

Implementation of Environmental Law Enforcement in Government Regulation 26/2023 Concerning Management of Sedimentation Products in the Sea

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Abstract

Enforcement of environmental law is an act or process of coercion to comply with the law based on statutory regulations. One of the laws and regulations in which there are rules regarding environmental law enforcement is Government Regulation 26/2023 concerning the Management of Sedimentation Products at Sea. In enforcing environmental law, administrative sanctions alone are not enough, there must be civil and criminal sanctions, moreover, the damage and pollution done to the environment is quite severe and cannot be recovered. This study examines the lack of sanctions in the form of civil and criminal in Government Regulation 26/2023. Using normative research methods the authors find that in enforcing environmental law there must be civil sanctions, especially criminal ones, the use of criminal sanctions as a premium medium can be applied in enforcing environmental law if damage The damage caused is quite heavy and restoration of the damaged environment is difficult to do, especially sea sand which is a non-renewable natural resource discussed in Government Regulation 26/2023. Enforcement of environmental law is important to do for the continuity and welfare of human life and living things other.

Keywords: environmental law, environmental damage, sea sand mining

A. INTRODUCTION

Development is an effort to make changes, but along with the changes, there are positive and negative impacts of development. The positive impact of development can be seen from the progress that has

been achieved, such as technological advances, construction of office buildings, improvements to transportation and communication facilities, increased levels of community welfare, and so on. The negative impacts of development can be seen from the narrowing of agricultural land due to population growth, the construction of factories which cause increasing air pollution, damage to the sea due to mining, and other damages in the environmental sector.

Environmental damage can no longer be said to be damage due to natural causes, it can also be caused by humans who are a significant cause of environmental damage. It cannot be denied that environmental problems that arise and develop due to human factors are much bigger and more complicated than natural factors themselves. Humans with their various dimensions, especially with the mobility factor of growth, reason with all the developments in its cultural aspects, as well as with the factors of the process of time or age that change human character and views, are factors that are more appropriately related to environmental problems. And environmental management issues can be considered one of the main causes of natural disasters in Indonesia. The estuary of all environmental problems is a development that is carried out without regard to environmental balance factors which in turn will cause damage to environmental pollution.

The research carried out by Kartono discusses administrative environmental law enforcement in environmental protection and management laws. In the research carried out by Cartono, the results showed that structurally the institutional environment for enforcing environmental law through environmental monitoring facilities, the PPLH Law does not mandate the formation of a new institution that specifically handles it, as was the case with the Environmental Impact Control Agency (Bappedal) in the past. This construction means that supervision by the State Minister for the Environment (MLNH) must be coordinated with sectoral departments/agencies. Therefore, in the event of an administrative violation of the conditions specified in the Amdal or RKL-RPL which results in the imposition of sanctions for canceling the permit, MLNH must coordinate as early as possible to avoid conflicts between administrative officials. Meanwhile, substantially, environmental supervision needs detailed support regarding statutory regulations

regarding the proportion of supervisors to the area being supervised, reporting standards and frequency of supervision.¹

Research conducted by Komang Ayu Suseni entitled "enforcement of environmental law as an effort to build a clean and healthy environment discusses the obstacles and obstacles in enforcing environmental law including: legal means, namely regarding policies issued which are often inconsistent with the principles of environmental protection and management live in Law no. 32 of 2009, secondly, law enforcement officials, namely limited knowledge and understanding of environmental aspects by law enforcers, is a very dominant obstacle factor in efforts to create a common perception of handling environmental cases, and finally, licensing is one of the problems that causes more problems. opportunities for the development of environmental problems.²

Research conducted by Nina Herlina entitled environmental problems and environmental law enforcement in Indonesia which discusses the implementation of sustainable development and controlled use of natural resources is the goal of environmental management. Environmental management problems can be considered as one of the main causes of environmental damage. 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.³

Of the several studies that have been carried out by previous researchers, none of them discussed the enforcement of environmental laws contained in government regulation 26/2023 concerning the management of marine sedimentation results. This research will focus on examining environmental law enforcement that is not strict with government regulation 26/2023. In this regulation there are only administrative sanctions. Administrative sanctions alone are not enough,

¹ Fakultas Hukum, Universitas Jenderal, and Soedirman Purwokerto, "236-375-1-Pb," no. April (2008): 247–57.

² Komang Ayu Suseni, "Penegakan Hukum Lingkungan Sebagai Upaya Membangun Lingkungan Yang Bersih Dan Sehat," *Pariksa* 5, no. 1 (2021): 1–7.

³ Nina Herlina, "PERMASALAHAN LINGKUNGAN HIDUP DAN PENEGAKAN HUKUM LINGKUNGAN DI INDONESIA Oleh : Nina Herlina, S.H., M.H. *) ABSTRAK," *Unigal.Ac.Id* 3, no. 2 (2017): 1–16.

there needs to be civil and criminal sanctions which must be stated in Government Regulation 26/2023.

Enforcement of environmental law is an act or process of coercion to comply with the law based on the provisions of laws and regulations. One of the regulations in which there is an element of environmental law enforcement is Government Regulation 26/2023 concerning the Management of Sedimentation Products at Sea. It is explained in the regulation that those who violate the provisions will be subject to administrative sanctions, the administrative sanctions contained in Government Regulation 26/2023 are: a) written warning; b) temporary suspension of activities; c) revocation of sea sand utilization permit; d) cessation of activities; and/or e) administrative fines.⁴ There are only administrative sanctions in the regulation is far from enough. In enforcing environmental law, civil and criminal sanctions are also needed as a commitment that protecting the environment, especially regarding non-renewable natural resources such as sea sand, is very important, but in Government Regulation 26/2023, there are no regulations governing sanctions. civil and criminal law in the context of enforcing environmental law.

B. RESEARCH METHOD

The type of research used in this research is normative research. Normative research is research on existing legal principles and principles, this is intended so that researchers can find out as much as possible what is the measuring tool in discussing this research so that they can find the point of truth for this research. If observed in terms of its nature, this research is analytical descriptive, which means that this research can provide a clear and systematic description of the main research problems.

Descriptive research is research that has the objective of providing data as accurately as possible on everything related to environmental law enforcement in Law 26/2023 concerning the Management of Sedimentation Products in the Sea.

⁴ Republik Indonesia and Lembaran Negara, "Laut B.," no. 171404 (2023): 30, [https://peraturan.bpk.go.id/Home/Details/249417/pp-no-26-tahun-2023#:~:text=Peraturan Pemerintah \(PP\) NO.,go.id%3A 21 hlm.&text=ABSTRAK%3A,pengelolaan hasil sedimentasi di laut.](https://peraturan.bpk.go.id/Home/Details/249417/pp-no-26-tahun-2023#:~:text=Peraturan%20Pemerintah%20(NO.,go.id%3A%2021hlm.&text=ABSTRAK%3A,pengelolaan%20hasil%20sedimentasi%20di%20laut.)

C. RESULT AND DISCUSSION

1. Environmental law

Environmental law has an important role in tackling environmental damage. Not only with the rule of law, but environmental law enforcement is also an inseparable part of the context of providing good and correct environmental protection and management. The term environmental law is a translation of several terms such as environmental law in English, milieu recht in Dutch, and surrounding natural law in Malaysian.⁵

Environmental law is interpreted as a law that regulates the environmental order (environment), in this case, it means that the environment includes all objects and conditions, including humans and their behavior that is contained in the space where humans are and affect the survival and well-being of humans and other creatures. Other life. Environmental law is a juridical instrument for environmental management.⁶

2. Environmental Law Enforcement

Enforcement of environmental law is an effort to achieve compliance with the regulations and requirements contained in environmental law provisions that apply in general and individually through supervision and application of sanctions. The word "environmental law enforcement" is defined by G.A Biezeveld as the application of government legal powers to ensure compliance with environmental regulations in various ways, including:⁷Administrative supervision of compliance with environmental regulations (inspections,

⁵ Arvin Asta Nugraha et al., "Jurnal Hukum Tora: Hukum Untuk Mengatur Dan Melindungi Masyarakat" 7, no. 2 (2021): 283–98, <https://doi.org/10.33541/tora.v12i3.1295>.

⁶ Hasanal Mulkan and Serlika Aprita, "Sistem Penegakan Hukum Lingkungan Pidana Di Indonesia," *Justicia Sains: Jurnal Ilmu Hukum* 7, no. 1 (2022): 97–112, <https://doi.org/10.24967/jcs.v7i1.1645>.

⁷ Terjemahan, G.A. Biezeveld, *Course on Environmental Law Enforcement*. Surabaya: Silabus, 1995, hlm. 7.

especially in the field of prevention), administrative action or sanctions in case of non-compliance (corrective activity), investigation of criminal cases of alleged violations (repressive activities), actions or criminal sanctions in the event of a violation (repressive activity).

It is. Civil action (lawsuits) in terms of threatening non-compliance (preventive activities).

Environmental law enforcement can be divided into three aspects, namely administrative environmental law enforcement carried out by government officials; criminal environmental law enforcement carried out by judicial juridical procedures; civil environmental law enforcement as well as "environmental disputes resolution" which is carried out through litigation and non-litigation.

Enforcement of environmental law does not only provide punishment or sanctions to perpetrators of environmental damage but also aims to prevent acts that cause environmental damage, therefore environmental law enforcement is not only repressive but also preventive.⁸ Repressive law enforcement aims to overcome environmental damage and/or pollution by imposing sanctions on perpetrators which can be in the form of criminal sanctions, civil sanctions, or administrative sanctions. Meanwhile, preventive environmental law enforcement aims to prevent environmental damage and/or pollution. In this case, preventive environmental law uses AMDAL (Environmental Impact Analysis) and permits it to be used as a legal instrument.

Arrangements regarding environmental protection and enforcement are contained in Law Number 32 of 2009 which is the third generation of environmental law regulations in Indonesia. This law regulates the systematic protection and management of the environment to achieve environmental balance and human welfare as a whole. In addition, Law Number 32 of 2009 regulates efforts to preserve the environment sustainably and also prevents environmental damage. It contains 3 (three) types of legal sanctions, including:

⁸ S S Rangkuti, "Hukum Lingkungan & Kebijakan Ling Nasional Ed 4," 2020, https://books.google.co.id/books?id=rm_IDwAAQBAJ&newbks=1&newbks_redir=0&printsec=frontcover&hl=id&redir_esc=y#v=onepage&q&f=false.

a) Administrative sanctions

Administrative sanctions are the first legal action given to companies that pollute and destroy the environment; Administrative sanctions have an instrumental function, namely the prevention and countermeasures of prohibited acts, and are primarily aimed at protecting the interests guarded by the violated legal provisions. In Law Number 32 of 2009 concerning Environmental Protection and Management, in Article 7 paragraph (2) administrative sanctions consist of: written warning, government coercion, freezing of environmental permits, revocation of environmental permits, civil sanction.

Civil sanctions are the second legal action given to companies that pollute and destroy the environment. Based on Article 84 of Law Number 32 of 2009 it is explained that for environmental dispute resolution to sue for compensation and or environmental restoration costs, namely: settlement of environmental disputes outside the court, settlement of environmental disputes through courts.⁹

Settlement of environmental disputes outside the court according to Article 85 and Article 86 of Law Number 26 of 2009 concerning the Protection and Management of the Environment states that settlement of environmental disputes outside the court is held to reach an agreement regarding the form and amount of compensation and/regarding certain actions to guarantee no occurrence or recurrence of negative impacts on the environment. This is done voluntarily by interested parties, namely parties who are harmed and cause losses to related government agencies, and can also involve parties who have concerns for environmental management. Settlement through this method is carried out using environmental mediation, the legal consequences of environmental mediation are usually set forth by the parties in the form of a written mediation agreement which is considered legally binding as a contract subject to the provisions of the Civil Code. However, it must be remembered that environmental mediation does not resolve the criminal aspect. What was resolved was only regarding the civil aspect, thus even

⁹ Nina Herlina, "PERMASALAHAN LINGKUNGAN HIDUP DAN PENEGAKAN HUKUM LINGKUNGAN DI INDONESIA Oleh : Nina Herlina, S.H., M.H. *) ABSTRAK."

though the agreement was implemented this would not be an obstacle to carrying out criminal charges.

Settlement of environmental disputes through courts according to Article 87 to Article 93 of Law Number 32 of 2009 concerning the Protection and Management of the Environment states that settlement of environmental disputes through courts is held to settle compensation, environmental restoration, absolute responsibility, expiration date for filing lawsuits, government and regional government lawsuits, community lawsuits, environmental organizations' lawsuits, administrative lawsuits.

1) Compensation

Any unlawful act in the form of pollution and environmental damage that causes harm to other people or the environment, obliges those responsible for a business and/or business activity or the company to pay compensation and/or take certain actions. In addition, the burden to carry out certain actions referred to by the judge can determine the payment of forced money or daily delays in completing certain actions. The legal determination of this provision is a realization of the existing principle in environmental law which is called polluters pay. In addition to being required to pay compensation, polluters or environmental destroyers can also be burdened by judges to take certain legal actions such as restoring environmental pollution and damage.¹⁰

2) Absolute Responsibility

A person in charge of a business and/or activity whose business creates a major and significant impact on the environment that uses hazardous and toxic materials are responsible for the losses incurred without the need to prove elements of guilt.

3) Expired Grace for Filing a Lawsuit

The expiration date for the right to file a lawsuit with the court follows the time limit as stipulated in the applicable provisions of the Civil Procedure Code and is calculated from the time the victim becomes aware

¹⁰ Nina Herlina.

of environmental pollution and/or damage. Expiration provisions do not apply to pollution and/or activities that use hazardous and toxic materials and/or produce hazardous and toxic waste.

4) Government and Regional Government Claim Rights

Government agencies and local governments responsible for the environment have the authority to file claims for compensation and certain actions against businesses and/or activities that cause environmental pollution and damage resulting in environmental losses.

5) Community Claim Rights

The community has the right to file a class action lawsuit for their interests and also the interests of the community if they experience losses due to environmental pollution and damage.

6) Environmental Organizations Claim Rights

In the context of carrying out the responsibility for protecting and managing the environment, environmental organizations have the right to file lawsuits in the interest of preserving environmental functions. The right to file a lawsuit is limited to demands to take certain actions without any claims for compensation, except for real costs or expenses.

7) Administrative lawsuit

Everyone can file a lawsuit against a state administrative decision if a state administrative agency or official issues an environmental permit. Business licenses that do not have the mandatory AMDAL and are not equipped with AMDAL documents and are not equipped with UKL-UPL documents for business actors or business activities.¹¹

c. Criminal sanctions

Criminal sanctions are the last aspect of legal action. Criminal sanctions are given to companies that pollute and damage the environment, and have the function of educating companies regarding the

¹¹ Nina Herlina.

actions committed, especially aimed at protecting the public interest which is guarded by the violated legal provisions. In addition, its function is also to prevent or hinder potential actors from carrying out irresponsible behavior toward the environment. To be able to impose criminal penalties for environmental cases at companies, regulations are also applied like other criminal cases, namely the principle of legality, meaning that it must be based on the existing law at the time the month was carried out and the mistake must be proven.

Criminal provisions are contained in Article 97 to Article 120 of Law Number 32 of 2009 concerning Environmental Protection and Management.

Article 98 of Law Number 32 of 2009 concerning Environmental Protection and Management states:

1) Anyone who intentionally commits an act that results in exceeding the air quality standard, ambient quality standard, water quality standard, seawater quality standard, 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 Rp. 3,000,000,000.00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah).

2) If the act referred to in paragraph (1) results in an injury to a person and/or endangers human health, the criminal shall be punished with imprisonment for a minimum of 4 (four) years and a maximum of 12 (twelve) years and a fine of at least Rp. 4,000,000,000.00 (four billion rupiah) and a maximum of Rp. 12,000,000,000.00 (twelve billion rupiah).

3) If the act referred to in paragraph (1) results in a person being seriously injured or dead, the criminal shall be punished with a minimum sentence of 5 (five) years and a maximum of 15 (fifteen) years, and a minimum fine of Rp. 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 15,000,000,000.00 (fifteen billion rupiah).¹²

If an environmental crime is committed on behalf of a business entity or company, criminal charges, and criminal sanctions will be imposed on the business entity or the person giving the order to commit the crime, or the person acting as the activity leader in the crime.

¹² Law Number 32 of 2009 Concerning Environmental Protection and Management States.

The criminal threats as stated in the Articles of Law Number 32 of 2009 concerning the Protection and Management of the Environment are imprisonment and fines. Apart from that, there are additional criminal or disciplinary actions for business entities in Article 119 in the form of: Deprivation of profits derived from criminal acts, closure of all or part of the place of business and/or activity, correction due to crime, obligation to do what is neglected without rights.

It is. Placement of the company under guardianship for a maximum of 3 (three) years.¹³

In applying or imposing sanctions, of course, they have their objectives, according to Article 2 of the Minister of Environment No. 2 of 2013 the purpose of imposing sanctions is: To protect the environment from pollution and/or damage resulting from a business and/or activity, to overcome environmental pollution and/or damage, to restore the quality of the environment caused by environmental pollution and/or damage, to provide a deterrent effect for business actors and/or activities that violate laws and regulations in the field of environmental protection and management and the provisions contained in environmental permits.

3. Principles of Environmental Law

Environmental protection and management are carried out based on the principle of state responsibility, which means that the state guarantees that natural resources will provide maximum benefits for the welfare and quality of life of the people, both present and future generations.¹⁴

The state guarantees the right of every citizen to a good and healthy environment. The state is obligated to take precautions against the utilization of natural resources which may cause environmental pollution

¹³ Nina Herlina, "PERMASALAHAN LINGKUNGAN HIDUP DAN PENEGAKAN HUKUM LINGKUNGAN DI INDONESIA Oleh : Nina Herlina, S.H., M.H. *) ABSTRAK."

¹⁴ Syamsul Arifin, "*Hukum Perlindungan dan Pengelolaan Lingkungan Hidup di Indonesia*," Jakarta: PT Sofmedia, 2012, 65-65.

and/or damage. The following are the principles that must be considered in enforcing environmental law¹⁵

First, the principle of sustainability and sustainability. This principle means that every citizen has obligations and responsibilities towards future generations and each other in one generation by making efforts to preserve the ecosystem.

Second, the principle of harmony and balance. This principle is interpreted in the framework of environmental utilization and must still pay attention to various aspects such as aspects of economic, social, and cultural interests, protection, and preservation of ecosystems.

Third, the principle of integration. This principle can be interpreted as protecting and also managing the environment by combining various elements or uniting various interconnected components.

Fourth, the principle of benefits. The principle of benefit is that all development activities carried out must be adjusted to the potential that exists in natural resources and the environment to improve people's welfare and harmonize human dignity with the environment.

Fifth, is the principle of justice. The principle of justice is that the protection and management of life must reflect proportional justice for all citizens.

Sixth, is the precautionary principle. This principle is interpreted as an uncertainty regarding the impact caused by a business and/or activity due to limited mastery of science and technology which cannot be used as an excuse for postponing steps to minimize or avoid threats to environmental damage.

Seventh, the principle of ecoregion. This principle is interpreted as environmental protection and management must still pay attention to the characteristics of natural resources, ecosystems, geographical conditions, local community culture, and local wisdom.

Eighth, the principle of biodiversity. The principle of biodiversity is that the protection and management of the environment must pay attention to integrated efforts to maintain the existence, diversity, and

¹⁵ Nugraha et al., "Jurnal Hukum Tora: Hukum Untuk Mengatur Dan Melindungi Masyarakat."

sustainability of living natural resources which consist of vegetable natural resources and also animal natural resources which form a single unit forming an ecosystem.

Ninth, the principle of polluters pays. Every party responsible for a business and/or activity that causes environmental pollution and damage must bear the costs for environmental restoration.

The tenth is the participative principle. Every community has the right to play an active role in the process of making decisions and implementing environmental protection and management.

Eleventh, is the principle of local wisdom. In the context of protecting and managing the environment, it is obligatory to pay attention to the values that apply in the governance of the community.

Twelfth, the principle of good governance. To protect and manage the environment, it must be based on the principles of participation, openness, accountability, efficiency, and fairness by the government.

Thirteenth, is the principle of regional autonomy. The Government and Regional Governments have the right to regulate and manage their governmental affairs in the field of environmental protection and management and are obliged to pay attention to the specificities and diversity of regions within the framework of the Unitary State of the Republic of Indonesia.¹⁶

4. Obstacles to the Enforcement of Environmental Laws

In managing the environment, everyone has the same right to enjoy a good and healthy environment. Many regulations have been issued by the government, but in practice, there are still many obstacles and obstacles encountered. Constraints and obstacles that lie in the factors, namely:¹⁷

a. Legal Facility

Issued policies are often inconsistent with the principles of environmental protection and management in Law Number 32 of 2009.

¹⁶ Nugraha et al.

¹⁷ Suseni, "Penegakan Hukum Lingkungan Sebagai Upaya Membangun Lingkungan Yang Bersih Dan Sehat."

This occurs because to enforce environmental law, the human factor as the executor determines more success than the legal factor itself.

b. Law Enforcement Officers

In resolving a problem, one is always confronted with one's level of professionalism, as well as those involving environmental cases which are constrained because the number of professional law enforcement officers is still very limited. Limited knowledge and understanding of environmental aspects by law enforcers is a very dominant obstacle factor in efforts to create a common perception of handling environmental cases.

c. Licensing

One of the problems that gives more opportunities for the development of environmental problems is in terms of licensing. Because Article 36 of Law Number 36 of 2009 can still be bypassed by entrepreneurs, especially if the permit in question is a permit granted by the Ministry of Industry after a company is ready to produce.

d. Legal Awareness

Legal awareness is the awareness of a person or group of people about the applicable rules. Therefore, it is appropriate for us to develop a conscious attitude towards the law. Community participation, according to the law on environmental management, is a major component, in addition to the existence of law enforcers, to achieve legal objectives through law enforcement means, by enforcing environmental law. Developing a society that is aware of the law begins with the image of society towards the surrounding environment.

e. Environmental Impact Analysis System (AMDAL)

The process of transparency and the mechanism for the openness of AMDAL documents to the community did not work as expected, and even the (affected) community did not know for certain that activity was taking place.¹⁸

5. Enforcement of Environmental Law in Government Regulation 26/2023 concerning Management of Sedimentation Products in the Sea

Law enforcement is the process of carrying out efforts to uphold or function legal norms in a real way as a guideline for behavior in legal

¹⁸ Suseni.

relations in the life of society and the state.¹⁹ This research will discuss environmental law enforcement in Government Regulation 26/2023 concerning the Management of Sedimentation Products in the Sea.

The law enforcement aspect in Government Regulation 26/2023 is not strict and complete, nor is it by Law Number 32 of 2009. In Government Regulation 26/2023 there are only administrative sanctions listed in Article 23 where the administrative sanctions are: written warning, temporary suspension of activities, revocation of sea sand utilization permit, termination of activities; and/or administrative fine.

In Government Regulation 26/2023, there are no civil sanctions or criminal sanctions, even though civil and criminal sanctions are very important sanctions and must be listed. This marine product sedimentation activity is very intense in direct contact with the community and natural preservation, so the government in this case must pay attention and side with the people by adding civil and criminal sanctions to Government Regulation 26/2023.

Mining activities carried out at sea have been stopped with the issuance of Presidential Decree Number 33 of 2002 which in his considerations explained that the mining, dredging, transporting, and trading of sea sand which has been going on uncontrollably, has caused damage to coastal ecosystems in the sea, deterioration fishermen and fish cultivation and the fall in the price of sea sand.²⁰

When re-making regulations related to sea sand mining, the considerations in Presidential Decree Number 33 of 2002 should be taken into consideration when the process of making Government Regulation 26/2023 anticipates a similar problem recurring.

As we know, Indonesia has experienced a dark history related to the export of sea sand where the negative effects of mining caused small islands to sink due to abrasion, fishermen's catches decreased, in 1976-2002 the waters of the Riau Islands were dredged to reclaim Singapore, the Batam Sea damaged, and Indonesia suffers losses of hundreds of trillions a year.²¹

As one example, an incident involving the burning of a boat by the community in the coastal area of Labuhanmaringgai District, East Lampung Regency, which allegedly belonged to a company that occurred on Saturday, March 7 2020 was a form of rejection by the community

¹⁹ Hukum, Jenderal, and Purwokerto, "236-375-1-Pb."

²⁰ Keputusan Presiden Republik Indonesia Nomor 33 Tahun 2002 tentang Pengendalian dan Pengawasan Pasir Laut.

²¹ <https://www.youtube.com/watch?v=IirtIKty9lc&feature=youtu.be> was accessed on June 15, 2023.

towards efforts to exploit sea sand. This rejection by the fishing community is part of the struggle to uphold their constitutional rights. The right to a good and healthy environment and waters, and to consider the sustainability of fishermen's lives.

In addition, the Sekopong Island Coastal community, Syahbandar Waters, and its surroundings also rejected the sea sand mining activity plan because it would damage the crab farming ecosystem, and have the potential to sink Sekopong Island.

Some of the real and visible negative impacts of sea sand mining are as follows: Increased coastal abrasion and beach erosion, decreasing quality of marine and coastal waters environment, increasing beach pollution, decreased quality of sea water causing increasingly turbid seawater, damage to fish spawning areas and nursery areas, generate turbulence which causes an increase in suspended solids levels at the bottom of sea waters, increasing the intensity of tidal floods, especially in coastal areas where there is sea sand mining, damaging coral reef ecosystems and the fauna that inhabits these ecosystems, the higher the energy of waves or waves that hit the coast or sea. This is because the bottom of the waters, which previously contained sea sand, has become very steep and deep so the energy waves hitting the shoreline will be higher due to reduced damping by the bottom of the coastal waters, the emergence of social conflict between the pro-environmental community and sea sand miners.²²

Of the several negative effects that the authors have described above, presumably only administrative sanctions are not enough, civil and criminal sanctions are needed. Enforcement of environmental law in civil law includes the settlement of environmental disputes outside and inside the court. Settlement of environmental disputes in natural courts includes class action lawsuits, environmental organizations' lawsuits, or government lawsuits. Through this method, apart from providing a deterrent effect, it will also increase the awareness of all stakeholders about the importance of protecting and managing the environment for the sake of future generations.²³

The act of destroying and polluting the environment is an act that can directly or indirectly endanger human life and soul. Criminal law aims to protect human life and honor and property. When environmental

²² <https://www.unila.ac.id/dampak-penambangan-pasir-laut/> was accessed on June 16, 2023.

²³ Lidya Suryani Widayati, "Ultimum Remedium Dalam Bidang Lingkungan Hidup," *Jurnal Hukum Ius Quia Iustum* 22, no. 1 (2015): 1–24, <https://doi.org/10.20885/iustum.vol22.iss1.art1>.

pollution and destruction hurts human life, the act is seen as an act that is contrary to morality and deserves to be subject to criminal sanctions.²⁴

Criminal responsibility is a consequence of criminal acts committed against the environment, both intentional acts (*opzet*) and negligence (*culpa*). Criminal acts can be characterized by violations of formal criminal law which are called formal offenses. In addition, criminal acts are also distinguished by the criterion that there must be a result of an act committed, which is called a criminal causal relationship. Criminal acts against the environment. Criminal acts against an environment are also referred to as environmental offenses.

In the environmental crime approach, several principles underlie the application of environmental criminal law. These principles are as follows:

1) The principle of legality, namely the existence of legal certainty and clarity and sharpness in formulating criminal law and the formulation of sanctions. So this needs to be linked to the accuracy of the criminalization process and all its requirements, such as the existence of clear victims or losses and the nature of enforcement or coercion of the formula.

2) Environmental criminal law must take into account the principles of sustainable development, namely not to sacrifice the rights of future generations to enjoy a healthy environment.

3) The principle is that if a hazard or threat of serious and irreversible damage occurs, imperfect scientific certainty should not be used as a reason for postponing effective action to prevent environmental damage. This principle is referred to as the precautionary principle.

4) The principle for achieving the goal of punishment is to educate the public about the moral wrongs associated with prohibited behavior and prevent potential perpetrators from behaving irresponsibly towards the environment.

5) The principle of restraint, as one of the conditions for criminalization, is that civil and other administrative sanctions are not effective in dealing with environmental problems.

According to Jaro Mayda in *The Penal Protection of the Environment*, criminal sanctions in environmental protection are used as an *ultimum remedium*. Jaro Mayda said, in the United States criminal

²⁴ Widayati.

prosecution is the end of a long chain, which aims to eliminate or reduce adverse effects on the environment. These links are grouped as follows: Policy determination, design, and planning, environmental impact statement, regulations on minimum standards or guidelines, licensing procedures; administrative decisions on violations, determination of deadlines, and final days for compliance with regulations, civil lawsuits to prevent or inhibit infringement, assessment of fines or damages, community lawsuits to force or accelerate the government to take action, claims for compensation, criminal prosecution.

For our country, the chain process above is still far from sufficient. This is because in our country such technical ideals still collide with factors in the form of an environmental management/development system such as an environmental impact analysis system; environmental quality standard system; industrial systems that are not yet adaptive to environmental regulations; unskilled personnel (manpower skills); technological capabilities; installer; inadequate facilities and finances; management of policies and law-making systems that are still simple; a bureaucracy that has not been simplified; people who are not yet literate, both in terms of responsibility and environmental morality, as well as in terms of the utilization of existing rights. However, regardless of our existence, the process described above is ideal if it is gradually considered and implemented in our country.

Criminal sanctions in enforcing environmental law depend heavily on administration. Andi Hamzah stated that the first post in defending and maintaining environmental laws rests with administrative officials because they are the ones who issue permits and they are the first to know if there is no permit or the conditions in the permit have been violated. The nature of the dependence of criminal law on administrative law in environmental cases in the position of criminal law can be categorized as a subsidiary function. This means that the application of criminal law can be enforced in environmental cases by first fulfilling the requirements of the administrative rules that have been violated. In other words, the first application of administrative sanctions and then criminal sanctions. This requirement actually cannot be separated from the object of environmental cases that are violated. Thus the application of criminal law can be seen from case to case if an act that violates an environmental

object meets the requirements to be called a criminal act then the judicial process can be continued.²⁵

In another discourse, Andi Hamzah stated:

However, this does not mean prioritizing its application (administrative law over criminal law) against violations of environmental law. What if the administrative official is reluctant to act and pretends not to know of any violations, even if he is involved or has an interest in the company that violates it? In cases like this, it is the criminal law instrument that should be applied in the premium medium. The choice falls on criminal law too, if the damage cannot be repaired or recovered, for example cutting down a tree, killing a protected bird or animal, or including irreparability. Repair or restoration of such damage cannot be done physically.

Environmental crimes in the past can be considered as *ultimum remedium* but international demands require that the criminal function in environmental crimes be *premium remedium*.²⁶ The Council of Europe Resolution 77 (28) emphasizes the need for the contribution of criminal law in the context of protecting the environment. UN General Assembly Resolution No. 45/121 of 1990 also adopted a resolution on environmental protection with criminal law proposed by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders. Likewise, the recommendation from the AIDP Preparatory Colloquium on the Application of Criminal Law to Crime Against the Environment in Ottawa, Canada (1992) emphasized the need to consider the use of criminal law to protect environmental sustainability. Then in March 1994, in Portland, Oregon, USA, the International Meeting of Experts on Environmental Crime was held. The meeting discussed the use of criminal sanctions within the framework of international, regional, and domestic protection which then resulted in The Portland Draft.²⁷

²⁵ N.H Siahaan, "Hukum Lingkungan Dan Ekologi Lingkungan," *Erlangga: Jakarta*, 2004, 521.

²⁶ Muladi, "Beberapa Catatan dalam RUU KUHP , dalam Lembaga Studi dan Advokasi Masyarakat (ELSAM), Beberapa Tulisan Terkait Kebijakan Kriminal dalam RUU KUHP,". Jakarta, ELSAM, 2006, 7.

²⁷ Muladi, "Demokratisasi, Hak Asasi Manusia, dan Reformasi Hukum di Indonesia," Jakarta, Habibie Center, 2002, 94.

According to Muladi, the role of criminal law in protecting the environment is increasingly important. Even in cases of severe environmental pollution and destruction, its nature as a "premium remedium" is increasingly visible. Likewise Alvi Syahri who stated that ultimum remedium can be waived in the event that the crime committed is a violation of subjective rights and the interests of the wider community. Even in the Netherlands, the opinion that the application of criminal law constitutes an ultimum remedium has been abandoned, because this has given rise to disputes between administrative officials and public prosecutors about when to use the ultimum remedium (criminal law).²⁸

In reality, criminal sanctions and administrative sanctions cannot be clearly distinguished so that they bring certain consequences as follows. First, according to G. Drupsteen and C.J Kleijs Wijnnobel, the principle of priority cannot be enforced, in the sense of prioritizing law enforcement efforts through administrative law over law enforcement efforts through criminal law means. Van der Bunt has shown that the nature of criminal law as ultimum remedium has various meanings. However, apart from the effectiveness of sanctions and the element of imposition of suffering, administrative sanctions can still be distinguished quite clearly from criminal sanctions. Apart from that, practical considerations also need to be considered, for example the capacity/capability of enforcing environmental laws. In this regard, the limited ability/capacity to carry out investigations and prosecutions means that priorities must be determined. According to Drusteen and Wijnnobel, in this case, ultimum remedium does not have to be placed last. Factors that determine priority setting include the level of seriousness of the crime, the nature/character of the crime and the possibility of law enforcement by the government or the judiciary.²⁹

²⁸ Widayati, "Ultimum Remedium Dalam Bidang Lingkungan Hidup."

²⁹ From jurnal Lidya Suryani, G. Drupsteen dan C.J. Kleijs Wijnnobel, *Upaya Penegakan Hukum Lingkungan Melalui Hukum Perdata, Administratif, Dan Hukum Pidana*, dalam Faure J.C. Oudijk, D.D. Schaffmeister, *Pemikiran Mengenai Hukum Pidana Lingkungan dalam Teori dan Praktek*. Bandung, Citra Aditya Bakti, 1994, 19.

Environmental problems in the form of pollution and damage are increasingly complicated, this can be seen by the decreasing quality of the environment in several regions in Indonesia which of course can potentially threaten the continuity and sustainability of human life and other living things. With every problem that occurs, Government Regulation 26/2023 should include not only administrative sanctions, but must contain civil sanctions, especially criminal sanctions.

D. CONCLUSION

Enforcement of environmental law has the objective of imposing penalties and sanctions on perpetrators of environmental destruction. In Government Regulation 26/2023 concerning the Management of Marine Sedimentation Products, there are only administrative sanctions, if environmental damage is severe enough and the damaged environment cannot be renewed, the penalty in the form of administrative sanctions will not have a deterrent effect.

Acts of destruction and pollution of the environment are actions that can directly or indirectly harm human life and soul. So in Government Regulation 26/2023 concerning Management of Marine Sedimentation Products, civil sanctions, especially criminal sanctions, should be included. Criminal sanctions aim to protect human life and honor and property. When environmental pollution and damage has a negative effect on humans, the act is seen as an act that is contrary to morality and deserves to be given a criminal sanction. Imposing criminal sanctions against environmental damage and environmental pollution, especially against non-renewable natural resources such as sea sand is not enough, civil and criminal sanctions must also be provided so that the environment is properly maintained.

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- ³⁰ Hukum, Fakultas, Universitas Jenderal, and Soedirman Purwokerto. "236-375-1-Pb," no. April (2008): 247–57.
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³⁰ "Hukum Lingkungan Dan Ekologi Pembangunan - Google Books," accessed November 17, 2023, https://www.google.co.id/books/edition/_/ae7qLHtmcW4C?hl=id&gbpv=1&pg=PA169&dq=hukum+lingkungan+dan+ekologi+pembangunan.

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