Environmental permission and environmental crime in law enforcement concerning living environmental management and protection

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Abstract. Environmental permission, according to the law on Living Environmental Management and Protection act no. 32 the year 2009 about protection and environment management (Undang-undang tentang Perlindungan dan Pengelolaan Lingkungan Hidup) is a condition to obtain business permission and/or activity. This analytical descriptive normative juridical study revealed the regulation of legislation related to environmental permission concerning the reinforcement of administrative sanction and criminal sanction. The data obtained were analyzed through certain legal norms stated in the regulation of legislation. The result of this study depicted that permission was the written document issued by the government. The form of the decision of state administration as legal evidence stating that an individual or a legal entity is permitted to run a business or specific activity to protect and manage the living environment. Our present study suggested that the reinforcement of environmental law was carried out under-one-roof management to materialize an integrated licensing system. The reinforcement of administrative sanction may play a more optimal role in preventing the worse environmental pollution or damage and the violation of environmental permission.

1. Introduction

Environmental pollution is the entry or incorporation of living items, substances, energy or other elements into the setting by human operations in order to exceed the prescribed environmental quality standards [1]. The occurrence of environmental pollution requires environmental supervision. Environmental supervision is a series of activities carried out directly or indirectly by the Environmental Supervisory Officer to search, ascertain, and regulate the level of compliance of the business person responsible or activities on the provisions stipulated in environmental permits and legislation in the field protection and management of the environment [2]. Enforcement of environmental administration is the supervision and submission of administrative sanctions. The application of administrative sanctions has 2 (two) characteristics, namely, preventive (supervision) and repressive (administrative sanctions). Environmental crime based on UUPLH (Undang-undang tentang Perlindungan dan Pengelolaan Lingkungan Hidup) is a violation committed by a person on the laws and regulations or provisions of environmental licensing [3].
Furthermore, the provisions of environmental crime under UUPPLH in applying criminal sanctions related to environmental permits are regulated in Article 109, Article 111, and Article 112 UUPPLH. The law indicates that the permit is a document issued by the government in writing given in the form of a state administrative decision which is proof of legality which states that a person or legal entity is permitted to conduct certain businesses and/or activities for environmental protection and management [4]. This analytical descriptive normative juridical study aimed to reveal the regulation of legislation connected to environmental permission with the reinforcement of administrative sanction and criminal sanction.

2. Materials and method

In order to get maximum results, legal research is carried out by using a normative juridical method with the consideration that the starting point of the research is the analysis of legislation governing environmental licensing. The nature of this research is descriptive analysis, a method that is packed ai to describe a condition underway related to the license Environment in relation to the enforcement of environmental administration and crime neighborhood-based UUPPLH, the goal in order to provide data on research so as to be able to explore ideal things, then analyzed based on legal theory or legislation in force. The data source used in this study is to use secondary data to get conceptual theories or doctrines, opinions, or thoughts conceptually that have to do with the object under study.

The sources of legal material in this study are as follows: constituting binding material, namely: Law Number 5 of 1986 concerning State Administrative Regulations/Law, Law Number 32 of 2009 concerning Protection and Management environment, Government Regulation No. 27 Year 2012 on environmental Permits, Government Regulation No. 18 Year 1999 regarding the management of hazardous and toxic, Permen LH No. 14 of 2010 concerning Environmental Documents for Businesses and/or Activities that Have Business Permits and/or Activities but have no Environmental Documents, Permen LH No. 2 of 2013 concerning Guidelines for Implementing Administrative Sanctions in the Field of Environmental Protection and Management. Secondary legal materials, tertiary legal materials, namely legal materials that support primary legal materials, among others in the form of books, papers, and secondary legal materials such as Internet and Interviews.

3. Results and Discussions

UUPPLH, which is a providing for protection and management of the environment, then sectoral laws in the field of the environment, which include forestry, plantations, and mining, must meet several conditions. Among other things, First, the Act must comply with UUPPLH. Second, the implementation of sectoral laws in the environmental sector must not conflict with UUPPLH. Third, all law enforcement associated to the environment must be guided by UUPPLH. UUPPLH functions as an umbrella act or umbrella provision or in law, is called kadarwet or raamwet, which is primarily against environmental problems [4].

This UUPPLH makes the necessary provisions for existing environmental regulations (lex lata) and further regulations below them (lex ferandai or organic provisions) for the environment. The problem in environmental law is pollution, which is the introduction of pollutants such as chemicals into the surrounding environment, which results in a negative impression that endangers human health, threatening natural resources and ecosystems. With the occurrence of environmental pollution, environmental supervision is needed. Environmental Supervision, hereinafter referred to as Supervision, is a series of activities carried out directly or indirectly by the Environmental Supervisory Officer (PPLH) and Local Environmental Supervisory Officer (PPLHD) to observe, ascertain, and define the level of compliance of business persons and/or activities conditions set out in the environmental permits and laws - laws in the field of environmental protection and management [5].

Environmental permits are instruments for preventing damage and/or environmental pollution, which are necessarily the control of environmental management activities. Moreover, also is one form of government action. The government action based on public authority is to allow or allow according to the law for a person or legal entity to do something of an activity. By giving permission, the
authorities allow people who beg for specific actions to be prohibited. Whereas the main thing about permits in the strict sense (permission) is that an action is prohibited, except permitted, with the aim that specific provisions which are linked to the application can be given certain limits for each case. So the problem is not only giving approval in particular circumstances but so that the actions that are permitted are carried out in specific ways (various conditions are included in the relevant provisions). In licensing, the authority to issue permits is government officials or administrative officials, whose relation is to the government's duty in providing public services to the public [6].

In terms of public services, permits are a form of service that must be given to the public in the form of administrative services, namely services that produce various forms of official documents needed by the public. Permits can be in the form of written and/or unwritten, but in State Administrative Law, permission must be written, in connection if something unexpected happens, then the permit in the form of a state administrative decision (beschicking) can be used as evidence in the court. Permits in the form of beschiking, of course, have a precise nature (the object is not abstract, but tangible, specific and determined), individual (who is given permission), final (someone who has the right to do a legal act in accordance with its contents cause inevitable legal consequences). The main thing in licensing is that an action is prohibited unless it is permitted with the aim that in the relevant provisions carried out in specific ways. Rejection of approval, revocation, or license suspension to the introduction of criminal sanctions can occur when criteria - the criteria established by the authorities are not fulfilled or violated. As an instrument, environmental permits function as the spearhead of legal instruments as directors, engineers, and designers of business actors and / or activities to achieve environmental protection and management goals and to overcome environmental problems due to human activities that are inherent in the basis of permits and can also function as a juridical means to prevent and overcome pollution and environmental damage [7].

Then it will continue with the theory of law enforcement. Law enforcement is the process of making efforts to uphold or function legal norms as a real guideline for behavior in public and state life. Law enforcement in the broad sense (law enforcement policy) is contained in the meaning of criminal politics (criminal policy), namely a conscious effort to overcome crime. Handling environmental problems through administrative law is part of non-penal law enforcement. The aim of enforcement of environmental law is essential to (compliance) the values of protecting the carrying capacity of ecosystems and environmental functions. In connection with the enforcement of environmental law, Ninik Suparni stressed that the enforcement of environmental law is an effort to achieve compliance with regulations and requirements in general and individual legal provisions, through supervision and implementation in administration, civilization, and law. For this reason, law enforcement can be done preventively, namely law enforcement efforts to prevent environmental pollution. And it can also be done repressively, namely the efforts of law enforcers to take legal action to those who violate the provisions of applicable laws and regulations [8]. Keeping the environment from being damaged is getting worse; precautionary measures need to be taken early. One form of early prevention is intensive supervision of businesses or activities that violate administrative law provisions. Immediate action is taken against violators of the administrative law. Enforcement of administrative law if done optimally, it can be ascertained that the environment will not be polluted, especially damaged. Types of administrative sanctions, which consist of 1. Written warning; 2. Government coercion; 3. Freezing of environmental permits and/or environmental protection and management permits; and 4. Revocation of environmental permits and/or permits for protection and management of the environment. In addition to four kinds of administrative sanctions listed above, there are also other kinds of administrative sanctions, namely administrative penalties and the cancelation of permits. The criteria for implementing administrative sanctions are choices that can be done in stages, freely, and/o/ cumulatively to realize the enforcement of environmental administration. If the effort is not or is not successful, then criminal prosecution is utilized. In UUPLHL, the definition of environmental crime is regulated in Article 97 UUPLHL that a crime is a crime. Criminal actions in environmental law include two activities, namely the act of polluting the environment and damaging the environment. This formulation is said to be a general formula (genus) and then becomes the basis
for explaining other criminal acts that are specific (species), both in the provisions in UUPPLH and in other legal provisions (sectoral provisions outside UUPPLH) that regulate criminal legal protection for the living environment [9].

There are 2 (two) licensing concepts, namely: a. An environmental permit is a permit that DIBE offered are to everyone who does business and/or activity requiring Amdal in the context of protection management of the environment as a prerequisite to obtaining a business license and/or activity. b. Business licenses and/or activities are permits issued by professional agencies to conduct business and/or activities. Moreover, both of these concepts have a close relationship with each other. The environmental administration lawsuit occurs because of errors in the process of issuance of state administration decision that one of the bodies or officials of state administration that issued the license and/or activities that are not equipped with environmental permits [10-11].

On the other hand business actors and/or activities that do not implement Article 121 UUPPLH, the business actors and/or activities will not have environmental documents based on Article 73 PP No. 27/2012 that environmental documents are equated as environmental permits. The business actor and/or activity is interpreted as a business actor and/or activity that does not have an environmental permit. This is a violation of environmental permits (Article 76 paragraph (1) UUPPLH) and can be subject to administrative sanctions (Article 76 paragraph (2) UUPPLH). Criminal provisions relating to environmental permits in UUPPLH, namely: a. Business actors who commit criminal acts conduct businesses and/or activities without having environmental permits (Article 109, UUPPLH). b. Crimes committed by the granting official: 1) environmental permit that issues environmental permits without being equipped with EIA or UKL / UP L (Article 111 paragraph (1) UUPPLH); 2) business licenses and / or activities that issue business licenses and / or activities without being equipped with environmental permits (Article 111 paragraph (2) UUPPLH). c. Criminal acts carried out by environmental supervisors (PPLH) who do not supervise compliance with the responsibility of businesses and/or activities against regulations and environmental permits that result in pollution and/or environmental damage resulting in loss of human lives (Article 112 UUPPLH)

4. Conclusions
An environmental permit is a State/State Administration Decree, which functions as a legal instrument and a juridical means to protect and manage the environment and to prevent it as well as the basis for issuing business licenses and/or activities based on UUPPLH. This study suggests that the enforcement of environmental administration in the field of environmental licensing in the form of environmental permits and environmental protection and management permits (PPLH Permits) needs to be carried out in an integrated manner with law enforcement on business licenses and/or activities so that the role of environmental administration can be more optimal in preventing pollution and/or more severe environmental damage, and violations of environmental permits and utilization of criminal law as ultimatum remidum against violations of environmental permits must also be more productive.

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