation currently in force, because if the positive law is qualified, it will be better in law enforcement. The quality of law enforcement is strongly influenced by the quality of positive law or regulations in force.
- Law Enforcement Officials (APH)
High integrity must be possessed by law enforcement officials and this is a challenge in the law enforcement process because it is very susceptible to being "tainted" by the problem of corruption which has now become a global problem, especially in developing countries. One of the systemic problems in developing countries is *judicial corruption*.
- Facilities and Infrastructure
One of the things that is important to fulfill is facilities and infrastructure, because otherwise it will result in slow service so that the settlement of cases becomes longer and longer, this will certainly have a *side effect* on the parties.
- Community
The condition of the community that already has sufficient understanding and knowledge in the field of law will certainly have a positive impact, because it will be more obedient and understand the applicable rules / laws, besides that the community will be more "sensitive" to the conditions of the surrounding environment so that if a violation occurs it will be able to respond and take the right steps.
- Culture
Culture that is born and lives in society will certainly affect people's behavior because culture has set norms and limits on which behaviors can and cannot be done and what is customary in the life of the community.

Various negative phenomena that occur in the practice of law enforcement must be addressed immediately because if not, in addition to injuring the sense of justice, it will also cause a decrease in public trust or even a loss of public trust in judicial institutions including law enforcement officials and more broadly in the government, one of which occurs because it is not steady or selective in the law enforcement process.

On the other hand, the *ultimum remedium* principle is also considered to be able to cause stumbling for law enforcement officials in carrying out their duties and functions in terms of environmental law enforcement, where the *ultimum remedium* principle essentially states that in law enforcement efforts, criminal law should be used as the last alternative even though it has fulfilled the criminal provisions as stated in Article 98 of the UUPH and in addition it must also fulfill the provisions of Article 100 paragraph (2) of the UUPH where sanctions and criminal law can be applied when administrative sanctions that have been given previously are not fulfilled or commit the same violation more than once. Some argue that environmental law enforcement in the form of imposing criminal penalties is more difficult to implement than imposing administrative sanctions. .

Application Of The Ultimum Remedium Principle In Law Enforcement Efforts In Environmental Criminal Cases With The Perspective Of *Economic Analysis Law*

The implementation of law enforcement efforts in the environmental field, using the principles of criminal law, namely *Ultimum Remedium* and *Primum Remedium* principles. The *Ultimum Remedium* principle essentially states that in law enforcement efforts, criminal law should be used as the last alternative, so that this can be interpreted if a case can be resolved first by taking administrative law and civil law channels or even by taking non-litigation efforts in the form of family settlements or through

negotiations and mediation, if it cannot be resolved then the last alternative is settlement using criminal sanctions, but currently in its development environmental law enforcement efforts are closer to *premium remedium*.

The occurrence of environmental cases tends to be due to human error especially coupled with the lack of awareness of entrepreneurs and the public in order to protect the environment from pollution from various kinds of waste and garbage which if not treated properly will inevitably result in damage and pollution of the ecosystem and cause damage to environmental quality standards so that rules and efforts are needed. Environmental criminal law enforcement has been outlined in Article 100 paragraph (2) of the UUPPLH which is more clearly stated in Article 1 number 6 of the same Law and in principle states that criminal law enforcement in environmental cases can only be implemented if the application of administrative law sanctions does not produce results but there are weaknesses in the enforcement of administrative sanctions as contained in Article 76 of the UUPPLH, where in the law there are no parameters and explanations for the success of law enforcement through administrative sanctions, this can cause differences of opinion, so that the formulation of sentences in the articles in the provisions of laws and regulations must strengthen and complement each other.

The *ultimum remedium* principle in practice is often used by parties who seek to "misuse" and be used as "justification" so that many cases of environmental violations are "shifted" and cannot be charged and criminal sanctions applied, even though the impact of violations of environmental law is very broad and detrimental to many parties including losses in the economic field so that various ways and approaches need to be taken so that optimal enforcement of criminal law can be carried out and one method of approach is with an economic approach (analysis).

Economic analysis in criminal offenses makes important contributions, namely as follows:

- Economics can simply describe the behavior of a person before the law in response to the sanctions of criminal law.
- There is a difference between relationship and cause, which is the rational nature and specific goals that humans have.
- Clear metrics on whether a legal policy has been successfully implemented, or in other words, whether there is an economic benefit from a policy that is implemented.

Based on the above, especially point 3, if it is related to law enforcement in environmental crimes as stated in Article 98 of the UUPPLH, the application of criminal sanctions cannot be carried out directly due to the provisions of the *ultimum remedium* principle which states that criminal law enforcement is used as the last alternative even though it has fulfilled the criminal provisions and besides that it must still fulfill the provisions of Article 100 paragraph (2) of the UUPPLH.

The application of criminal sanctions in environmental cases, for example in pollution of water quality standards that have a broad negative impact, endanger life and are very difficult to rehabilitate, it should be possible to apply criminal sanctions directly as long as they meet the criminal elements with sufficient evidence without having to process first with administrative sanctions and repeated violations, so that rationally it can be more effective and efficient and there is no waste in various resources including economic resources. The law is open to accept changes therefore by looking at the various problems that occur, it is necessary to make reforms in positive law, especially environmental crimes where positive encouragement or incentives can grow in society, so that people pay attention and pay attention to various behaviors and actions that can have a negative impact on the environment .

CONCLUSIONS

Law enforcement is an effort to achieve one of the objectives of the law, namely the realization and maintenance of order. Law enforcement carried out by law enforcement officers (APH) cannot necessarily be free from non-technical factors that influence it so that in the process it requires seriousness and commitment and strong integrity from all parties.

The ultimum remedium principle is a principle in criminal law and for environmental cases in accordance with the UUPLH, this principle can be implemented when administrative sanctions have been given but not fulfilled or have committed repeated violations or more than once.

The application of criminal sanctions in environmental cases with a rational economic approach in law enforcement efforts in environmental criminal cases, can be more effective and efficient and there is no waste in various resources including economic resources.

ADVICE

- A strong commitment from all elements including government and law enforcement is needed so that existing laws and regulations can be obeyed and implemented properly.
- It is necessary to reform the law in the environmental field, so that it can be more implementable, can meet current and future legal needs and can fulfill a sense of justice in the context of environmental law enforcement.
- There needs to be consistency and mutual reinforcement between all positive laws.

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