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[Amiq *, Vol.6 (Iss.6): June 2018] ISSN- 2350-0530(O), ISSN- 2394-3629(P) (Received: Apr 20, 2018 - Accepted: June 19, 2018) DOI: 10.5281/zenodo.1299906
Http://www.granthaalayah.com ©International Journal of Research - GRANTHAALAYAH [22] Social ADMINISTRATIVE SANCTION IN ENVIRONMENTAL LAW DR. H. Bachrul Amiq, S.H., M.H. *1 *1 Dr. Soetomo University, Indonesia Abstract Enforcement of administrative sanctions is part of the enforcement of administrative environmental laws.

Law enforcement of the administrative environment itself can be done in a preventive and repressive manner. Administrative law enforcement that is preventive is done through supervision, while repressive law enforcement is done through the application of administrative sanctions. Supervision and application of administrative sanctions aims to achieve the adherence of the public to the legal norms of the administrative environment.

Good supervision as part of preventive environmental law enforcement will prevent the violation of administrative law norms. Thus, environmental pollution resulting from such breaches can be avoided. This is better than the enforcement of repressive administrative sanctions after the offense. However, it does not mean that the review of enforcement of administrative sanctions is unimportant. Keywords: Environmental; Sanction; Administrative; Law.

Cite This Article: DR. H. Bachrul Amiq. (2018 ADMINISTRATIVE SANCTION IN ENVIRONMENTAL LAW International Journal of Research - Granthaalayah, 6(6), 22-37. https://doi.org/10.5281/zenodo.1299906. 1. Introduction When preventive law enforcement does not achieve the goal or in other words still violations despite strict

supervision, repressive law enforcement through the implementation of administrative sanctions is absolutely necessary.

It aims to provide forcible attempts to violators of administrative law for its actions that cause pollution or environmental damage. So, even if supervision is done very well, it is still very possible that the violation occurs, while the offense must be followed by the application of sanctions. Without the application of administrative sanctions, the rules are merely writings that have no meaning, which can be violated by anyone.

The application of administrative sanctions is also part of consistency in enforcement of environmental law. In addition to aiming to achieve compliance with law, supervision can also identify the occurrence of violations early, so that if there is a violation of law then the implementation of administrative sanctions can be done immediately. Thus, between supervision as a preventive effort and the [Amiq *, Vol.6 (Iss.6): June 2018] ISSN- 2350-0530(O), ISSN- 2394-3629(P) (Received: Apr 20, 2018 - Accepted: June 19, 2018) DOI: 10.5281/zenodo.1299906 Http://www.granthaalayah.com ©International Journal of Research - GRANTHAALAYAH [23] application of administrative sanctions as a repressive effort is a whole process in enforcing environmental administration law.

In relation to the prevention of environmental pollution, the application of administrative sanctions has several advantages when compared with other types of sanctions, both criminal sanctions and civil sanctions. Criminal sanctions are directed at violators to cause a sense of deterrent or sorrow. Civil sanctions namely the payment of compensation is directed to the victim for the loss suffered as a result of the unlawful act.

Indemnification for victims can not restore the contaminated environment. In contrast to the objectives of these two sanctions, administrative sanctions are directed to the prevention and cessation of violations as well as the restoration of the environment which is damaged or polluted by the actors' acts.

Law enforcement of administrative environment in the form of supervision and implementation of administrative sanction in UUPPLH has been regulated in Chapter XII of the second part covering Article 76 to Article 83 UUPPLH, as follows: Article 76 1) The minister, governor or regent / mayor shall impose administrative sanction to the party responsible for the business andlor activity if under surveillance found violation of the environmental permit.

2) Administrative sanctions consist of: written warning; government coercion; freezing of environmental permits; or Revocation of environmental permits. Implementation of

administrative sanctions as set forth in the above article is the authority possessed by administrative officials, in this case the Minister as the official of the Central Government.

In addition, local officials (Governors and Regents / Mayors may also apply - in the sense of imposing administrative sanctions in accordance with their powers.) Even if the authority of local officials (Governors or Regents / Mayors) is not used or not implemented, then the application of such administrative sanctions may be Minister as the official of Central Government This is regulated in Article 77 UUPLH which states: The Minister may apply administrative sanctions to the party responsible for the business andlor activity if the Government considers the local government to intentionally not impose administrative sanctions on serious violations in the field of environmental protection and management ".

Implementation of administrative sanctions imposed by administrative officials does not eliminate the responsibility of employers and / or activities that violate environmental law for environmental restoration and / or criminal responsibility. This means that if in the acts or activities that cause damage or environmental pollution there are elements of criminal, then still be accounted for criminally.

In addition to the company as a legal entity conducting activities or businesses that cause damage and pollution of the environment, can also be subject to administrative sanctions in the form of [Amiq *, Vol.6 (Iss.6): June 2018] ISSN- 2350-0530(O), ISSN-2394-3629(P) (Received: Apr 20, 2018 - Accepted: June 19, 2018) DOI: 10.5281/zenodo.1299906 Http://www.granthaalayah.com ©International Journal of Research - GRANTHAALAYAH [24] freezing or revocation of permits.

Freezing or revocation of permits is made if the employer or person in charge of the activity does not exercise government coercion as one form of administrative sanction that has previously been imposed. It is stated in Article 79 of UUPPLH which states: "The imposition of administrative sanctions in the form of freezing or revocation of environmental permit as referred to in Article 76 paragraph (2) letter c and letter d shall be done if the party responsible for the business andlor activity does not exercise the government's coercion".

The use of the Government's free authority in imposing administrative sanctions as stipulated in the old UUPLH, is very likely to result in arbitrary acts or abuse of authority. Moreover the application of administrative sanctions is a governmental act that is giving the burden to the community or the offender. Therefore, the application of sanctions must be done properly and accurately, that is based on the law, both written in

legislation, and on the law that is not written in this case the Principles of Good Governance (AAUPB).

The improper application of sanctions allows for administrative suits from the public or violators against the Government. Implementation of administrative sanctions in cases of environmental pollution is one form of governmental acts committed in the framework of enforcement of environmental law. Therefore, the theoretical study on the application of administrative sanctions can not be separated from the discussion of the acts of government.

The acts of government include all acts committed by the administrative organs in order to carry out government duties. Government duties include all state activities beyond the formation of laws and the judiciary. This is parallel to the notion of "besturen" or government in the strict sense.

Governance in the broad sense (regering) includes making regulations (regel geven), government in the sense of narrow (besturen), and judge (geschil beslechting). In relation to the legal hearing into public and private law, the Government's legal actions can be divided into two, namely public legal action and private legal action.

Furthermore, public legal acts are divided into two, namely the public legal act of one-sided (eenzijdige publiekrechtelijke handelingen) and the act of public law of a square (tweezijdige publiekrechtelijke handelingen). In relation to the application of administrative sanctions, the related governmental act is a one- sided public legal act.

Implementation of administrative sanctions is an act that is based on public authority and is an act unilaterally committed by the Government. As suggested by Van der Wel as quoted by E. Etrecht that the act of one-sided public law is an act of government carried out on the basis of a special power owned by the Government. This action is named "beschikking".

In the Indonesian language has been used officially in Law No. 5 of 1986 on the State Administrative Court in terms of state administrative decisions. In the midst of the demands of clean government, it is very relevant to note here that clean government can be seen from the actions taken. Governance is a concrete form of government duties.

From the aspect of the relationship between the government and the people, the act of government is the root of the dispute between the government and the people. [Amiq *, Vol.6 (Iss.6): June 2018] ISSN- 2350-0530(O), ISSN- 2394-3629(P) (Received: Apr 20, 2018

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[25] Based on this, a clean government must be realized in every action based on the law (rechtmatig).

Every act of government should be "rechtmatig" so that every act in decision-making in the form of administrative sanctions, the government should pay attention to the principle of legitimacy of government (rechtmatigheid van bestuur). Thus, as far as possible avoid the occurrence of disputes between the government and the people. 2.

Administrative Sanctions in the Protection Laws and Management of the Living Environment Implementation of administrative sanctions can not be separated from the general environmental policy aimed at realizing environmentally sustainable development by ensuring legal certainty and providing protection to the right of everyone to get a good and healthy environment as the objective in UUPPLH (Law Number 32 Year 2009).

In Article 3 UUPPLH mentioned that environmental protection and management aims [17]: protect the territory of the Unitary State of the Republic of Indonesia from pollution and / or environmental damage; ensure safety, health, and human life; ensure the survival of living beings and the preservation of ecosystems; preserving environmental functions; achieve harmony, harmony, and environmental balance; ensuring the fulfillment of justice of present and future generations; guarantee the fulfillment and protection of the right to the environment as a part of human rights; controlling the wise use of natural resources; realizing sustainable development; and Anticipating global environmental issues.

The environmental policy as regulated in Article 3 of the above UUPPLH can be pursued by various means or instruments that are both prevention of pollution and environmental restoration. In UUPPLH, several environmental policy instruments have been partially supported by implementing regulations, such as environmental permits and environmental standards, and environmental restrictions and obligations.

In legal theory, it has become a standard formulation that applies to prototype rule of law which consists of two parts namely legal requirements and consequences. The terms section contains about a particular event, while the second contains the legal consequences associated with that particular event. Such a rule of law is called a hypothetical provision, because the legal effect of the second activity will occur only if the conditions in the first part are met (IBID).

Implementation of administrative sanctions is one form of Government action based on a distinct administrative authority, because no judicial procedure is necessary to implement it and is unilateral. Such actions in administrative law are called decisions. As stated by Van der Pot and Van Vollenhoven that: "Decisions are unilateral legal actions in the sphere of government, carried out by a body of government on the basis of its extraordinary authority" (W.F. Prins, Kosim Adisapoetra, 1983: 42) [8].

The characteristic characteristic of a decision is its individual-concrete nature (Philip M. Hadjon, 1993: 124) [2]. Individual means that decisions are directed only at [Amiq *, Vol.6 (Iss.6): June 2018] ISSN- 2350-0530(O), ISSN- 2394-3629(P) (Received: Apr 20, 2018 - Accepted: June 19, 2018) DOI: 10.5281/zenodo.1299906
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[26] specific people who are explicitly mentioned in them, whereas concrete relates to events or deeds that occur.

Government Coercion Government Coercion is regulated in article 80 of UUPPLH. Under the aforementioned article, the meaning of government coercion may be the temporary suspension of production activities, the transfer of production facilities, the closure of sewerage or emissions, dismantling, seizure of potentially provoking goods or devices, violations, suspension of all other activities and aims to stop violations and restore environmental functions.

The meaning of government coercion is what is known in Article 143 of Law Number 32 Year 2004 regarding Regional Government with the term "Coercion of Law Enforcement or the Coercion of Legal Maintenance". Elucidation of Article 143 paragraph (1) confirms that the meaning of "law enforcement cost" in this provision constitutes additional sanction in the form of imposition of fees to violators of Regional Regulations other than the provisions set forth in the criminal provisions.

Regardless of the different terms mentioned above, there are several attributes attached to government coercive sanctions as follows: 1) Government coercion is basically a concrete act (feitelijke handeling) in order to stop the violation and / or restore the situation that is against the law. 2) Government coercion is a law enforcement authority owned by a government whose application does not require judicial procedures.

3) The costs of terminating violations and / or restoring the conflicting circumstances shall be borne by the offender. The concrete form of the violation committed by the responsible person of business which enables the implementation of government coercion such as violation of the obligation to have EIA (Article 22 UUPPLH), business and / or activity that is not wajb equipped with environmental management effort and

environmental monitoring effort hereinafter called UKL -UPL, shall prepare a letter of statement on environmental management and monitoring (Article 35 UUPPLH) as well as violation of obligations or restrictions that are expressly stipulated in environmental legislation.

Freezing Environmental Permit The freezing of environmental permit is stipulated in UUPPLH and Government Regulation Number 27 Year 2012 regarding Environmental Permit. However, in the regulation, there is no mention and explanation regarding the freezing of environmental permits in both UUPPLH and government regulations, only mentioned as one form of administrative sanction after the application of governmental coercion sanction.

The freezing of environmental permit is a concrete action from the government in the form of not temporarily imposing environmental permit which result in the cessation of a business and / or activity. To determine when an act is considered as a government action that is: 1) The action is carried out by the government apparatus in its position as ruler and as a tool of government (bestuurorganen); 2) Such action shall be carried out with the intent of being a means of causing legal consequences in the field of administrative law; [Amiq *, Vol.6 (Iss.6): June 2018] ISSN- 2350-0530(O), ISSN-2394-3629(P) (Received: Apr 20, 2018 - Accepted: June 19, 2018) DOI: 10.5281/zenodo.1299906 Http://www.granthaalayah.com ©International Journal of Research - GRANTHAALAYAH [27] 3) The action concerned is carried out in order to carry out government functions and maintenance of the interests of the state and the people.

The freezing of this environmental permit is not a final decision of the state administrative official, since it is not the end result of administrative law enforcement. Hence, the responsibility of the business is still given the opportunity to improve the facilities and restoration of the environment and complete the environmental permit requirements and / or environmental protection and conservation permit.

If the repair and recovery of the environment is successful, the environmental permit will be redeemed. Conversely, if there is no improvement, then the environmental permit is revoked. Revocation of Environmental Permit The revocation of environmental permit is one of the forms of administrative sanction as stipulated in Article 76 paragraph (2) of UUPPLH which stipulates that administrative sanction consists of: written warning, government coercion, freezing of environmental permit, or revocation of environmental permit. Government Regulation No.

27 of 2012 on Environmental Permits shall sanction environmental permit holders

violating the provisions as referred to in Article 53, which shall be liable to administrative sanctions comprising: written warning, government coercion, freezing of environmental permit, or revocation of environmental permits [16]. The application of this revocation of environmental permits applies to those responsible for businesses and activities that do not exercise government coercion.

Article 79 of the UUPPLH affirms that: "The imposition of administrative sanctions in the form of freezing or revocation of environmental permit as referred to in Article 76 paragraph (2) letter c and letter d shall be done if the party responsible for the business and / or activity does not exercise government coercion." Spoken by A.M. Donner that the possibility of lifting a decision depends on the type of decision in question.

Is it a legal decision (rechtsvastellende beschikking) or a decision that creates the law (rechtsscheppende beschikking). Decisions that are to declare a law or declaration are bound by the laws and regulations on which the decisions are based. This type of decision is difficult to remove unless the basic rules permit.

On a decision that creates a law or constitutive possibility of a larger retraction (Victor Situmorang: 129-130) [9]. Administrative Fines Administrative fines are an alternative sanction of the application of government coercion if the party responsible for business and / or activities that do not compel the government will be fined for the delay in the implementation of government coercion sanction.

This is evident from the formulation of Article 81 UUPPLH which reads: "Any person in charge of business and / or activities that do not exercise government coercion may be fined for any delay in the implementation of governmental coercion sanction." Administrative fines are the imposition of an obligation to make payment of a certain amount of money to the party responsible for business and / or activity because it is too late to compel the government.

The imposition of penalties for the delay in carrying out government coercion is calculated from the time the implementation of government coercion is not implemented (Bruggink, 1996: 100) [1]. [Amiq *, Vol.6 (Iss.6): June 2018] ISSN-2350-0530(O), ISSN- 2394-3629(P) (Received: Apr 20, 2018 - Accepted: June 19, 2018) DOI: 10.5281/zenodo.1299906 Http://www.granthaalayah.com ©International Journal of Research - GRANTHAALAYAH [28] 3.

Severity of Administration Sanction Application Scope of Legal Implementation of Administrative Sanctions Implementation of administrative sanctions is one form of state administrative decisions that allow the emergence of lawsuits from the affected

decision. This should serve as a warning to law enforcement officials to do so carefully considering all aspects, juridical and sociological.

The juridical issue to be considered is the validity of the decision on the implementation of sanctions to be taken. This is a consequence of the conception of the state of Indonesia as a state of law that upholds the principle of "rechtmatigheid van bestuur". Based on the principle, every decision must meet its legal requirements, so that the decision is legally enforceable and may apply lawfully. Law No.

5 of 1986 concerning the State Administrative Court (and all its amendments) does not expressly stipulate the legal requirements of a decision [19]. However it can be interpreted acontrario from the provisions of Article 53 paragraph 2 and the explanation of Law No. 9 of 2004 on Amendment to Law No. 5 of 1986 concerning the State Administrative Court which regulates the basis for filing a lawsuit invalid decision, as follows: 1) The defendant's State Administration Decision is contrary to applicable laws and regulations (with respect to authority, procedure and substance).

2) The defendant's State Administration Decision is contrary to the general principles of good governance. Referred to as general principles of good governance include the following principles: legal certainty, orderliness of state administration, transparency, proportionality, professionalism, accountability, as referred to in Law Number 28 Year 1999 concerning Clean and Corrupt State Officials, Collusion , and Nepotism.

In line with the above, Philipus M. Hadjon argued that the implementation of the principle of rule of law (rechmatig bestuur), especially concerning publication of the library of state administration includes: 1) Principle acts in accordance with legislation (wetmatigheid). The suitability concerns the authority, procedure and substance of the decision.

2) The principle of "not misusing authority for other purposes" (prohibition of "detournement de pouvoir"). 3) The principle of acting rationally, reasonably or can be formulated as the principle of "not acting arbitrarily". 4) Act in accordance with the good general principles of government. (Paul Effendi Lotulung, 1994: 119) [4].

Authority for Implementing Administrative Sanctions Administrative sanctions shall be imposed by the competent administrative organs. In this case the official concerned must have legitimate authority under the laws and regulations. Without a legitimate authority, a person can not take public legal action.

This is in line with the provisions of Article 1 number (8) of Law Number 51 of 2009

concerning the Second Amendment to Law No. 5 of 1986 concerning State Administrative Courts which states that: "The Agency or State Administration Officer is the body or official which carries out government affairs under applicable laws and regulations ". This provision, in addition to containing the meaning of the [Amiq *, Vol.6 (Iss.6): June 2018] ISSN- 2350-0530(O), ISSN- 2394-3629(P) (Received: Apr 20, 2018 - Accepted: June 19, 2018) DOI: 10.5281/zenodo.1299906 Http://www.granthaalayah.com ©International Journal of Research - GRANTHAALAYAH [29] legality principle of every governmental act, also indicates that only laws and regulations alone provide the authority possessed by state administrative officials. In general, the authority to take government action comes in two ways, namely attribution and delegation.

At attribution occurs the granting of new authority by sutau provisions in the legislation. While in the delegation there is delegation of authority from government officials who have obtained the authority of attribution to other government officials. The delegation of authority is also followed by the shift of responsibility and accountability.

Delegation of authority can only be done by legislation (Indroharto: 91) [3]. The authority of government organs has limited territory, substance and time. It was proposed by Philipus M. Hadjon that: Every authority is limited by content, region and time. Defects in these aspects create defects of authority (onbevoegdheid) concerning: 1) Contents defects (onbevoegdheid ratione materiae).

2) Defect area (onbevoegdheid ratione loci). 3) Time defect (onbevoegdheid ratione temporis) (Philipus M. Hadjon, 1994: 9) [2]. Procedures for Implementing Administrative Sanctions Every act of government including the application of administrative sanctions shall be made in accordance with the procedures outlined. Without such a procedure, the application of administrative sanctions will contain procedural defects.

This is one of the reasons for the judge to declare such action null and void. Good procedures should reflect the three main elements of administrative law, the principles of the rule of law, the principles of democracy and the instrumental principle. The principle of a state of law in procedure relating to the protection of fundamental rights.

The principle of democracy requires openness in governance, while the instrumental principle includes the principle of efficiency (doelmatigheid) and the principle of effectiveness (doelterffendheid) (Philipus M. Hadjon) [2]. 3.1. Procedures for Implementation of Governmental Coercion As described in the previous chapter, government coercion is essentially a concrete action.

This should be distinguished from legal actions that are clearly undertaken by the

Government to cause a specific legal effect. Government coercion is a concrete action to stop violations of administrative environmental law norms that are violated by businessmen responsible. For example, the person responsible for the business violates the waste water quality standard, the Governor terminates it by closing the sewerage.

UUPPLH provides restrictions on the procedure of applying government coercion preceded by reprimand, as stipulated in Article 80 Paragraph (1) of UUPPLH which affirms that: Government coercion as referred to in Article 76 paragraph (2) letter b in the form of: 1) temporary suspension of production activities; 2) transfer of production facilities; [Amiq *, Vol.6 (Iss.6): June 2018] ISSN- 2350-0530(O), ISSN- 2394-3629(P) (Received: Apr 20, 2018 - Accepted: June 19, 2018) DOI: 10.5281/zenodo.1299906 Http://www.granthaalayah.com ©International Journal of Research - GRANTHAALAYAH [30] 3) closure of sewerage channels or emissions; 4) demolition; 5) seizure of potentially infringing goods or devices; 6) suspension of all activities; or 7) Other measures aimed at stopping violations and restoring environmental functions.

Government coercion may be exercised without any specific reprimands for the offenses that have enormous environmental effects and losses. Article 76 paragraph (2) of UUPPLH affirms that: The imposition of government coercion may be imposed without a warning if the offense breeds: 1) a very serious threat to humans and the environment; 2) greater and wider impacts if not immediately stopped pollution and / or destruction; and / or 3) greater damage to the environment if not immediately stopped pollution and / or destruction. 3.2.

Environmental License Revocation Procedure UUPPLH provides no guidance on the environmental permit revocation procedure. Therefore, a review of the revocation procedure of a license is made against the rules on which the license is based. Neither in UUPPLH or Government Regulation Number 27 of 2012 on Environmental Permit is not regulated on the revocation guidelines.

In 2013, a guideline for implementation of administrative sanctions was implemented through the Regulation of the Minister of Environment No. 02 of 2013 on Guidelines for Implementing Administrative Sanctions in the Field of Environmental Protection and Management. Article 53 of Government Regulation Number 27 of 2012 concerning Environmental Permits stipulates the possibility of revocation of environmental permits for the following reasons [16]: 1) The Environmental License Holder violates the terms and obligations contained in the Environmental Permit and the environmental protection and conservation permit; 2) Not make and submit implementation reports on the requirements and obligations in the Environmental Permit to the Minister, governor or regent / mayor; and does not provide a guarantee fund for the restoration of

environmental functions in accordance with the laws and regulations.

3) Not perform periodic reporting every 6 (six) months of implementation of the requirements and obligations in the Environmental Permit. In line with the possibility of revocation of the environmental Permit mentioned above, the Regulation of the Minister of the Environment No. 02 of 2013 in Article 4 paragraph (5) also raises the reasons for the revocation of environmental permits and stipulates that [12]: Revocation of Environmental Permit and / or Environmental Protection and Enforcement Permit as referred to in paragraph (1) letter d shall be applied if the party responsible for the business andlor activity: 1) transfer the business license to another party without the written consent of the licensor; [Amiq *, Vol.6 (Iss.6): June 2018] ISSN- 2350-0530(O), ISSN- 2394-3629(P) (Received: Apr 20, 2018 - Accepted: June 19, 2018) DOI: 10.5281/zenodo.1299906 Http://www.granthaalayah.com ©International Journal of Research - GRANTHAALAYAH [31] 2) not implementing most or all of the government coercion that has been implemented within a certain time; and / or 3) has caused pollution and / or damage to the environment that endanger human health and safety.

Seeing these reasons, the removal of environmental permits is a very effective sanction in tackling environmental pollution and destruction. As soon as environmental Permits that pollute the environment or violate the licensing requirements (which are none other than Environmental Impact Assessment and UKL-PKL) are revoked, then the company's activities are suspended. Thus, the negative impact on the environment does not happen again.

As mentioned in Article 36 of UUPPLH which requires every business and activity to have AMDAL or UKL-UPL is obliged to have environmental license. Government Regulation No. 27 of 2012 also regulates the order of obtaining environmental permit stipulated in Article 2 paragraph (2) Environmental Permits obtained through the stages of activities covering the preparation of Amdal and UKL-UPL, AMDAL assessment and UKL-UPL examination and the application and issuance of Environmental Permit. 3.3.

Substance Implementation of Administrative Sanctions The substantive aspect is the content aspect of the administrative sanction decision. Generally, the laws and regulations that form the basis of a decree have regulated substantial material concerning the subject matter and the purpose of the action. The content of the decision is none other than the determination of the rights and or obligations of the subjects directed by the decision.

Substantially, therefore, the decision must clearly state what the (object) and the subject of the decision and for what (goal) the decision was made. It was proposed by Philipus

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