International Journal of Law, Policy and Social Review
www.lawjournals.net
Online ISSN: 2664-6838, Print ISSN: 2664-682X
Received: 01-02-2024, Accepted: 24-02-2024, Published: 18-03-2024
Volume 6, Issue 1, 2024, Page No. 112-118

The principle Of *Ultimum Remedium* in enforcement of environmental crime laws in Indonesia and Malaysia

Beny Siswanto
Faculty of Law, Universitas Jambi, Indonesia

Abstract
The application of the *ultimum remedium* principle will make it difficult for law enforcers to enforce environmental criminal law, with this principle it can shackle law enforcement officials in carrying out environmental law enforcement duties, besides it can also harm the environment because the perpetrators of violations of water quality standards. This research examines the insynchronization and urgency of legal norms in the *ULTIMUM Remedium* Principle in law enforcement for environmental crimes in Indonesia and Malaysia. The case approach in doctrinal approach research aims to study the application of law norms or rules carried out in legal practice. The concept approach was used because this research examined the application norms of law in Indonesia, while Malaysia prioritizes the implementation of the principle of the *primum remedium* principle. The repressive efforts need to be taken in the form of criminal law enforcement to ensure legal certainty as a basis for the protection and management of natural resources and other development activities. However, if environmental pollution and damage have occurred, repression efforts need also be taken, namely, enforcing the law on environmental crimes and environmental protection in Indonesia. In addition, strengthening criminal penalties is carried out by providing compensation for damage. In the case of PT Rafi Kamajaya Abadi (PT RKA) case, it was found that the PT had a karhutla of 2,560 hectares in West Kalimantan Province (Kalbar) which was granted by the Sintang District Court (PN) Panel of Judges, on August 8, 2022.

Keywords: Ultimum remedium principle, law enforcement, environmental crimes

Introduction

Enforcement of environmental criminal law must be careful of the "final remedial principle" that criminal law enforcement must be in its final resort after the implementation of administrative law enforcement is deemed unsuccessful. Meanwhile, the general principles of the Criminal Law and the Criminal Procedure Act stipulate that no crime can be punished except for the force of criminal regulations in the law (the principle of legitimacy). This means that when acts contrary to the laws are regulated by statutory regulations, they may be punished.

However, environmental criminal law enforcement is contrary to this principle. it is because the implementation of Article 100 paragraph (2) of UUPPLH 2009 is strengthened by the explanation of Article 6 of UUPPLH 2009. in which essentially environmental criminal law enforcement can only be implemented if the implementation of administrative enforcement is considered unsuccessful.

The application of the ultimum remedium principle will make it difficult for law enforcers to enforce environmental criminal law, with this ultimum remedium principle it can shackle law enforcement officials in carrying out environmental law enforcement duties, besides this ultimum remedium principle can also harm the environment because of the perpetrators of violations of water quality standards. The priority for waste, emissions and disturbances is the provision of administrative sanctions, meaning that there is no deterrent effect on perpetrators who violate waste water quality standards, emissions and disturbances. The application of administrative sanctions is good if they are complied with immediately and do not repeat similar actions, but if they are not obeyed, especially after they have been complied with and then repeat similar actions, this will certainly cause more damage to the environment.

The application of the principle of *ultimum remedium* in law enforcement for environmental crimes in Indonesia and Malaysia is interesting to study because the two countries have almost the same history but are different in the history of their legal formation. Indonesia adheres to the Continental European system while Malaysia adheres to the Anglo Saxon system. These differences in legal systems differ based on historical factors, namely control or colonization by 2 (two) Western countries. Malaysia was colonized by the British and Indonesia was colonized by the Dutch. These two countries have their own legal systems, so it is now the legal system in the countries that were colonized by these countries.

An examination of the environmental legal regulations in force in Indonesia prioritizes the application of the *ultimum remedium* principle, while Malaysia prioritizes the application of the *primum remedium* principle. The difference in the application of these two principles will of course give rise to different legal effects.

Law Number 32 of 2009 concerning PPLH has a weakness in the application of *ultimum remedium* that in the current conditions *ultimum remedium*, including several civil decisions that have been decided by a panel of judges with a compensation value of tens of trillions cannot be executed, of course it is different if using law criminal (*primum remedium*) which has previously confiscated assets, it will certainly be easier to execute decisions for compensation for state losses and restoration of the environment and affected communities.

In contrast to Malaysia, the application of *primum remedium* is seen as providing a positive side in reducing the level of forest and land fires, because it prioritizes enforcement of criminal law first. There are criminal sanctions in Malaysia with a maximum of RM 2,000 for those who do not comply

with the provisions. If the polluter is taken to court then under Article 22 EQA 1974, the maximum fine is RM. 500,000 or imprisonment for five years or both. In cases of open burning, a number of cases have been brought to court. In September 1998, the Klang Sessions Court tried and prosecuted Syarikat Pembinaan Yeoh Tiong Lay under Article 22(1) for RM. 20,000 or 4 months in prison. The maximum penalty for open burning is RM. 100,000 or 5 five years in prison or both.

Research Questions

As explained in the background previously, here the researchers formulated several research questions as follows:

1. How is the principle of *ultimum remedium* regulated in law enforcement for environmental crimes in Indonesia and Malaysia?
2. What is the urgency of the *ultimum remidium* principle in enforcing environmental crime laws in Indonesia and Malaysia?
3. How is the *ultimum remedium* principle formulated to guarantee legal certainty for environmental protection in Indonesia so that it can be implemented as a legal reform for overcoming environmental crimes in Indonesia?

Literature Review

1. Theory of Legal Objectives

To realize the objectives of law, Gustav Radbruch stated, "it is necessary to use the principle of priority of the three basic values which are the objectives of law. This is because in reality, legal justice often clashes with the usefulness and certainty of the law and vice versa. Additionally, according to Erwin (2012) the three basic values of legal objectives require someone to sacrifice in the event of conflict.

For this reason, the priority principle used by Gustav Radbruch must be carried out in the following order:

1. Legal Justice;
2. Legal Benefits;
3. Legal Certainty.

The legal system can avoid internal conflicts. In Radbruch's view, these three aspects are relative and subject to change. At some point, the legal system may focus on justice and push utility and legal certainty to the limit. In another case, security and utility may be emphasized. The relative and fluid nature of this relationship is unsatisfactory.

2. Political theory of law/criminal law policy

According to Marc Ancel, criminal law policy or criminal law politics is one of modern criminal science. As he explained, modern criminal science consists of 3 (three) components: criminology, criminal law and penal policy.

Apart from being related to legal politics, criminal law politics is also related to criminal politics or known as criminal policy and criminal policy. In other definition, Sudarto in Nawai (2002) defines criminal politics as a rational effort by society to overcome crime/criminal acts. A similar definition was also put forward by Marc Ancel which Muladi (2006) [11] quoted as "the rational organization of the control of crime by society".

Carrying out criminal politics means choosing among many alternatives, which is the most effective in efforts to overcome criminal acts. Thus, the politics of criminal law, seen from the political side of law, means how to try or make and formulate good criminal legislation. Meanwhile, seen from the perspective of criminal politics, the politics of criminal law is identical to the definition of policies for dealing with criminal acts with criminal law.

3. Legal Protection Theory

Based on the theory proposed by Hadjon (1987) [7] legal protection is the protection of dignity and recognition of human rights possessed by legal subjects in a legal state based on the legal provisions in force in that country to prevent arbitrariness, so it can be said that the law functions as a protection for human interests. Besides, Raharjo (1993) [12] said that legal protection is protecting human rights that other people harm and this protection is given to the community so that they can enjoy all the rights granted by law.

Legal protection is an effort made by the law to overcome violations. Which as explained by Hadjon (1987) [7] it consist of two types, namely:

a. Repressive legal protection, namely legal protection created to resolve a dispute.
b. Preventive legal protection, namely legal protection, was created to prevent disputes.

In implementing and providing legal protection, legal subjects are needed which are called preventive legal protection and repressive legal protection. Preventive legal protection aims to prevent disputes from occurring, while repressive legal protection aims to resolve disputes. In other words, legal protection can provide certainty, justice, order, peace, and benefits to society.

Methodology

1. Research Design

This research is normative juridical research. Normative juridical research takes the form of "an inventory of applicable legislation, attempts to find the principles or philosophical basis of this Legislation. Or in other words, Marzuki (2008) said if this research discovered laws that are appropriate to a particular case".

The statute/legislative approach was applied in this research because, from a legal logic, normative research is based on research conducted on existing legal materials. In other words, normative research must certainly use a statutory approach, because what will be researched are statutory regulations from laws to presidential regulations that are related to this research.

According to the author's consideration, a conceptual approach is necessary because the concepts used at any time can develop over time. The concept of *ultimum remedium*, law enforcement, environmental crimes. A conceptual approach was used because this research examines the insynchronization of legal norms in the *ultimum remedium* principle in law enforcement for environmental crimes in Indonesia and Malaysia.

The use of a historical approach is necessary because in this research what is discussed is the principle of *ultimum remedium* in law enforcement for environmental crimes in Indonesia and Malaysia, so it is necessary to explain the basic intellectual concepts, history and background as a guide in analyzing the substance.

Case approach (Case Approach)

The case approach in doctrinal approach research aims to study the application of legal norms or rules carried out in legal practice. This approach is usually used regarding cases related to the principle of *ultimum remedium* in law enforcement for environmental crimes in Indonesia.

2. Collection of Legal Materials

The type of legal material used by the author in this study is as follows

a. Primary Legal Material, consisting of statutory regulations related to the issues discussed, namely

1. The 1945 Constitution of the Republic of Indonesia.
2. Law Number 32 of 2009 concerning Environmental Protection and Management
3. Law Number 39 of 2014 concerning Plantations
4. Criminal Code
5. Other implementing regulations

b. Secondary Legal Materials, namely legal materials that can explain primary legal materials, namely

1. Legal Books.
2. Law Journals and Papers.

c. Tertiary Legal Materials, namely legal materials that can provide instructions and explanations for primary and secondary legal materials, including the Black's Law Dictionary and the Legal Dictionary.

2. Analysis of Legal Materials

In this research, the method of deductive analysis is used, namely an analytical method to analyze laws and regulations relating to the formulation of problems in the research. The researchers then correlated them with several principles and theories, which were the basis or analysis tools for writing this research to find conclusions/conclusions, solutions and ideal ideas for the subject being discussed.

Findings and Discussions

1. Regulation of the *Ultimum Remedium* Principle in Law Enforcement for Environmental Crimes in Indonesia and Malaysia

Regulation of the *ultimum remedium* principle in law enforcement for environmental crimes in Indonesia and Malaysia, namely

1. The Indonesian legal system recognizes an administrative justice system, while the Malaysian legal system only recognizes one court for all types of cases.
2. The Indonesian legal system became modern because universities conducted studies, whereas the Malaysian legal system was developed through the practice of legal procedures.
3. The disovery of rules is used as a guide in making decisions or solving problems so that they are abstract in the Indonesian legal system, while the rules in the Malaysian legal system are concretely used directly to resolve cases.

In connection with the similarities in the regulation of the *ultimum remedium* principle in enforcing environmental criminal law in Indonesia and Malaysia, *Ultimum Remedium* is one of the principles contained in the criminal law of Indonesia and Malaysia, which says that criminal law should be used as a last resort in law enforcement and is considered still There is an alternative solution other than applying criminal law rules. The characteristics of criminal law in the context of *Ultimum Remedium* can be interpreted as meaning that the existence of criminal sanctions regulations is placed or positioned as the final sanction. This means that giving priority to giving administrative sanctions or civil sanctions. Suppose administrative sanctions and civil sanctions are not sufficient to achieve the goal of restoring balance in society. In that case, imposing new criminal sanctions can be considered a last resort or Ultimum Remedium.

The difference in the regulation of the *ultimum remedium* principle in law enforcement for environmental crimes in Indonesia and Malaysia is related to the punishment that based on Section 22 (1) of the 1974 EQA which was amended through the 1996 Environmental Quality Act and last updated through the 2014 Environmental Quality Regulation, no one may, unless licensed, emit, release any water into the atmosphere contrary to the acceptable conditions specified under s21 EQA 1974. Additionally, Ling & Yoke (1992) under Section 22 (3) of the EQA 1996 (Amendment), the maximum penalty for atmospheric pollution is RM. 100,000 or 5 years in prison or both.

The new order provides a maximum compounding of RM 2,000 for those who do not comply with the provisions. If the polluter is taken to court then under Article 22 EQA 1974, the maximum fine is RM. 500,000 or imprisonment for five years or both. In cases of open burning, a number of cases have been brought to court. In September 1998, the Klang Sessions Court tried and prosecuted Syarikat Pembinaan Yeoh Tiong Lay under Article 22(1) for RM. 20,000 or 4 months in prison. The maximum penalty for open burning is RM. 100,000 or 5 five years in prison or both. The company is suspected of carrying out open burning at 1.05 pm 5 May 1998.

In Malacca, the Sessions Court has imposed harsher penalties for open burning. The manager of the Mow Hin Timber Factory (Sapu Stick Company) pleaded guilty to open burning in Alor Gajah in April 1999 at 11.35am. In an investigation by DOE officials, they found managers burned piles of sawdust without permission. The charges included Regulation 56(1) of the Environmental Quality (Clean Air) Regulations 1978. In mitigation, the representative manager said this was his first breach. The manager was sentenced to 3 weeks in prison. However, the manager appealed to the High Court and the sentence was changed to 1 day in prison and a fine of RM. 5,000.

Meanwhile, for Indonesia, the principle of *ultimum remedium* in law enforcement for environmental criminal acts in Indonesia and Malaysia is carried out by applying criminal sanctions as regulated in related laws and regulations, namely Law Number 32 of 2009 concerning Environmental Protection and Management and Laws. Law Number 39 of 2014 concerning Plantations. Article 108 of Law Number 32 of 2009 concerning Environmental Protection and Management determines:

Every person who burns land as intended in Article 69 Paragraph (1) letter h, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah).

Article 98 Paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management determines

Any person who intentionally commits an act that results in exceeding the ambient air quality standards, water quality standards, seawater quality standards, or environmental damage standard criteria, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 (ten) years. and a fine of at least IDR 3,000,000,000.00 (three billion rupiah) and a maximum of IDR 10,000,000,000.00 (ten billion rupiah).

Article 99 Paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management determines

Any person whose negligence results in the exceedance of ambient air quality standards, water quality standards, sea water quality standards, or environmental damage standard criteria, shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of up to a minimum of IDR 1,000,000,000.00 (one billion rupiah) and a maximum of IDR 3,000,000,000.00 (three billion rupiah).

Article 108 of Law Number 39 of 2014 concerning Plantations, which stipulates: "Every plantation business actor who clears and/or cultivates land by burning as intended in Article 56 Paragraph (1) shall be punished with a long prison sentence of 10 (ten) years and a maximum fine of Rp. 10,000,000,000.00 (ten billion rupiah)".

2. The Urgency of the Ultimum Remidium Principle in Law Enforcement for Environmental Crimes in Indonesia and Malaysia

Regarding the Indonesian court decision that charged Malaysian state companies involved in forest and land fires, namely Decision 44/Pdt.G/LH/2021/PN Stg. This decision concerns the lawsuit of the Ministry of Environment and Forestry (KLHK) against PT Rafi Kamajaya Abadi (PT RKA) in the case of forest and land fires (karhutla) in West Kalimantan Province (Kalbar) which was granted by the Sintang District Court (PN) Panel of Judges, on August 8, 2022. This subsidiary of the TDM Berhad Group - a group of companies registered in Malaysia - is obliged to pay compensation to the Indonesian State of around Rp. 917 billion.

The company was proven to have caused forest and land fires in its concession area of 2,560 hectares in the period from August 2016 to September 2019, in Tengkajau Village, North Pinoh District, Melawi Regency, West Kalimantan. This KLHK lawsuit was submitted to the Sintang District Court (PN) on December 27 2021 with Case Register Number 44/Pdt.G/LH/2021/PN Stg. In their verdict, the panel of judges stated that the company owned by a Malaysian investor was proven to have committed an unlawful act and was obliged to pay material compensation amounting to Rp. 270,807,710,959 and environmental restoration costs amounting to Rp. 646,216,640,000, and stated that the lawsuit used absolute liability (strict liability). Director of Environmental Dispute Resolution Jasmin Ragil Utomo, as Attorney for the Minister of Environment and Forestry, said that the compensation value determined by the Sintang District Court (2021) if panel of Judges was lower than the total value of the demands submitted by the Ministry of Environment and Forestry, which amounted to around IDR 1 trillion.

Malaysia's state policy on Indonesian court rulings ensnaring Malaysian state companies involved in forest and land fires that Malaysia's decision not to introduce legislation to deal with companies responsible for forest fires is a "missed opportunity" to curb Asia's devastating annual haze Southeast and to end the diplomatic row over the issue. The rash of land and forest fires has led to Indonesian and Malaysian officials blaming each other for the noxious smoke, with Malaysia's then-environment minister promising to draft laws to punish businesses and individuals who cause pollution on land they manage overseas. But after months of consultations with green groups, the government scrapped the planned law in favor of a more regional approach.

Helena Varkkey, a lecturer at the University of Malaya in Kuala Lumpur who has researched the haze problem for over 15 years, said ignoring the law was "a missed opportunity. Over the years, Taylor (2024) [19] found that there has been a lot of recrimination with the Indonesian government pointing the finger at Malaysian companies and vice versa. The law would be able to neutralize the blame game. Malaysia could show that it is playing its role by regulating its own companies and that others should do the same.

In media reports, Malaysia's environment ministry - which did not respond to a request for comment - cited a similar law targeting companies that was introduced in neighboring Singapore but proved largely ineffective. Singapore's Transboundary Haze Pollution Act 2014 has had little impact due to a lack of maps and support from Indonesian authorities, forestry experts say.

Unlike Singapore law which has the potential to hold any entity liable – Malaysian law is aimed at holding domestic companies accountable through "naming and shaming". "If the Malaysian law only targets Malaysian companies, the view from Indonesia should be very different. Indonesia must be willing to cooperate and share the necessary information (and) evidence.

3. Formulation of the Principle of *Ultimum Remedium* in Law Enforcement of Environmental Crimes in Indonesia and Malaysia so that it can be implemented as a legal reform for overcoming environmental crimes in Indonesia

The policy formulation of the *ultimum remedium* principle in ensuring legal certainty and environmental protection in Malaysia, focuses on handling air pollution. That policy is one of the main environmental problems in Malaysia, especially in urban-industrial areas. Uncontrolled development activities and increasing traffic volumes are factors that may contribute to this trend. The problem becomes more apparent during the dry months of June to August and early September when smog becomes a threat. In response to this matter, Hanifah (2019) [5] said if the air pollutants have been determined by the Environmental Quality (Clean Air) Regulations 2014, smoke, ash or other substances that the Minister can make by notification in the Official Gazette are declared as air pollutants for the regulations.

This is inseparable from monitoring, in the form of a national air quality monitoring program (NAQMP) carried out using semi-automatic equipment (high volume samples) for measuring total suspended particles and inhalable particulates through a network of more than 35 monitoring

stations. Ambient lead levels are also monitored at locations close to major roads with heavy traffic.

In 1955, air quality monitoring was privatized and taken over by Nature Around Malaysia Sd. Bhd (ASTHMA). ASMA has set up and manages around 50 fully automated traffic monitoring stations.

Relates to punitive sanctions for acts of atmospheric pollution. Pursuant to Section 22(1) of the EQA 1974 as amended by the Environmental Quality Act 1996 and most recently updated by the Environmental Quality Regulations 2014, no person may, unless licensed, emit, discharge any water into the atmosphere in contravention of the acceptable conditions specified in under s21 EQA 1974. Under Section 22(3) of the EQA 1996 (Amendment), the maximum penalty for atmospheric pollution is RM. 100,000 or 5 years in prison or both.

The term for burning land and forests in Malaysia is known as open burning. Although the problem of open burning is largely transboundary, local sources, especially those caused by local fires, have been found to exacerbate the situation. Local fires mainly caused the 1998 haze in Sabah and Sarawak. This prompted the drafting of the new Open Burning Environmental Quality (Prescribed Activities) Order 2003 which prohibits open burning for any activity other than that specified in the order. These are listed under paragraph 3 of the Order as "declared activities" all of these activities are not open burning as under section 29A of the EQA 1974 as amended through the Environmental Quality Act 1996 and last updated through the Environmental Quality Regulation 2014. Therefore, it must follow requirements set out in paragraph 3 which also refers to other laws such as the Plant Quarantine Act 1976, the Animals Act 1953 and the Fire Services Act 1988. The stated activities include the burning of infected plants and the carcasses of sick animals or poultry, and the use of fire for religion, research and training.

Under the new order, the DOE must be notified before open burning can take place. Additionally, those planning to burn diseased plants or their carcasses must seek prior approval from the Department of Agriculture and Veterinary Services. This is important to prevent individuals who abuse the law. The Department of Agriculture and Veterinary Services must certify that the plant or animal is diseased and that there is no other method of disposal. Those permitted to conduct open burning must also comply with strict requirements set by the DOE. The department will determine the time, place and manner in which the harvest or carcasses should be burned so as not to cause air pollution.

An important condition under the order is that all open burning activities must cease when the air pollutant index breaches the 100 level. That means the DOE must begin releasing API readings to the public again. The government cannot gain public cooperation if it continues to make API reading an official secret. A significant impact of this new law is that the DOE will no longer issue permits to the plantation sector to combat open burning. With advances in technology, DOE feels that large plantation companies can live without fires in their business activities. However, the order excludes traditional farmers and small farmers who use fire to clear land or remove biomass such as rice husks. The exception is on the basis that the farmer carries out open burning on a small scale according to the area of land and the biomass involved is negligible.

The new order provides a maximum compounding of RM 2,000 for those who do not comply with the provisions. If the polluter is taken to court then under Article 22 EQA 1974 as amended through the Environmental Quality Act 1996 and last updated through the Environmental Quality Regulation 2014, the maximum fine is RM. 500,000 or imprisonment for five years or both. In cases of open burning, a number of cases have been brought to court. In September 1998, the Klang Sessions Court tried and prosecuted Syarikat Pembinaan Yeoh Tiong Lay under Article 22(1) for RM. 20,000 or 4 months in prison. The maximum penalty for open burning is RM. 100,000 or 5 five years in prison or both. The company is suspected of carrying out open burning at 1.05 pm 5 May 1998.

In Malacca, the Sessions Court has imposed harsher penalties for open burning. The manager of the Mow Hin Timber Factory (Sapu Stick Company) pleaded guilty to open burning in Alor Gajah in April 1999 at 11.35am. In an investigation by DOE officials, they found managers burned piles of sawdust without permission. The charges included Regulation 56(1) of the Environmental Quality (Clean Air) Regulations 1978. In mitigation, the representative manager said this was his first breach. The manager was sentenced to 3 weeks in prison. However, the manager appealed to the High Court and the sentence was changed to 1 day in prison and a fine of RM. 5,000.

Based on the description above, it can be stated that the application of the Judge's decision in Malaysia to environmental cases is based on the principle of *primum remedium*.

The benefit of the *ultimum remedium* is that environmental problems in the form of pollution and environmental damage are becoming increasingly complex and tend to be difficult to handle properly. This indication can be seen in the increasingly declining quality of the environment. The negative impact of decreasing environmental quality is the emergence of threats or negative impacts on health, decreased aesthetic value, economic losses and disruption of natural systems. Environmental problems, when linked to human rights issues, are not only country-by-country problems, but also regional and even international (between nations) problems. The right to a healthy living environment is one of the human rights regulated in the Universal Declaration of Human Rights, 1948 (Art. 25) in conjunction with Art.11 International Covenant on Economic, Social and Cultural Rights (1966). Article 28 H of the 1945 Constitution of the Republic of Indonesia also confirms the right to a good and healthy living environment. Preventive efforts to control environmental impacts need to be implemented by making maximum use of monitoring and licensing instruments.

However, in the event that environmental pollution and damage has occurred, repressive efforts need to be taken in the form of criminal law enforcement to ensure legal certainty as a basis for the protection and management of natural resources and other development activities. Enforcement of criminal law in environmental matters, namely by still paying attention to the principle of *ultimum remedium* as the application of administrative law enforcement and/or civil law before criminal law enforcement is implemented, is still feasible to maintain by strengthening regulations and institutions.

For legal certainty regarding the application of the ultimum remedium, law enforcement regarding environmental

protection and management based on Law Number 32 of 2009 through 3 (three) systematic law enforcement steps, namely starting with administrative law enforcement, dispute resolution outside the court and investigation. for environmental crimes. According to Rangkuti, administrative sanctions have an instrumental function in the environmental sector, namely controlling prohibited acts and primarily aimed at protecting the interests protected by the violated provisions.

Meanwhile, civil law provisions include resolving environmental disputes outside the court and inside the court. Settlement of environmental disputes in court includes class action lawsuits, the right to sue environmental organizations, or the right to sue the government. Through this method, it is hoped that apart from having a deterrent effect, it will also increase the awareness of all stakeholders about how important environmental protection and management is for the lives of present and future generations. Enforcement of criminal law in this Law continues to pay attention to the principle of *ultimum remedium* which requires criminal law enforcement to be implemented as a last resort after the implementation of administrative law enforcement is deemed unsuccessful. The *ultimum remedium* principle applies only to certain formal criminal acts, namely punishment for violations of waste water quality standards, emissions and disturbances.

However, in the event that environmental pollution and damage has occurred, repressive efforts need to be taken in the form of criminal law enforcement to ensure legal certainty as a basis for the protection and management of natural resources and other development activities. Enforcement of criminal law in environmental matters, namely by still paying attention to the principle of *ultimum remedium* as the application of administrative law enforcement and/or civil law before criminal law enforcement is implemented, is still feasible to maintain by strengthening regulations and institutions.

For legal certainty regarding the application of the ultimum remedium, law enforcement regarding environmental protection and management based on Law Number 32 of 2009 through 3 (three) systematic law enforcement steps, namely starting with administrative law enforcement, dispute resolution outside the court and investigation. for environmental crimes. According to Rangkuti, administrative sanctions have an instrumental function in the environmental sector, namely controlling prohibited acts and primarily aimed at protecting the interests protected by the violated provisions.

Meanwhile, civil law provisions include resolving environmental disputes outside the court and inside the court. Settlement of environmental disputes in court includes class action lawsuits, the right to sue environmental organizations, or the right to sue the government. Through this method, it is hoped that apart from having a deterrent effect, it will also increase the awareness of all stakeholders about how important environmental protection and management is for the lives of present and future generations. Enforcement of criminal law in this Law continues to comply with the principle of *ultimum remedium* which requires the implementation of criminal law enforcement as a last resort after the implementation of administrative law enforcement is deemed unsuccessful. The *ultimum remedium* principle applies only to certain formal criminal acts, namely punishment for violations of wastewater quality standards, emissions, and disturbances.

Strengthening criminal penalties for perpetrators of environmental crimes is carried out by strengthening the principle of *ultimum remedium*. Strengthening the principle of *ultimum remedium* by providing compensation for damage by the criminal principle of compensation. This is done with compensation money to cover state losses, costs for restoring damaged environments and compensation for affected communities. If the company that commits forest and land burning does not want to provide replacement money, the company's assets will be confiscated.

Conclusion and Recommendation

1. Conclusions

The regulation of the *ultimum remedium* principle in the enforcement of environmental criminal law in Indonesia and Malaysia explains that the Indonesian State continues to observe the *ultimum remedium* principle as an initial step in the enforcement of environmental law by applying administrative and civil law against environmental crimes. However, Malaysia no longer retains the *ultimamum remedium* principle in the enforcement of an environmental crime.

The urgency of the *ultimum remedium* principle in enforcing the law on environmental crimes and environmental protection that environmental law enforcement continues to pay attention to the *ultimum remedium* principle that this principle aims to avoid over-criminalization that crime is the latest tool owned by the state to tackle crime. But also this criminal law can be followed by other forms of sanctions. Providing criminal sanctions in the UUPPLH as a last resort if administrative sanctions are not implemented is one effort to implement the *ultimum remedium* principle. The provision of criminal sanctions as the *ultimum remedium* principle will increase the awareness, especially of business and/or activity actors, of the restoration of polluted environments.

Furthermore, the formulation of the *ultimum remedium* principle in ensuring legal certainty and environmental protection in Indonesia, namely strengthening the *ultimum remedium* principle by providing compensation for damage. This is done with compensation money to cover state losses, costs for restoring damaged environments and compensation for affected communities. If the company that commits forest and land burning does not want to provide replacement money, the company's assets will be confiscated.

2. Recommendations

In the future, law enforcement officers and future environmental authorities need to fully understand the legal principles, in particular the last remediation principles and laws and regulations relating to the resolution of environmental crimes and TPLH, to make appropriate decisions. Since the environment is a source of livelihood for all communities, especially those affected by environmental pollution and destruction, fairness and wisdom are shown in all communities.

For the legislative body to be able to apply the principle of the final remediation when forming a standard material in an environmental law. The new environmental law must be the final remediation, and in addition to corporal punishment and fines, it must include compensation for damage to the

environment and the costs of the State (reconstruction) of damaged communities and compensation or compensation. For this reason, it is essential to ensure that law enforcement agencies coordinate to implement environmental law, for example from investigations to the calculation of the cost of state financial losses and the restoration of the environment and the recovery of affected communities (reconstruction) through experts, as well as the confiscation of corporate assets that damage the environment, so that the implementation and objectives of environmental pollution and damage recovery can be achieved.

References

1. Nawawi BA. Capita selecta criminal law. *Bandung: Citra Aditya Bakti*, 2010.
2. --------. Anthology of criminal law policy. *Bandung: PT. Aditya Bakti's image*, 2010.
3. --------. Law enforcement issues and criminal law policy in combating crime. *Jakarta: Kencana Media Group*, 2007.
4. Erwin M. Environmental law in the environmental development policy system. *Bandung: Refika Adhama*, 2008.
5. Hanifah AN. A student guide, understanding environmental law in Malaysia. *Selanggor Malaysia: MALAHA Press*, 2019.
6. Marzuki MP. Legal research revised edition. *Jakarta: Kencana Prenadamedia Group*, 2014.
7. Hadjon MP. Legal protection for the indonesian people. *Surabaya: Bina Ilmu*, 1987.
8. Rahardjo S. Law enforcement issues. *Bandung: New Rays*, 2003.
9. Salim HS, Nurbani ES. Application of legal theory to theses and dissertations. *Jakarta: Raja Grafindo Persada*, 2013.
10. Ling, Chee Y, Rio T. Declaration on environment and development: an assessment, twn, Penang Malaysia, 1992.
11. Muladi. Several notes in the draft criminal code, in the institute for community studies and advocacy (ELSAM), and several writings related to criminal policy in the draft criminal code. *ELSAM, Jakarta*, 2006.
12. Raharjo S. Implementation of justice in a changing society. Journal of Legal Issues, 1993.
13. The 1945 Constitution of the Republic of Indonesia.
14. Law Number 39 of 1999 concerning Human Rights.
15. Law Concerning Environmental Protection and Management. UU no. 32 of 2009. State Gazette of the Republic of Indonesia of 2009 Number 140 Supplement to State Gazette of the Republic of Indonesia Number 5059.
16. Government Regulations on Environmental Permits. PP Number 27 of 2012. State Gazette of the Republic of Indonesia of 2012 Number 48 Supplement to State Gazette of the Republic of Indonesia Number 5285.
17. Decision of the Constitutional Court of the Republic of Indonesia Number 18/PUU-XII/2014.
18. MK Decision Number 35/PUU-V/2012 concerning Judicial Review of Law Number 41 of 1999 Against the 1945 Constitution.
19. Taylor M. Malaysia walks away from law to tackle firms over forest fires, Kuala Lumpur (Thomson Reuters Foundation). Retrieved from, 2024. *https://www.reuters.com/article/us-malaysia-wildfire-environment-politic-idUSKCN2531FK*