Deconstruction of the ultimum remedium basic concept on protection and management tropical biodiversity

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Abstract. The biological potential in Indonesia is no longer managed and protected. So far Indonesia has had biologically related laws and regulations, but its implementation is still weak and less effective. Therefore, Law No. 32 of 2009 on Environmental Protection and Management or called UUPLH mentioned the management and protection of biodiversity based UUPLH namely two principles in law of criminal provision, the principle of remedium ultimum which is an effort, and the principle of premium remedium that takes care of the law. So far many mistakes in interpreting the application of the principle of remedium ultimum which is said to make it difficult for law enforcement to enforce environmental criminal laws and can shake law enforcements in carrying out task of environmental law enforcement. In addition, it is also said that the principle of remedium ultimum can also harm the environment due to violations of waste water quality standards, emissions, and disturbances that take precedence is the administration of administrative sanctions, meaning that there is no deterrent effect on perpetrators. Therefore, it is necessary to deconstruct the principle of remedium ultimum in the proper enforcement of environmental criminal law including structuring and enforcement (compliance) which can also be a view of criminal law that can be used as an instrument in the framework of protection and management of tropical biodiversity, especially the environment and can bring consequences for the intertwining of criminal law with administrative law. The results of the research are based on UUPLH that can protect biodiversity by Indonesia and reconstruct the principle of ultimum remedium in environmental law. Research methods using normative legal research on philosophical.

1. Introduction
In Indonesia biodiversity is the capital for development. Forty million Indonesians depend their lives directly on biodiversity. People use more than 6000 species of plants and animals for daily life. For the country itself biodiversity produces considerable foreign exchange [1]. Indonesia is also one of the 12 (twelve) centers biodiversity because it is the largest area in the Center of Indomalaya. Biodiversity has emerged as a new legal issue, when widely exploited by irresponsible parties Therefore it is necessary to provide an important protection given the many violations of biodiversity committed by developing countries with developed countries such as the occurrence of biopiracy against especially in biological diversity, especially medicinal plants committed by developed countries to meet pharmaceutical needs by conducting massive exploration to developing countries whose purpose is taken and researched medicinal plants that are considered high value [2]. The many factors and considerations of the need for protection and management of biodiversity cause all parties to strive to overcome and provide optimal...
protection both through legislation and regulation. In order to achieve these goals, the device of legislation (environmental law) as one of its means. Frequent violations of biodiversity are one of the reasons and considerations why biodiversity needs to be protected. It is also in good agreement with the concept of justifiable development, which is describe the development process that optimizes management, benefits from biological natural resources, human resources, by aligning biological natural resources in development [3]. The constitutional principle relating to the understanding of sustainable development can be implied in the provisions of Article 33 paragraph (4) of 1945 Constitution which states, that:

“The national economy is organized based on economic democracy with the principle of togetherness, fair efficiency, sustainable, environmentally sound, self-reliance, and by maintaining the balance of progress and national economic unity”.

Amendment to Article 33 of 1945 Constitution, expressly relates between national economic development and the environment. So the basic principles of development embraced today must be able to align economic, social, and environmental development in a good and harmonious manner with the importance of environmental preservation. The philosophy and meaning contained in article 33 of the Constitution’45 is very deep, namely the philosophy of "transgeneration". Earth, water and natural wealth that are the basis of the development of the Indonesian nation for the greatest wealthy of the citizen could be achieved if implemented according to principles of sustainable environment and development insight [4]. Wealth guarantee will be able to benefit the current generation and can be enjoyed by future generations if natural wealth does not suffer damage and pollution caused by excessive and unplanned exploitation and exploration and violates the provisions stipulated by Law No. 32 (2009) on Environmental Protection and Management. UUPPLH basically regulates and implements protection in several natural resources such as water, soil, air, rural, coastal and sea, social environment, urban and biodiversity, so to prevent the experience in damage and or pollute from implementation of activities and or businesses, both small and large scale caused by the existence of human actions or behavior. In fact, environmental problems are always human problems that have an impact on human needs, even if they are denied.

Speaking of environmental issues, the definition of environmental law contained in the provisions of Article 1 paragraph (1) of Law No. 4 of 1982 on Environmental Principles Provisions has been updated according to Law No. 23 of 1997 on Environmental Management. This is similar to the understanding of the term environment in Law No. 32 of 2009 on Environmental Protection and Management. In the provisions Article 1 stated that law of environment based on unity of space with the circumstances, power, objects and living beings, including human behavior and their interaction, which affects nature itself, the survival of life, and the welfare of humans and other living beings. Studying definition of environment, the environment elements has the privilege is the inclusion of man and his behavior as a component of the environment. This is because without human behavior, it is impossible to bring the environment towards damage or pollution. Although in reality environmental damage occurs due to nature, but almost certainly caused by the existence of human actions and behavior.

Human behavior towards the environment is dominated by economic considerations, both individual economy and state economy. Economic objectives are even excessive, thus encouraging over exploitation without adequate protection measures. That attitude and behavior is also influenced by a lack of knowledge or rather a lack of public appreciation about the ecological functions of the environment that provide services to humans. As a result there is severe environmental damage and threatens the livelihoods of our country. Therefore, such attitudes and behaviors must be changed to be environmentally friendly that still pays attention to economic development. In maintaining the environment for all human beings in the present and in the future in a sustainable manner, it takes a wise environmental management effort according to Soemarwoto done with the following management system:

1. Instruments of regulation and supervision (set and supervise-ADA).
2. Economic Instruments.
3. Persuasive Instruments
4. Set Yourself (ADS).

The government also implements governing regulations designed to prohibit or restrict activities that damage the environment aimed at the enforcement of environmental laws. In the enforcement of environmental law there are efforts to accomplish observations with the requirements and rules in the provisions of the law individually and generally, through the application (or threat) and supervision of administrative, criminal and civil sanctions. According to Siti Sundari Rangkuti [5], the application of sanctions can be imposed if the laws governing reciprocal relations between humans and other living beings are violated. Environmental law establishes current values and values that are expected to be enforced in the future and can be called "laws governing the environmental order”.

The development of environmental law undergoes a process that was originally known as environmental law (hinderrecht) which is straightforward and contains aspects of courtesy. Then, the development gradually shifted towards administrative law, in accordance with the rapid increase role of ruler as interference against several aspects of life with increasingly sophisticated society. Administrative aspects of environmental law cause the decision of the ruler discretion is set forward in the form of determination (beschikking) of the ruler. In addition to the development of environmental law influenced by civil law and administrative law, environmental law containing values, not apart from the moral values embraced by the local community in the form of customary law or customs. These values are believed that if violated, they will get sanctions called criminal acts and fined.

Criminal sanctions are seen as an effective solution in tackling the problem of crime rate or quantity of crimes that are increasing rapidly in Indonesia, especially crimes related to environmental law. Criminal sanctions are a form of state responsibility to maintain security and order as well as legal protection efforts for its citizens and are the last means of addressing the problem of crime in society. The responsibility of the state is the establishment of a law that is listed criminal sanctions. In the legislator it is necessary to realize that in the inclusion of criminal sanctions in the law required rationality and proportionality. It is also stated in the Criminal Code that none of the act can be criminalized, excluded the criminal rules strength in the legislation (principle of legality). This means that if an act that is against the law has been stipulated in the legislation, then the act must be penalized. Featiring Bassioni's opinion in Teguh Prasetyo [6], criminal can only be justified when there is a need that benefits the community and vice versa is unnecessary, unjustified and dangerous to society. The form of legal regulation made is considered as the instrumentation of law enforcement in the nation life and state. In the instrument of environmental law enforcement is carried out through supervision stipulated in Law No. 32 of 2009 on Environmental Protection and Management, conducted by the Minister, Governor and Regent/Mayor and both Ministers. With the aim that in environmental management can provide legal protection and great benefits for every citizen and can enforce environmental law in restoring the environment into an ecosystem, where the environmental elements are whole unity and influence others in with the productivity, stability and balance of the environment. Ecosystems are problematic because of environmental damage and pollution, thus it has its own character, since the environmental law enforcement was less complicated law enforcement due to environmental law occupies cross between several classical law. Andi Hamzah [7] says that law enforcement is an oversight and application (or with threat) of the use of administrative, criminal, or civil instruments to achieve a determination of the prevailing laws and regulations that apply generally and apply to individuals, and is also part of the last link in the regulatory chain of policy planning on the environment. Environmental law enforcement can be distinguished in three aspects, namely: administrative environmental law enforcement; criminal environmental law enforcement; civil environmental law enforcement).

Law No. 4 of 1982 concerning The Basic Provisions of Environmental Management (UULH) which is valid for approximately 15 years, which is then refined through the issuance of Law No. 23 of 1997 on Environmental Management (UIPLH) can’t be separated from the application of the principle of subsidy of criminal law, which is almost said to be "mandatory” in the enforcement of environmental law and supporting administrative law. The provisions enactment of criminal law must still pay attention to the principle of subsidy such as criminal law was obliged, if sanctions in other field of law, such as
civil sanctions, administrative sanctions and alternative environmental dispute resolution was inefficient. Moreover, the perpetrator error was relatively severe and the consequences of his actions are relatively huge and his actions resulting in public unrest. In other words, the principle of subsidy is not the price of death alias can be ruled out with a number of conditions. The existence of the principle of subsidy in the enforcement of environmental crimes since the beginning has also contained weaknesses in the concept of the principle of subsidy in the formulation of the 1982 UULH which resulted in the abolition of the principle of subsidy in its application. The formulation system in the explanation is not clear, making it difficult to practice. To fix this, the principle of subsidiary is changed to the principle of ultimum remedium.

UUPPLH No. 23 of 1997 has been amended into Law No. 32 of 2009 on Environmental Protection and Management there are two principles for criminal legal facilities, namely the principle of ultimum remedium which is a last resort, and the premium principle of remedium that prioritizes law enforcement through criminal law facilities. The ultimum remedium principle, first used by the Dutch Minister of Justice, Mr. Modderman in 1864, in answering Mr. Mackay's question to the Dutch parliament on the legal basis for the need for a sentence for someone who had committed a violation of the law. On that question Modderman stated: "... that the punishable is first of all violations of the law. This is a condition sine qua non (a condition that should not exist). Second, punishable are violations of the law that in experience cannot be eliminated in other ways. The punishment should be a last resort (ultimum remedium) in Indonesian criminal law enforcement. Besides, the premium remedium principle in the legal context is no longer as a last resort but as the first drug to deter people from committing criminal offenses. Actually every criminal threat has its objections. This does not mean that the criminal threat will be eliminated, but it must always consider the advantages and disadvantages of the criminal threat to really be a cure effort and must keep it from making the disease worse. As a sanction, criminal sanctions should be placed in the last position rather than in front, due to the harsh nature of criminal sanctions that have different implications for each person.

This is in line with the opinion of Wirjono Prodjodikoro [8] whom mentioned that the criminal sanctions nature was the ultimum remedium or ultimate weapon as compared to administrative or civil sanctions. Accordingly, this has given rise to inclination to safe in the conduct of criminal sanctions. Therefore, the ultimum remedium is a term that describes the criminal sanctions nature. Similarly, the opinion of Sudikno Mertokusumo [9] who said that as the last tool in imposing criminal sanctions, therefore should be sought other sanctions for the accused. In criminal law is known a very popular principle among judges namely in dubio pro reo (in case of doubt the judge must decide in such a way as to benefit the accused). In addition, another principle that has something to do with the principle of ultimum remedium is res judicata pro veritate habetur (what the judge decides must be considered correct) and its application is in the court area. The same is also stated by Topo Santoso [10] mentioned that under one of the differences between each criminal law, both private and public laws is the question of sanctions. Criminal sanctions was the imprisonment form and confinement that cause convict must be separated and rival from both society and family. The most draconian sanction is that the death penalty keeps a convicted man apart from his life. then it can be concluded that ultimum remedium is a matter of the application of criminal sanctions options for perpetrators of criminal acts. Because criminal sanctions are harsh and cruel sanctions, therefore, judges are given the option not to use the sanctions that exist in criminal law.

The application of ultimum remedium principle only applies to certain formil crimes, namely emissions, criminalized violations of wastewater quality standards, and disturbances as stipulated in Article 100 UUPPLH. This is reinforced in the explanation of No. 6 UUPPLH, which in essence is that environmental criminal law enforcement can only be applied if the application of administrative law enforcement is considered unsuccessful and the principle of ultimum remedium as a last resort. So far, there have been many errors in interpreting the application of the ultimum remedium principle which is said to make it difficult for law enforcement to enforce environmental criminal law and can shackle law enforcement officials in carrying out the task of environmental law enforcement [11], in addition it is said that the principle of ultimum remedium can also harm the environment because of violations of
wastewater quality standards, emissions, and disturbances that take precedence is the administration of administrative sanctions, meaning that there is no deterrent effect on the perpetrators. Therefore, it is necessary to deconstruct the principle of ultimum remedium in the proper enforcement of environmental criminal law including the arrangement and enforcement (compliance and enforcement) which can also be a view of criminal law that can be used as an instrument in the framework of protection and management of tropical biodiversity, especially the environment and can bring consequences to the intertwining of criminal law with administrative law.

2. Method
In accordance with the formulation of the research, this type of research is conducted with normative research with the consideration that the starting point of research analysis of the legislation governing the enforcement of environmental criminal law and the principle of ultimum remedium. The nature of the research conducted is prescriptive research.

The approach in this study uses 6 (six) types of approaching. First, statute approach (legal approach), which is an approach used to review and analyze the provisions of the Law used to know the principle of ultimum remedium and carried out in order to conduct content analysis of legislation related to the enforcement of environmental criminal law to make the principle of ultimum remedium as the relevant legal norm in the realm of environmental criminal law. Second, conceptual approach is used to examine the basic concept of Ultimum Remedium in environmental criminal law enforcement related to business license. Third, philosophy approach is used to examine the need for the application of ultimum remedium principle to permit violations in environmental criminal law enforcement. Fourth, comparative approach is an approach that is done to take a comparison of the application or functional principle of ultimum remedium in the common law state and civil law state, especially in the enforcement of environmental criminal law. Fifth, the historical approach used to examine the history of the application of the principle of ultimum remedium to violations of environmental permits is now referred to as a permit to seek in the enforcement of environmental criminal law. Sixth, case approach used to examine the application or functionalization of ultimum remedium principles against violations of environmental permits / permits attempted in the enforcement of environmental criminal law. Normative legal research data used is secondary data that is to solve legal issues and at the same time provide a prescription on what should be, needed research sources in the form of primary legal materials and secondary legal materials. Secondary data collection methods are carried out with library research techniques and document studies in various institutions, both government and private institutions. Primary data collection is done with in-depth interview techniques. Data analysis is done by qualitative data analysis method.

3. Discussion
There is indeed no concept of puppetry about the so-called law. Thus, when it is known that the so-called concept is in fact the determinant of a theoretical building, as it is said in the English literature that 'concepts is the building blocks of theories', it must be concluded here that "the absence of concept similarity will have consequences on the absence of a single theory of the so-called law". The law that is conceptualized as 'the rule of law' will certainly be theorized other than the law that is conceptualized as the entire result of the judicial process that leads to the judge's decision', and will also be otherwise if the law is conceptualized in the form of reality or realization that appears as 'regularity of human behavior in the life of society'. This concept in general is nothing but the so-called 'term' in logic and the so-called 'term' in every scientific discussion. Whatever the name in various discussions, it can generally be said per the definition that the 'concept' is a certain symbol used as a representation of objects known and /or experienced by humans in their public life. As a meaningful symbol, every concept settled in the numenon realm, is an imaginative nature of ideas, while the object represented is in the phenomenon realm, is the sensory actual fact-realm. In social science, objects found in social life must also be definitively limited to concepts, and the problems relating to the level of abstraction will
also have to be considered. Thus, social science and legal science are arguably more easily inclined to his ideal image with his blue-sky concepts [12].

Furthermore, the discussion of deconstruction in general which is an action of the subject that dismantles an object composed of various elements that are worthy of dismantling by using deconstruction methods that then the elements become the determinant of a philosophical text. As we often read and observe, that philosophically charged texts are certainly very argumentative, not ambiguous, and the discourses are an attempt at rational organizing of premises, arguments and conclusions to be neatly and rationally intertwined. This deconstruction as an analytical knife to solve the formulation of the first problem is the concept of deconstruction of the basic ultimum remedium in the enforcement of environmental criminal law. In solving the formulation of the first problem, the legal theory used is the theory of criminal law subsidiary. Given the function and characteristics of such criminal law, the existence of new criminal law norms is necessary when other legal norms cannot or do not serve to protect the interests of the public [13].

Criminal law norms are seen as the last effort or means to protect the common good. This function of criminal law is referred to as "ultimum remedium", which is related to the theory of criminal law subsidiary. This principle is one of the popular principles in the application of criminal law in Indonesia, which states that criminal law should be used as a last resort in terms of law enforcement. Van de Bunt suggests that criminal law as ultimum remedium has three meanings, namely:

1) The application of criminal law only against people who violate the law ethically is very severe.
2) Criminal law as ultimum remedium because criminal law sanctions are heavier and harsher than other legal field sanctions, even often bring side effects, then it should be applied if the sanctions of other areas of law are not able to resolve the problem of violations of the law (the last drug).
3) Criminal law as ultimum remedium because administrative officials are the first to know the occurrence of violations. So they are the ones who are prioritized to take steps and actions rather than criminal law enforcement [14].

From this theory, the thing that can be concluded is that if in an act of violation, no other effort can be applied in solving a problem then the criminal law will be applied as a last resort, although there is a strong criminal law urgency in the framework of law enforcement in Indonesia. This is because there are some special rules governing it in addition to criminal provisions or at least in special rules it is possible for there to be other legal instruments, other than criminal law. Therefore, it is very necessary to pay attention to the regulation of administrative norms, when applying criminal provisions in the form of deprivation of rights of freedom (prison) and deprivation of economic rights (fines). To prevent high crime rates, it is appropriate to refer to the principle of subsidies and proportionality in the implementation and enforcement. The characteristics of criminal sanctions in UUPLH which is the regulation of environmental law, underlie the legitimacy of government power through environmental instruments. Thus, the authority of the Government as an environmental manager in supervising legal subjects, namely Individuals and Corporations or Legal Entities can be required to comply with regulatory policies when conducting business activities related to the environment in Indonesia. This is because natural resources are unable to realize sustainable development. To ensure good environmental practices are implemented, regulation, supervision and enforcement are needed to produce a potential economy into a sustainable and environmentally friendly real economy, so that the ultimate goal for people's greatest prosperity and prosperity will be achieved [15]. Classification of acts threatened with criminal provisions in environmental law in Indonesia, based on Article 98-115 of Law No. 32 of 2009 on Environmental Protection and Management has criminal characteristics that contain two principles in the use of criminal legal facilities, namely as The Principle of Ultimum Remedium and Premium Remedium Principle. While in the formulation, there are criminal formil and criminal material contained in UUPLH, namely Article 98 paragraph (2) and (3) and article 99 paragraph (2) and (3) UUPLH, which is part of the concept of criminal law.

UUPLH has a specificity beyond the principles of general criminal law which has sanctions which are "extra" criminal rules. However, the criminal provisions in UUPLH namely imprisonment and
criminal fines are considered inactive, because in its provisions, criminal fines can be punished with a criminal cage that is a characteristic of the general justice system and refers to the KUHAP and Criminal Code. And administrative sanctions that are supposed to be used as Subsidiarity are now changed to Ultimum Remedium and can be combined with a prison sentence as Primum Remedium, because the characteristics of administrative sanctions are preventive aimed at recovery, while prison criminal sanctions are repressive aimed at punishment (injury). However, if the formulation of both sanctions, i.e. criminal and fines are used in an elaborative and constructive manner, then all actions relating to violations and destruction of the environment will be resolved using the concept of criminal administration in the sense of treating as criminal law, which means criminal sanctions are used as tools in law enforcement against violations of administrative norms, so that administrative law as "intermediate law" has an important role. proposed in the law enforcement process in Indonesia.

Deep brush understanding a Criminal law based on a criminal law perspective, criminal law outside the Criminal Code, have "extra" criminal sanctions that not yet understood in the constructive application of law and law enforcement. Thus to resulting in a law enforcement process Criminally, it must be refers to the general provisions and principles of criminal law as well as the general criminal justice process [16]. Therefore, at necessary right specifically resolve the idea of actions that violate criminal norms or criminal norms related to environmental damage. Will the enforcement of prison sanctions alone is not only make natural resources or the environment return to their original condition, but We need a sustainable development program with restoration efforts in dealing with issues related to activities that have an impact on environmental damage. Violations of the nature of destruction and environmental pollution in addition to administrative sanctions as preventive measures can also be accompanied by imprisonment as optimal repressive measures while paying attention to the principle of Ultimum Remedium as an integrated effort in the framework of sustainable development related to environmental issues that are not updated and Government and Law Enforcement officials are obliged to provide public services and Control protection (supervision) also law enforcemen this. Therefore, it is necessary one Concept of Deconstruction or rearrangement in environmental criminal law, namely the new event law (formil law) and the Joint Decision between General Criminal Law Enforcement Officers on the application principle Ultimum Remedium Which is the purpose to prevent overlapping authority. It needs the basis of legitimacy of authority (material law) over the presence of a new institution in a law as an omnibus law. Which is the purpose of integrate law enforcement processes that impact environmental damage due to mining, forestry, fisheries, and other business activities without permits or permit violations. The law enforcement concept in the field of environment (integrated environmental justice system) was integrated by reflecting the principles of environmental and community protection in a synergistic and sustainable manner, good agreement with the theory of criminal law In principle Subsidiarity, where there is an arrangement Ultimum Remedium criminal sanctions must be placed or positioned as a last resort [17].

4. Conclusion
In this work, we discussed the essential to specifically resolved the idea of actions that violate criminal norms relating to environmental damage. Through the Government and Law Enforcement Officials are obliged to provide public services as well as protection of control (supervision) and law enforcement, so that violations of environmental destruction and pollution in addition to administrative sanctions as preventive measures can also be accompanied by imprisonment as a repressive effort of action (simultaneously; compulsive) while paying attention to the principle of Ultimum Remedium. Extensive efforts in the framework of developing sustainable related to environmental problems that are not renewed. Because prison sanctions are not only making natural resources or the environment return to their original condition, but require a sustainable development program. Therefore, R-elevation efforts are needed in dealing with problems related to activities that have an impact on environmental damage. There is also the concept of deconstruction in environmental criminal law, namely the new event law (formal law) and the Joint Decree between the General Criminal Law Enforcement Officer and the Ultimum Remedium principle whose purpose is to prevent overlapping authorities. Therefore, the basis
of legitimacy of authority (material law) on the presence of new institutions in a law as an omnibus law to integrate law enforcement processes that have an impact on environmental damage due to forestry, mining, fisheries, and other business activities without permission or permit violations. In summary, the law enforcement concept in various fields of environment can be integrated by considering the principles of environmental and community protection in a synergistic and sustainable manner.

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