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ENVIRONMENTAL LAW ENFORCEMENT THROUGH STATE ADMINISTRATIVE LEGAL INSTRUMENTS IN ENVIRONMENTAL CASES IN INDONESIA

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Abstract: Enforcement of environmental law through administrative legal instruments is very important to deter polluters. This research is a type of normative legal research based on the problems and themes raised. The research approach used is a philosophical and analytical approach, focusing on rational, analytical, critical and philosophical views, and ends with drawing conclusions which aim to produce new findings on the main problems that have been determined. It will also use the analytical descriptive method, by describing the applicable laws and regulations with legal theory and law enforcement practices that are related to the problem. Apart from that, it can also be taken through the State Administrative Court regarding the granting of permits (*beschikking*) by state administrative officials. Its essence is to protect, overcome, and restore the quality of the environment from pollution or damage as well as providing a deterrent effect on those responsible for violating laws and regulations on environmental protection and provisions for managing environmental permits. Research is carried out to implement environmental protection and the government must also provide penalties to prevent environmental damage.

Keywords: State Administrative Law, environmental law enforcement, environmental protection and management.

Introduction

The regulation and management of the environment and natural resources is one of the main challenges of the government. With Indonesia's abundance of natural resources, the government plans to carry out community welfare development but it turns out that the use of these natural resources often causes environmental pollution and damage and benefits (profits) only a small group or region without paying attention to the welfare of the community living around the resource area. The development of residential, industrial or plantation areas often ignores environmental sustainability and only considers aspects of economic profit. Furthermore, errors in environmental management can at least be caused by various factors such as level of education, economic problems, lifestyle, weaknesses in the legal and regulatory system, and weak supervision of environmental management, resulting in pollution and damage to the environment. Environmental management problems are one of the main causes of natural disasters in Indonesia. The source of all environmental problems is development carried out without paying attention to environmental balance factors which in turn will cause environmental damage and pollution.

According to Kusumaatmadja (2006), the law is not only a set of rules and principles that regulate life in society but also includes the institutions and processes needed to realize law in reality. Principles and rules describe the law as a normative phenomenon and institutions and processes describe the law as a social phenomenon (Kusumaatmadja, 2006). This understanding concludes that one of the most important functions of law is achieving order in society. The function of law guarantees order, so, some people equate this function with the purpose of the law. In the theory of development law, it is said that law is a means of community renewal. The theory of development law can

modify the concept proposed by Roscoe Pound, namely law is a tool of social engineering. To ensure regularity, laws and regulations (rules) are made. The 1945 Constitution has been amended four times and has become the basis for Indonesian laws and regulations. The fourth paragraph of the preamble to the 1945 Constitution states that the Government of the State of Indonesia shall protect the entire Indonesian nation and the entire homeland of Indonesia, achieving general welfare and an intelligent life for the nation. The protection of the Indonesian nation covers all Indonesian people and the protection of the spilled blood covers the territory, including the environment. This underlies the state's obligation to protect the people and the environment.

The living environment is the unity of space and all objects, forces, conditions, and living things, including humans and their behaviour, which affect nature itself, the continuity of life, and the welfare of humans and other living creatures. The environment is single and comprehensive in the form of a balanced and harmonious system. All of its components are constantly connected and influence each other. All elements show an increasingly wide variety (Danusaputro, 1982). The single nature of the environment and its holistic approach impact each element in interrelated ways. In order to provide optimal carrying capacity, it is necessary to preserve environmental functions. Preservation of environmental functions is a series of effort to maintain the continuity of the carrying capacity of the environment (Indonesia, 2009a).

Preserving environmental functions is carried out by managing them according to the environment's carrying capacity and resilience. Environmental protection and management are not possible without enforcement and the certainty that the law provides. Environmental law has developed rapidly as a means of protection, control, and certainty for the community (social control) with the role of an agent of stability but even more prominently as a means of community change (Rangkuti, 1996). Environmental law concerns determining values currently in effect and those expected to apply in the future (Rangkuti, 1996).

Environmental law exists to minimize environmental damage caused by humans. Etymologically, environmental damage can be interpreted as a decline in the quality of the environment, so that later it will have a negative impact on the lives of living things around it. Environmental damage will cause a loss of living things, especially humans. It is hoped that the importance of enforcing environmental law in cases of forest fires will be an agenda in order to realize sustainable development. One of the steps in the agenda is to increase welfare and equity that will be felt by the community. In efforts to enforce environmental law in cases of forest fires, there needs to be good cooperation between the government, law enforcement officials, and society to strengthen each individual's self-awareness, so that future generations will benefit from the environment.

Environmental law regulates the environmental order (Danusaputro, 1982) and contains aspects of state administrative law, civil, criminal, international, and spatial planning. Thus, the substance of environmental law is contained in administrative environmental law, civil environmental law, environmental criminal law, and international environmental law, which has developed into a separate legal discipline and spatial law (Rangkuti, 1996). The application of environmental law in terms of administrative law arises when the decision of the authorities is stated in the form of licensing procedures, determining environmental quality standards, procedures for analyzing environmental impacts, and so on (Rangkuti, 1996). In implementing environmental law in Indonesia, compliance and enforcement are required. Environmental law compliance can be carried out using supervision and licensing instruments. Observance of the law is the obligation of the entire community and for this, an understanding of rights and obligations is a requirement. In contrast, the scope of national environmental law enforcement is the development of an

enforcement system, determination, priority cases that need to be legally resolved, and capacity building of enforcement officers (Silalahi, 2001).

Environmental law concerns determining values (*waardenbeoordelen*), namely the values currently in effect and the expected values to be implemented in the future and can be referred to as the law regulating the environmental order (Rangkuti, 1996). Indonesia's development aims to improve the quality of life of the people. To improve the quality of life, care must be taken so that the ability of the environment to support life at a higher level is not damaged because if damage occurs, the quality of life will decline; such development is unsustainable (Soemarwoto, 2007). Development is not just about having a large amount of money or a robust economy (Sudantoko, 2003). Development cannot continue if nature is exploited too much to change the balance of nature itself (Sudantoko, 2003). Sustainable development meets the needs of the present generation without compromising the ability of future generations to meet their needs. The concept contains two essential ideas. First, the idea of needs, especially the essential needs of the world's poor, must be prioritized. Second, the idea of limitations stems from the condition of technology and social organisation on the ability of the environment to meet current and future needs (Fadiyah, 2007). Pollution is a significant development impact caused by B3 waste by industrial activities (Fadiyah, 2007). Environmental pollution is the entry or inclusion of living things, substances, energy, and/or other components into the environment by human activities so that they exceed the established environmental quality standards (Indonesia, 2009b).

Administrative law has a central role in environmental law at the control, maintenance, and supervision stage. In administrative law, control, maintenance, and supervision can be carried out in a preventive, preemptive, and repressive manner. In environmental law, the primary jurisdiction is administrative law (executive rather than *rex judicata*). This means that administrative law is the primary means of environmental management because it is better to prevent than restore. In this case, the role of development law theory is to direct development through permits, as one of the essential instruments in administrative law. Implementing the legal theory of development into permits is expected to direct (not only control but also supervise) to create sustainable development.

Environmental law enforcement related to forest fires is contained in the government regulation of the Republic of Indonesia Number 4 of 2001 concerning Control of Environmental Damage and/or Pollution related to forest and or land fires. They can be punished if proven guilty in accordance with Articles 11, 14, 17, and 18 which cover damage and air pollution from forest fires. Law Number 32 of 2009 concerning Environmental Management and Protection is contained in Article 98 paragraph 1 and/or Article 99 paragraph 1. The existence of serious law enforcement in taking actions that are negligent about their rights and obligations can make them not repeat this to minimize the occurrence of environmental cases such as cases of forest fires in Indonesia. By providing strict sanctions in the form of fines and criminal penalties, as well as strict supervision and the need for cooperation between the government and law enforcement agencies, cases of environmental problems can be reduced in the future.

Then, the role of judges is crucial in enforcing environmental law, especially in cases of pollution and environmental destruction. Enforcement of environmental law is prioritized on administrative law or at least on civil law, namely regarding the issue of compensation, class action lawsuits or lawsuits filed by environmental organizations or non-governmental organizations (NGOs). In essence, criminal law claims are often directly filed without regard to their nature as the ultimum remedium (principle of subsidiarity), which states that criminal law is the last means in law enforcement if other means are not effective in law enforcement. In addition, the judges are

expected to be able to give anticipatory and futuristic decisions.

Based on the explanation related to the environmental damage problems faced, research was conducted to find out how law enforcement in Indonesia deals with environmental cases as a factor in state administrative legal instruments. It is hoped that environmental law enforcement can be carried out in accordance with the mandate of the 1945 Constitution.

Method/Approach

This research is categorized as normative legal research based on the problems and themes raised as research topics. The research approach used is a philosophical and analytical approach, focusing on rational, analytical, critical and philosophical views, and concludes with new findings to answer the main problems that have been determined. It will also be analyzed using descriptive analytical methods, namely by describing applicable laws and regulations with legal theory and law enforcement practices that are positively related to the problem (Marzuki, 2011). Data collection prioritizes legal research of various materials through a review of library sources in the form of documents, books, journals, magazines, and newspapers related to legal materials. It departs from the ambiguity of law enforcement in cases of forest fires with a descriptive approach through statutory regulations, legal concepts, and legal comparisons. The study material in this article is in the form of secondary data, namely data from laws, legal research results, and law enforcement in environmental problems in cases of forest fires and sustainable development.

Results and Discussion

The Position of State Administrative Law in the Regulation of Environmental Law

The objectives of the State of the Republic of Indonesia are stated in the fourth paragraph of the preamble to the 1945 Constitution. The Constitution and its Preambles in which the objectives of the state are formulated are the objects of the study of Constitutional Law. In contrast, the operationalization of realizing state goals is the object of the study of State Administrative Law. Thus, Indonesian Administrative Law is a *juridische instrumentarium* to realize the goals of the Republic of Indonesia (Marbun, 2012).

Theoretically, state administrative law is a state and government phenomenon that exists under the concept of a legal state or appears simultaneously with the implementation of state and government power based on specific legal rules (Ridwan, 2006). State administrative law is defined as the administrative regulations as a starting point. State Administrative Law itself is widely understood as a set of rules that regulate the legal relationship between citizens and the government, so that the state can function (Ridwan, 2006). According to Sjahran Basha, State Administrative Law is a set of regulations that allow the state administration to carry out its functions, which at the same time protects citizens against acts of state administration and protects the administration itself (Ridwan, 2006). In line with that, Soehino put forward two crucial aspects contained in State Administrative Law, among others:

(1) The legal rules governing how the state apparatus performs its duties; and

(2) Legal rules that regulate the legal relationship (*rechtsbetrekking*) between state or government administrative apparatus and citizens (Ridwan, 2006).

Based on the two crucial aspects stated above, it appears that the state administration, in carrying out its duties and functions, must be based on legal arrangements. This is in line with the principle of state administrative law itself, namely *rechtmatgheid van administratief*.

In the concept of a state of law, the position and role of the state are powerful and significant; therefore, the state is burdened with a heavy and broad task, thus, encouraging interference in all aspects of the lives of its citizens. Such a conception of the state gave birth to various terms, including the welfare state and social

service state (the state provides services to the community) or according to Lemaire, it is called *bestuurszorg* (the state functions to organize the general welfare) (Marbun, 2012) or *welvaartsstaat/verzorgingsstaat* (Ridwan, 2006).

One of the main principles that is the basis for every administration of government and state in every legal state, especially for legal countries in the continental system is the principle of legality (Ridwan, 2006). In-state administrative law, the principle of legality is interpreted as "*Dat het bestuur aan de wet is onderworpen"* (that the government is subject to the law) (Stout & Langedijk, 1994). This legality principle is a rule of law principle often explicitly formulated in the expression "*Het beginsel van wetmatigheid van bestuur*".

Historically, the principle of government based on laws originated from 19th-century legal thought, which went hand in hand with the existence of a classical law state or a liberal law state (*de liberale rechtsstaatidee*) and was controlled by the development of legalistic-positivistic legal thought, especially the influence of the legal flow of legalism, which considers only the law that is written (Haan *et al*., 1986). While normatively, the principle that every government action must be based on statutory regulations or based on this authority is adopted in every standard law system, the application of this principle varies from country to country. Some countries adhere to this principle very strictly but some countries do not apply it so strictly (Ridwan, 2006). This means that for things or government actions that are not so fundamental, the application of these principles can be ignored (Ridwan, 2006). The principle of legality is also closely related to democracy, which demands that every form of law and various decisions be approved by the people's representatives and pay attention to the people's interests as much as possible (Ridwan, 2006).

According to Indroharto, applying the principle of legality will support the implementation of legal certainty and equal treatment. Equality of treatment occurs because everyone who is in a situation as specified in the provisions of the law has the right and obligation to act as determined (Ridwan, 2006) such as the regulation of the environment in environmental law. Legal certainty will occur because a regulation can make all actions taken by the government predictable or can be estimated in advance by looking at the applicable regulations. Then, in principle, it can be seen or expected how government officials concerned will act (Ridwan, 2006). Thus, the community can adjust to these conditions.

However, the state administration based on the principle of legality (written law) is in practice, inadequate, especially in a society that is dynamic. This is because written law always contains weaknesses, which according to Bagir Manan, "written law has various congenital and artificial defects". In another part, Bagir Manan mentions the difficulties faced by written law, namely:

(1) Law as part of people's lives covers all aspects of life, which are very broad and complex so that they cannot be fully embodied in statutory regulations; and

(2) Legislation as written law is static (in general) and cannot quickly follow society's growth, development, and change that must be carried out (Manan & Magnar, 1987).

This weakness in written law also means that there is a weakness in applying the principle of legality. Therefore, in the administration of the state and government in a state of law, other requirements are needed so that the life of the state, government, and society runs well and relies on justice (Ridwan, 2006).

Atmosudirdjo (1983) mentioned several requirements for the administration of government:

(1) Effectiveness, meaning that its activities must meet the targets that have been set;

(2) Legitimacy, meaning that the activities of state administration must be accepted by the local community or the environment concerned;

(3) Jurisdiction, namely where the actions of state administration officials must not violate the law in a broad sense;

(4) Legality, namely a condition that states that an act or decision of the state administration must not be carried out without a legal basis (written) in a broad sense. If something is carried out with the argument of "emergency", the emergency must be proven later; if it is not proven, then the act can be sued in court;

(5) Morality, which is one of the conditions that society pays most attention to; general and official morals and ethics must be upheld;

(6) Efficiency must be pursued as optimally as possible; cost savings and productivity must be met to the highest standard possible; and

(7) The latest techniques and technology must be used to develop or maintain the best performance.

Although the principle of legality contains weaknesses, it remains the main principle in every state of law and is the basis of every state and government administration. In other words, every state and government administration must have legitimacy, namely the authority granted by law (Ridwan, 2006). Thus, the substance of the principle of legality is authority, namely "*Het vermogen tot het verrichten van bepaalde rechtshandelingen*", Nicolai and Olever (1994) which is the ability to carry out specific legal actions.

Talking about authority is undoubtedly closely related to power. Sociologically, power is the ability to influence other parties to follow the will of the power holder, either voluntarily or by force (Marbun, 2012). Power has a neutral nature and is good or bad depending on the way and purpose of its use. Power can be sourced from strength, money, honesty, morals, and weapons. Meanwhile, authority (authority *gezag*) is formalized power both against a particular group of people and over a specific area of government, unanimously originating from legislative power and government power, and authority (competence *bevoegdheid*) is only about a specific field (Marbun, 2012). Authority is the ability to carry out a public legal action or juridically, authority is the ability to act by the applicable law to carry out legal relations. The nature of government authority includes express, implied or clear intent and purpose, related at a specific time and subject to written and unwritten law limitations (Indroharto, 1991). While the "content" can be general (abstract), for example, making regulations and can also be concrete in the form of a decision or a plan such as making a spatial plan and giving advice (Indroharto, 1991).

So, in principle, authority is always based on and comes from the power of law. Authority then becomes the basis for the government in carrying out various legal actions, both public legal actions and civil legal actions. Concerning the implementation of public legal actions, the government makes regulations (*regeling*), namely the authority in the form of regulating policies (especially in the environmental field), conducting environmental management, regulating the supply, and use of natural resources, regulating legal actions and legal relations between legal subjects (Siahaan, 2009). In addition to regulations (*regeling*), the government also issues stipulations (*beschikking*) in implementing regulations (*regeling*) to control activities that have a social impact. For example, issuing permits as a control instrument to prevent pollution and/or environmental damage.

The provisions of Article 63 of Law Number 32 of 2009 concerning Environmental Protection and Management (from now on referred to as UUPPLH) have regulated the authority of the government and local governments in environmental protection and management, including:

(1) To provide guidance and supervision of the compliance of the person in charge of the business and/or activity to the provisions of environmental permits and statutory regulations; (Indonesia, 2009b) and

(2) Issuing environmental permits.

The two powers are principally a form of preventive law enforcement in controlling environmental impacts. Supervision, as referred to in UUPPLH can be in the form of:

(1) Compliance with environmental permits;

(2) Compliance with environmental protection and management permits (wastewater disposal permits, permits for the management of hazardous and toxic wastes "B Waste" in the form of storage, collection, processing, stockpiling, and transportation); and

(3) Compliance with laws and regulations in environmental protection and management (environmental documents, water, air, B3 and B3 waste) (Dinas Lingkungan Hidup DIY, 2019).

Meanwhile, the objectives of the supervision include:

(1) To find out the implementation of the obligations contained in the legislation on controlling pollution and environmental damage;

(2) To find out the implementation of obligations in carrying out environmental management and monitoring, as stated in the Environmental Document/Environmental Permit and/or the requirements listed in the related permit;

(3) To determine the level of compliance of the person in charge of the business and/or activity to the provisions of the environmental laws and regulations; and

(4) To prevent pollution/damage to the environment (Dinas Lingkungan Hidup DIY, 2019).

Meanwhile, the issuance of environmental permits, as referred to in UUPPLH is to protect the environment sustainably, to increase efforts to control businesses and/or activities that harm the environment, to provide clarity of procedures, mechanisms and coordination between agencies in administering permits for businesses and/or activities, and provide legal certainty in business and/or activities (Indonesia, 2012).

Law Enforcement and Environmental Dispute Resolution through State Administrative Law Instruments

The disturbed balance of the environment needs to be restored to its original function. It provides benefits for the welfare of society and ensures justice between generations by increasing protection and law enforcement (Erwin, 2015).

Enforcement of environmental law is closely related to the apparatus's ability and the community's compliance with applicable regulations, covering three areas of law: Administrative, criminal, and civil (Erwin, 2015). According to Erwin (2015), the definition of environmental law enforcement was put forward by G. A. Biezeveld as follows:

"Environmental law enforcement can be defined as the application of legal, governmental power to ensure compliance with environmental regulation through:

(a) Administrative supervision of the compliance with environmental regulations (inspection) (mainly preventive activity);

(b) Administrative measures or sanctions in case of non-compliance (corrective activity);

(c) Criminal investigation in case of presumed offenses (repressive activity); and

(d) Civil action (lawsuit) in case of (threatening) non-compliance (preventive or corrective activity)"

Thus, environmental law enforcement is to achieve compliance with regulations and requirements in general and individual legal provisions through supervision and the application of (or threat of) administrative, criminal, and civil sanctions.

In addition, environmental law enforcement is also defined as observing environmental law through supervision, inspection and detection of law violations, and restoration of environmental

damage and action against the offender (*dader*) (Supardi, 2010). Thus, environmental law enforcement can be carried out in a preventive sense to comply with regulations (compliance), repressively and correctively through the provision of sanctions or control processes for violations. These two things are the essence of holistic environmental law enforcement by preventing and tackling the destruction and pollution. Preventive efforts in complying with regulations can be carried out by implementing requirements, supervision, and guidance by state administration officials (administrative and legal aspects). Meanwhile, repressive efforts in enforcing environmental law are carried out by administering sanctions and through court processes to stop violations, restore the environment, and anti-loss measures to victims of pollution and environmental destruction (administrative, civil, and criminal legal aspects).

The number of cases or problems related to pollution and environmental damage often results in law enforcement not being implemented effectively. Other factors outside of law enforcement such as economic, social, cultural and politics, often colour the dynamics of environmental law enforcement. Therefore, according to Bagir Manan, in carrying out fair law enforcement, three things are needed: (1) The law to be enforced is accurate and fair, (2) law enforcement actors are key in law enforcement, and (3) the social environment where the law applies. Apart from that, another factor that can realize fair law enforcement is the accuracy and suitability of applying legal aspects in the law enforcement process. Be it administrative, criminal, and civil law, UUPPLH provides space for law enforcement by using legal aspects cumulatively.

These problems can be seen in the case of forest fires carried out by PT. Bumi Mekar Hijau (PT. BMH) in Case Number 24/Pdt.G/2015/PN Palembang. In this case, the legal instrument approach used in dispute resolution is civil law by prioritizing regulations regarding the principle of strict liability. In one of his considerations, the judge stated that the plaintiff could not prove the fire incident, the perpetrator, and the motive and mode. In addition, a causal relationship between errors and losses in fulfilling the elements contained in Article 1365 of the KUHPer was not proven.

If it is related to problems related to unlawful acts contained in Article 1365 of the KUHPer in this case, with the provisions of Article 30 paragraph (1) Government Regulation Number 45 of 2004 concerning Forest Protection, as amended by Government Regulation Number 60 of 2009 concerning Amendment to Government Regulation Number 45 of 2004 concerning Forest Protection, it is clear that there is an absolute responsibility (strict liability) that must be borne by the permit holder, be it the holder of the forest utilization permit, the holder of the permit to use the forest area or the owner of the private forest (Indonesia, 2004). As emphasized:

> *"Forest Utilization Permit Holders, Forest Area Use Permit Holders, or Private Forest Owners are responsible for the occurrence of forest fires in their working areas."*
>
> "*The person in charge of Forest Utilization Permit Holders, Forest Area Use Permit Holders, or Private Forest Owners for the occurrence of forest fires in their work areas is an absolute responsibility which means Forest Utilization Permit Holders, Forest Area Use Permit Holders, or Private Forest Owners either intentionally or not intentionally, must be criminally responsible and/or pay compensation for the occurrence of forest fires in their working area, unless the holder of a forest utilization permit, holder of a permit to use forest area, or private forest owner can prove that he is innocent.*"

It is sufficient for the perpetrator to be declared responsible for environmental pollution or damage, even though he is found guilty of strict liability. Errors (fault or *schuld*) are not

essential to declare the perpetrator responsible because he already assumed responsibility when the incident occurred (Erwin, 2015).

Suppose it is associated with Article 88 of the UUPPLH and its explanation. In that case, strict liability is an element of error that does not need to be proven by the plaintiff as the basis for payment of compensation. As mentioned:

> *"Everyone whose actions, business, and/or activities use B3, generates and/or treats B3 waste, and/or poses a serious threat to the environment is responsible for the losses without proving the fault element."*
>
> *"What is meant by absolute responsibility or (strict liability) is that the error element does not need to be proven by the plaintiff as the basis for payment of compensation."*

Even though the forest fires did not use B3, produce, or manage B3, plantation/forestry activities could be associated with strict liability because they pose a severe threat to the environment. These threats are generally included in activities/businesses that have a significant and essential impact on the environment. Even in other cases, these impacts are related to the Amdal, one of the requirements for obtaining an environmental permit. In addition, things that need attention are losses and casualties. The causality relationship must be interpreted as not between losses and actions but between losses and the nature of activities.

In comparison, in Austria and Germany, the application of strict liability for certain losses (also including hazardous activities) is applied to the presumption of causation so that it is the defendant who has the burden to prove that the plaintiff's losses are not caused by the plaintiff and are also related to losses that are included in losses that can be expected to occur in the future due to the activities of the defendant.

In its course of action, the court's decision on Case Number 24/Pdt.G/2015/PN Palembang, dated December 30, 2015 was made on appeal by the plaintiff to the Palembang High Court Case Number 51/PDT/2016/PT Palembang. In its decision, the panel of judges at PT Palembang accepted the appeal from the plaintiff/appellate. It overturned the Palembang District Court's Decision on Case Number 24/Pdt.G/2015/Palembang District Court. The panel of judges, in their decision also rejected the provision from the plaintiff/appealer, namely the request that PT. BMH stopped all activities during the legal process. When viewed from the aspect of law enforcement, the petition of the plaintiff/appellate in Provivi can be seen as an effort to enforce administrative sanctions.

Based on the public's concerns concerning the Decision on Case Number 24/Pdt.G/2015/PN Palembang, a settlement approach will be carried out through environmental administration law enforcement to provide a broad overview of how environmental law enforcement is using an administrative law approach for the problem of pollution and environmental damage in Indonesia.

Enforcement of administrative witnesses is part of law enforcement in the administrative environment. Enforcement of the administrative environment law itself can be done preventively. Preventive enforcement of environmental law is carried out through supervision while repressive environmental law enforcement is carried out through administrative sanctions. The supervision and enforcement of administrative sanctions aim to achieve public compliance with the legal norms of the administrative environmental law (Amiq, 2013). As said by JBJM Ten Berger, administrative law enforcement instruments include two things, namely Supervision and the Implementation of Sanctions (Boorsma *et al*., 1992).

Supervision that is carried out correctly as part of preventive environmental law enforcement can prevent violations of administrative law norms. Thus, environmental pollution caused by such violations can be avoided. This is better than enforcing repressive administrative sanctions after the violation.

However, this does not mean that the study of the enforcement of administrative sanctions is unimportant (Amiq, 2013).

When preventive law enforcement does not achieve the goal or in other words, violations still occur even though strict supervision has been carried out, repressive law enforcement through the application of administrative sanctions is necessary. It aims to provide coercive measures to administrative law violators for their actions that cause environmental pollution or damage (Amiq, 2013).

So, even though supervision is carried out very well, it is still possible for violations to occur while these violations must be followed by sanctions. Without applying administrative sanctions, regulations are just words that have no meaning and can be violated by anyone. The application of administrative sanctions is also part of the consistency in environmental law enforcement (Amiq, 2013).

In addition to aiming to achieve compliance with the law, supervision can also identify the occurrence of violations early on. If there is a violation of the law, administrative sanctions can be applied immediately. Thus, supervision as a preventive measure and applying administrative sanctions as a repressive measure is a complete process in enforcing administrative law (Amiq, 2013).

Without intending to separate the discussion on supervision and the application of administrative sanctions, the analysis of this approach departs from the assumption that through supervision, violations of administrative environmental legal norms have been identified, followed by enforcement of administrative sanctions. Thus, there will be a link between preventive law enforcement and repressive law enforcement in the environmental field (Amiq, 2013).

Concerning the prevention of environmental pollution, administrative sanctions have several advantages compared to other type of sanctions, both criminal sanctions and civil sanctions. Criminal sanctions are aimed at violators to create deterrence. Civil sanctions, namely the payment of compensation to victims for losses suffered due to unlawful acts. Compensation to victims cannot restore a polluted environment. In contrast to the objectives of the two sanctions, administrative sanctions are aimed at preventing and stopping violations and to restore the damaged or polluted environment due to the perpetrator's actions (Amiq, 2013).

The nature of administrative sanctions is *reparatoire*, meaning to restore to its original state (Hadjon, 1993). Therefore, without diminishing the meaning of other legal sanctions, the application of administrative sanctions in the case of forest fires has a significant role in preventing and overcoming environmental damage. The granting of authority to the government to apply administrative sanctions in environmental cases should be a logical consequence of the government's authority in environmental management.

Preventive Efforts

From the perspective of administrative law, as a preventive measure in controlling environmental impacts, it is necessary to make maximum use of monitoring and licensing instruments. In terms of fires and environmental damage that occurs, repressive efforts need to be made in the form of effective and consistent law enforcement against pollution and environmental damage.

Supervision is the main task of authorized officials, especially officials who issue permits. Permits are not only a formal requirement that must be fulfilled by business actors but also substantially comply with the requirements required in the permits (Akib, 2015).

The supervision carried out in principle cannot be separated from the existence of environmental and sectoral legal arrangements that provide authority in supervision so that preventive efforts in enforcing environmental administration law on environmental protection and management can be implemented. Some of the arrangements that form the basis for the implementation of supervision include:

1. Law Number 32 of 2009 Concerning Environmental Protection and Management

In the provisions of Article 71, it is explained that the supervision of the obedience of the person in charge of the business/activity is an authority owned by both the government and regional governments, the implementation of which is as follows:

(1) The minister, governor or regent/mayor, under their respective authorities, are obliged to supervise the compliance stipulated in the laws and regulations in the field of environmental protection and management;

(2) The minister, governor, or regent/mayor may delegate the authority in conducting supervision to the official/technical agency responsible for environmental protection and management; and

(3) In carrying out supervision, the minister, governor, or regent/mayor stipulates an environmental supervisory official who is functional.

In addition, under their respective authorities, the minister, governor, or regent/mayor are obliged to supervise the person's compliance in charge of the business and/or activity concerning the environmental permit (Indonesia, 2009b). The minister can supervise the person in charge of the business and/or activity whose environmental permit is issued by the regional government if the government considers that a serious violation has occurred in environmental protection and management (Protection and Management of Environment, 2009).

Because environmental supervision has a distinctive character, supervisory officials are given broader authority not only to supervise by taking notes, but more than that, to carry out enforcement actions among others (Hadin Muhjad, 2015): (a) Monitoring, (b) requesting information, (c) making copies of documents and/or making necessary notes, (d) entering a specific place, (e) photographing, (f) making audio-visual recordings, (g) taking samples, (h) checking equipment, (i) inspecting the installation and/or means of transportation, and (j) stop certain violations (Indonesia, 2009b). Because the results of supervision have the potential to find criminal acts, in carrying out their duties, environmental supervisory officials can coordinate with civil servant investigators.

2. Regulation of the Minister of the Environment Number 2 of 2013 Concerning Guidelines for the Implementation of Administrative Sanctions in the Field of Environmental Protection and Management

In the provisions of Article 3 paragraph (1), it is stated that the minister, governor, or regent/mayor shall apply administrative sanctions to the person in charge of the business/activity if during the supervision there is a violation of: (a) Environmental permit, (b) environmental protection and management permit, and (c) laws and regulations in the field of environmental protection and management.

Supervision is carried out by the Environmental Supervisory Officer (PPLH) and/or Regional Environmental Supervisory Officer (PPLHD) based on: (a) Reports on the implementation of environmental permits and/or environmental protection and management permits and (b) public complaints (Indonesia, 2009b).

Repressive Efforts

The application of administrative sanctions cannot be separated from environmental policies in general, which aim to achieve sustainable development that is environmentally sound by ensuring legal certainty and providing protection for everyone's right to a good and healthy environment, as stated in UUPPLH (Amiq, 2013).

The regulation of administrative sanctions as a repressive law enforcement effort in UUPPLH looks more evident than in UUPLH-97, which previously only regulated the government's authority to set

administrative sanctions. In UUPPLH, in addition to the government's authority to determine administrative sanctions, it also strengthens forms of administrative sanctions (Amiq, 2013).

In the provisions of Article 76, UUPPLH states:

(1) The minister, governor, or regent/mayor shall stipulate administrative sanctions to the person in charge of the business and/or activity if, under supervision, it is found that a violation of the environmental permit is found.

(2) Administrative sanctions consist of:
   (a) Written warning;
   (b) Coercion orders;
   (c) Freezing of environmental permits; or
   (d) Revocation of the environmental permit.

The application of administrative sanctions is by authority of an administrative official, in this case, the minister as an official of the Central Government. In addition, the governor and the regent/mayor can also apply administrative sanctions under their authority. Suppose the governor or regent/mayor deliberately does not apply administrative sanctions, in that case, the application of administrative sanctions can be carried out directly by the minister as an official of the Central Government. This is confirmed in the provisions of Article 77 UUPPLH, which states:

> *"The minister may apply administrative sanctions to the person in charge of the business and/or activity if the government considers the regional government to have intentionally not applied administrative sanctions to serious violations in environmental protection and management."*

The application of administrative sanctions imposed by administrative officials does not eliminate the responsibility of those in charge of businesses and/or activities that violate environmental law to carry out environmental restoration or are criminally responsible. If there is a criminal element in an act or activity that causes environmental damage or pollution, it must still be held criminally responsible (Amiq, 2013).

The person in charge of activities or businesses that cause environmental pollution or damage can still be criminally liable even though administrative sanctions have been applied to him by administrative officials. This is stated explicitly in the provisions of Article 78 UUPPLH:

> *"The administrative sanction as referred to in Article 76 does not relieve the person in charge of the business and/or activity from the responsibility for recovery and punishment."*

Thus, even if the entrepreneur/person in charge of the activity has been given administrative sanctions, criminal sanctions can still be imposed on him/her.

As legal entities that carry out activities or businesses that cause environmental damage and pollution, companies may also be subject to administrative sanctions in the form of freezing or revocation of permits. Suspension or revocation of permits is carried out if the entrepreneur or person in charge of the activity does not carry out government orders as a form of administrative sanction that has previously been imposed. This is also confirmed in the provisions of Article 79 UUPPLH, which states:

> *"The imposition of administrative sanctions in the form of freezing or revocation of environmental permits as referred to in Article 76 paragraph (2) letters c and d is carried out if the person in charge of the business and/or activity does not carry out government coercion."*

From the perspective of state administrative law, administrative officials as organs with authority can essentially apply/impose administrative sanctions to persons/civil law entities in the form of government coercion

(*bestuur dwang*). Likewise, in environmental law enforcement, administrative officials are given the authority to impose sanctions in the form of government coercion, in the form of (Indonesia, 2009b):

(a) Temporary suspension of production activities;
(b) Transfer of production facilities;
(c) Closure of sewerage or emissions;
(d) Dismantling;
(e) Confiscation of goods or tools that have the potential to cause violations;
(f) Temporary suspension of all activities; or
(g) Other actions are aimed at stopping violations and restoring environmental functions.

Government coercion can be imposed without prior warning if the violation has caused: (a) A severe threat to humans and the environment, (b) a more significant and broader impact if the pollution and/or destruction is not immediately stopped, and (c) more significant harm to the environment if the pollution and/or destruction is not immediately stopped (Indonesia, 2009b). If the coercive sanctions imposed by the government are not implemented, the person in charge of the business/activity may be subject to other sanctions in the form of fines (Indonesia, 2009b).

Another administrative sanction in the form of government coercion is forcing the person in charge of the business and/or activity to restore the polluted environment. The sanction is under environmental administration law, namely to restore a damaged environment to return to its original state or restore the situation (*restitution in integrum*). This is in line with the provisions of Article 82 of the UUPPLH, which states that "The minister, governor, or regent/mayor has the authority to force the person in charge of businesses and/or activities to carry out environmental restoration due to environmental pollution and/or destruction they committed and can appoint a third party to carry out environmental restoration due to environmental pollution and/or destruction which it has committed at the expense of the person in charge of the business and/or activity."

To further regulate the authority of the Government and Regional Government in administering administrative sanctions, as referred to in UUPPLH, there is Minister of Environment Regulation Number 2 of 2013 concerning Guidelines for the Implementation of Administrative Sanctions in the Field of Environmental Protection and Management. It states that ideally, before issuing a Ministerial Regulation that regulates guidelines for applying administrative sanctions as a technical guide, a Government Regulation must first be issued as a mandate from Article 83 of the UUPPLH.

In this Ministerial Regulation, the application of administrative sanctions in the form of written warnings, government coercion, freezing of environmental permits, revocation of environmental permits, and administrative fines will be explained as follows:

(1) Written Warning

A written warning is applied to the person in charge of the business and/or activity that violates the requirements and obligations listed in the environmental permit and/or environmental protection and management permit. However, both in terms of sound environmental management and technicality, these violations can still be corrected and if they have not yet harmed the environment. The violation must be proven and ensured that it harms the environment through pollution and/or destruction.

(2) Government Coercion

Government coercion is a concrete action to stop the violation and/or restore it to its original state. Government coercion is applied if the person in charge of the business and/or activity violates the requirements and obligations listed in the environmental permit and/or environmental protection and management permit and causes environmental pollution and damage.

(3) Suspension of Government Permits

The suspension of government permits is applied to temporarily not enforce environmental permits and/or protection and management permits, resulting in the cessation of a business and/or activity. This permission freeze can be done with or without a time limit. Freezing of environmental permits is applied to violations, for example: (a) Not carrying out government coercion, (b) carrying out activities other than those listed in the environmental permit and/or environmental protection and management permits, and (c) the permit holder has not technically completed what should be his/her obligations.

(4) Revocation of Environmental Permit

The revocation of the environmental permit is applied if the person in charge of the business and/or activity takes the following actions: (a) Transfers his business license to another party without written approval from the business license giver, (b) not implementing most or all of the government coercion that has been applied within a specific time, and (c) has caused pollution and/or environmental damage that endangers human safety and health, and has caused public unrest.

The application of administrative sanctions, as described above is based on effectiveness and efficiency in preserving environmental functions, the severity of the type of violations committed by the environmental permit holders, the level of compliance of the environmental permit holders concerning the fulfilment of orders or obligations specified in the environmental permit, history of compliance of environmental permit holders, as well as the level of influence or implication of violations committed by environmental permit holders (Indonesia, 2012). Administrative sanctions can also be carried out through a gradual, accessible and/or cumulative mechanism.

In addition, the person in charge of the business and/or activity may be required to pay a certain amount of money because it is too late to implement the government's coercive sanction. The imposition of fines for delays in implementing the Government's coercive sanctions starts from the period when the government's coercive sanctions are not implemented (Indonesia, 2013).

The application of this instrument is essential in environmental management because environmental problems are not solved by only regulating the obligations of each person to environmental sustainability in order to control a person's behaviour to continue to comply with his obligations. However, more than that, strict action must be taken against any violations that cause environmental damage. This is where the importance of administrative sanctions is one of the legal instruments in protecting and managing the Indonesian environment (Amiq, 2013).

Administrative Lawsuit

State administrative officials carry out administrative sanctions in the form of written warnings, government coercion, freezing of environmental permits, and revocation of permits against violators of administrative law without going through a judicial process. Problems will arise if there is a violation of the administrative environment law. However, the authorized state administrative official does not carry out his authority, imposing administrative sanctions on the violator. In other words, state administrative officials are authorized to ignore administrative law violations or even secretly approve activities that violate administrative environmental laws. For example, according to the provisions of administrative environmental law, a business is required to carry out an Environmental Impact Analysis (EIA). However, it turns out that the activity has been established or is operating without going through the EIA process and the authorized official still issues a business permit for the activity. In a situation like this, who should act to enforce environmental administrative laws? (Rahmadi, 2014).

In this situation, Article 93 of the UUPPLH states that anyone can file a lawsuit against a state administrative decision if: (a) A state

administrative agency or official issues an environmental permit to businesses and/or activities that are required to have an EIA but are not accompanied by an EIA document, (b) state administrative bodies or officials issue environmental permits for activities that are required to be UKL-UPL but not equipped with UKL-UPL documents, and, (c) state administrative bodies or officials who issue business and/or activity permits that are not equipped with environmental permits.

Submission of administrative lawsuits against decisions of state administrative bodies or officials as intended, carried out under the procedural law of the state administrative court in Law Number 5 of 1986 concerning the State Administrative Court has undergone two changes, the latest being Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts.

In addition, state administrative lawsuits can also be viewed from the perspective of the interests of business actors. For example, the case of state administration between Tjondro Indria Liemonta, President Director of PT Bakti Bangun Era Mulia and associates against the minister for the environment was later decided by the Supreme Court with Decision Number 109/K/KTU/2009 (Rahmadi, 2014).

Conclusion

Enforcement of Environmental Law through Administrative Law instruments is an effort to protect, cope with, and restore the quality of the environment from pollution or damage, as well as provide a deterrent against those in charge of businesses who violate the laws and regulations in the field of environmental protection and management and the provisions of environmental permits.

Therefore, when used to solve the forest fire problem carried out by PT. Bumi Mekar Hijau (BMH), this approach can guarantee protection for the sustainability of forest ecosystems. This approach can prevent forest damage from getting worse through supervision (preventive measures) and assigns recovery responsibility to the person in charge of the permit holder without being separated from criminal and civil/ compensation charges (repressive measures).

The challenge is how to minimize various inhibiting factors for both law and law enforcement agencies in the future. For example, the incomplete implementation of implementing regulations that support the application of administrative sanctions, the overlapping of organic administrative regulations that are authorized to apply sanctions with other instruments, and the occurrence of inconsistencies in the enforcement and enforcement of administrative sanctions for violations of administrative environmental law.

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Conflict of Interest Statement

The authors declare that they have no conflict of interest.

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