Legal Analysis of Administrative Sanction Principles for Environmental Permit Abuse

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Abstract

In the administrative legal system of a country, the granting of permits for certain types of business activities by the public is a authority held by the government. In the process of granting permits by the government, once the requirements set by individuals or legal entities within the community are met, there are certain principles that must not be violated by the permit recipients. Violations committed in the realm of state administration lead to administrative sanctions. These sanctions range from warnings, compensation, non-renewal of permits, and even revocation of permits to prevent the business from operating again. The abuse of the granted permits is often carried out by corporations in their activities related to environmental protection and management. The issuance of permits, while intended to facilitate operations, frequently becomes problematic and can have negative impacts on societal aspects such as health, education, and the economy. Laws related to environmental protection and management encompass provisions for written warnings. In cases of violations of environmental administrative laws, state administrative officials often issue written warnings. For instance, if there are violations of thresholds for air quality or emission standards. Additionally, the government can impose enforcement measures in the form of prevention and cessation of violations. For instance, if an individual or corporation is constructing a business establishment and disposing of waste without a permit.

1. Introduction

Licensing within the administrative legal system of a country holds valid

legality and can be used for purposes as intended by those who obtain licenses

from a state institution. Since licenses are issued by a state institution functioning as the government, the license holders can engage in any activities without limitations. However, the validity of these licensing legalities often faces issues when the granted licenses are frequently misused in their activities.

The legal system not only pertains to rules and regulations but encompasses a broad spectrum, including its structure, institutions, and processes that fill it, all intertwined with the law that exists within society (living law) and legal culture. According to Lawrence Friedman, the elements of the legal system consist of legal structure, legal substance, and legal culture.[1]

The legal structure encompasses the executive, legislative, and judicial branches, as well as related institutions such as the Prosecutor's Office, Police, Courts, Judicial Commission, the Corruption Eradication Commission (KPK), and others. On the other hand, legal substance pertains to norms, regulations, and laws. Legal culture includes the perspectives, habits, and behaviors of the society regarding their perceptions of the values and expectations of the existing legal system. In other words, legal culture is the climate of social thought about how the law is applied, violated, or enforced.[2]

Without legal culture, the legal system itself remains powerless, like a dead fish lying in a basket, not a lively fish swimming in its sea. Every society, nation, and community possesses a legal culture. There are always attitudes and opinions about the law. This does not imply that every individual within a community shares the same thoughts. Law is a form of social control by the government, acting as rules and social processes that seek to encourage beneficial behaviors or deter negative ones. On the other hand, social control is a comprehensive network or set of rules and processes that bring legal consequences to specific behaviors, for instance, general rules against unlawful actions.[3]

Misuse of the granted licenses is often carried out by corporations in their activities related to environmental protection and management. The issuance of licenses, when abused, consistently presents problems and the resulting losses have significant negative impacts on society's well-being, spanning areas such as health, education, and the economy. Licensing that frequently falls victim to misuse by its holders leads to administrative sanctions.[4]

As a form of policy, licenses must not contradict legislative regulations and the societal norms that exist both vertically and horizontally. Policies in the form

[1] Sayyidatiihayaa Afra Geubrina Raseukiy, 'Membaca Kebijakan Hukum Dalam Pemenuhan Hak Atas Lingkungan Yang Bersih, Sehat Dan Berkelanjutan Sebagai Hak Asasi Manusia Universal', *Jurnal Hukum Lingkungan Indonesia*, 9.1 (2023), 1–24 <https://doi.org/10.38011/jhli.v9i1.508>.

[2] Rizal Irvan Amin, 'Pendekatan Sosiologi Hukum Dalam Memahami Konflik Peraturan Perundang-Undangan Di Indonesia', *Jurnal Hukum Dan Pembangunan Ekonomi*, 8.2 (2021), 156 <https://doi.org/10.20961/hpe.v8i2.49764>.

[3] Syafrudin Makmur, 'Budaya Hukum Dalam Masyarakat Multikultural', *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 2.2 (2015) <https://doi.org/10.15408/sjsbs.v2i2.2387>.

[4] Erni Erni and Febri Jaya, 'Efektifitas Perizinan Berusaha Berbasis Risiko Dalam Rangka Kemudahan Berusaha', *Wajah Hukum*, 6.2 (2022), 248–57 <https://doi.org/10.33087/wjh.v6i2.927>.

of licenses should reflect a policy that aligns with the way of life and well-being of the entire society, thereby serving the goals of the state within the concept of a welfare state as enshrined in the Preamble of the 1945 Constitution of the Republic of Indonesia, which aims to realize a prosperous state.[5]

In the field's reality, based on empirical and normative studies, it is often found that licenses are not implemented according to their intended purposes. For instance, in the case of forest management permits, those responsible for forest management often exceed their granted permissions by engaging in land burning, assuming they have the necessary authorization. However, the granted permit does not allow forest management through burning.

Environmental management can only succeed in supporting sustainable development if government administration functions effectively and cohesively. One of the primary legal tools for preventing and addressing the control of environmental impacts is the licensing system, where the issuance of licenses is carried out with careful procedure fulfillment, appropriate targets, and consideration of ecological interests.[6] In order for the obligations of holders of Forest Concession Rights (HPH) permits to facilitate environmental management as a means of controlling environmental impacts, the government holds the authority to oversee and enforce administrative sanctions. The enforcement of these administrative sanctions is intended to ensure that HPH permit holders fulfill their obligations as stipulated in the Law and Environmental Impact Assessment (AMDAL) documents.[7]

The abuse of authority by those in power. Law becomes meaningful when human behavior is influenced by it, and when society uses the law to guide its conduct. On the other hand, the effectiveness of law is closely related to the issue of legal compliance as a norm. This differs from fundamental policies that are relatively neutral and depend on the universal values of the goals and reasons for the creation of laws.[8]

In practice, we observe that some laws are largely obeyed, while others are not. The legal system will clearly collapse if everyone does not adhere to the laws, causing those laws to lose their significance. The ineffectiveness of laws tends to influence the timing, attitude, and quantity of non-compliance, having tangible effects on legal behavior, including lawbreaking behavior. This condition will affect law enforcement, which ensures certainty and justice within society. Legal certainty can be viewed from two perspectives: certainty within the law itself and certainty due to the law. "Certainty within the law" implies that each legal norm

[5] Andri Trisna, M. Usman Maliki, and Nurul Hikma, 'Inovasi Pelayanan Perizinan Melalui Online Single Submission (OSS) Studi Pada Mal Pelayanan Publik Kota Palembang', *Jurnal Manajemen*, 10.3 (2022), 253–60.
[6] Idi Amin, 'The Corporate Liability in Environmental Crime', *Jurnal IUS Kajian Hukum Dan Keadilan*, 6.2 (2018), 259.
[7] Nina Herlina, 'Permasalahan Lingkungan Hidup Dan Penegakan Hukum Lingkungan Di Indonesia', *Unigal.Ac.Id*, 3.2 (2017), 1–16.
[8] Rantika Safitri, 'Analisis Penyalahgunaan Alokasi Dana Desa Oleh Kepala Desa (Studi Kasus Di Desa Taman Jaya)', *Jurnal Petitum*, 2.1 (2022), 45–55.

must be formulated in sentences that do not contain varying interpretations. Consequently, it will lead to compliant or non-compliant behavior with regard to the law. In practice, many legal events arise where when confronted with the substance of the regulating legal norms.[9]

2. Research Method

The research method employed in this study is a type of normative juridical research, specifically legal research using a literature study approach, conducted by investigating through literary materials or solely relying on secondary and tertiary data. The approach method used is the legislative approach.[10] The data collection method used involves a literature study, which is employed to gather primary data, secondary data, and tertiary data related to the presented issue. This is done by studying legal documents and regulations. Primary legal materials include the 1954 Constitution, the Criminal Code, the Environmental Management Permit Law, court decisions, and other provisions related to environmental management permits. Secondary legal materials consist of books, legal journals, legal theories, doctrines, and the results of legal research. Tertiary legal materials include general Indonesian language dictionaries, legal dictionaries, and legal encyclopedias. The obtained data sources are then analyzed using a qualitative analysis approach.[11] This involves observing the obtained data and connecting each data point to the relevant legal provisions and principles related to the researched issue, using an inductive logic approach. This means thinking from specific to general by employing normative materials, namely legal interpretations and constructions. Subsequently, the analysis is conducted using a qualitative method. As a result, broader conclusions can be drawn regarding the issue, which serves as the research objective.[12]

3. Results and Discussion

The Position of the Government in the Authority of Granting Licenses

A license is a permission that grants the right to operate a business. A license is used to indicate permission that allows an individual to run a company with special or exceptional authorization. According to public law, the state, province, and district are organizations, positions, or associations of governmental and administrative bodies. However, according to civil law, the state, province, and

[9] Indra Kirana and Rahmi Ayunda, 'Sistem Belanja Cash On Delivery (COD) Dalam Perspektif Hukum Perlindungan Konsumen Dan Transaksi Elektronik', *Jurnal Surya Kencana Satu : Dinamika Masalah Hukum Dan Keadilan*, 13.1 (2022), 69 <https://doi.org/10.32493/jdmhkdmhk.v13i1.20217>.

[10] Irwansyah, *Penelitian Hukum; Pilihan Metode Dan Praktik Penulisan Arikel* (Yogyakarta: Mitra Buana Media, 2020).

[11] Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif Dan Empiris* (Depok: Prenada Media Group, 2016).

[12] I. G. K. Ariawan, 'Metode Penelitian Hukum Normatif', *Kertha Widya*, 1.1 (2013).

district are collections of legal entities whose legal actions are carried out by the government.[13]

When the government acts in the field of civil law and is subject to civil legal regulations, the government acts as a representative of legal entities, not as a representative of positions. Therefore, the government's position in civil legal interactions is no different from that of an individual or a private legal entity. It does not hold a special position and can be a party in civil disputes with the same standing as an individual or a private legal entity in the general legal system.

The government's position, theoretically having two functions, as a representative of positions and a legal entity, each subject to different laws, public law and private law, can be confusing for many people, especially for the general public. This confusion is at least related to three points: 1. The difficulty in clearly determining when the government is acting in the realm of civil law and when it is in the realm of public law. 2. In practice, the entity acting in both public and private realms uses the same name, "government." 3. As mentioned above, the distinction between public law and private law is relative. One way to alleviate this confusion is through a deep understanding of the concept of government authority (bestuursbevoegdheid).[14]

One of the principles in a rule of law state is the "wetmatigheid van bestuur" or governance based on legislation. In other words, every legal action by the government, whether in its regulatory or service functions, should be based on the authority granted by the prevailing legal regulations. In various local regulations within districts or cities, it can be observed that a significant portion of permits, especially those falling under the authority of the district or city government, are under the jurisdiction of the district head or mayor. On the other hand, other regulations delegate the authority for handling permits to technical agencies. In this case, the authorized technical agency is responsible for processing and issuing the permits. With the strengthening of regional autonomy, especially at the district or city level, the freedom and independence of local authorities in regulating various matters are becoming more evident.[15]

In order to fulfill this task, the government is granted authority in the field of regulation, where the function of regulation gives rise to several juridical instruments to address individual and specific events, namely in the form of determinations. According to their nature, being individual and specific, these determinations serve as the forefront of legal instruments in the administration's implementation, or as closing norms within a series of legal norms. One of these determinations relates to licensing issues. Based on various determinations, licenses, including permits, are considered constitutive determinations, meaning

[13] Mawardi Khairi, 'Kewenangan Pemerintah Daerah Provinsi Dalam Pemberian Izin Pengelolaan Perairan Di Wilayah Pesisir Dan Pulau-Pulau Kecil', *JATISWARA*, 35.3 (2020), 267–82.

[14] Ani Sri Rahayu, *Pengantar Pemerintahan Daerah: Kajian Teori, Hukum Dan Aplikasinya* (Jakarta: Sinar Grafika, 2018).

[15] Haposan Siallagan, 'Penerapan Prinsip Negara Hukum Di Indonesia', *Sosiohumaniora*, 18.2 (2016), 122–28.

they establish new rights that an individual, whose name is mentioned in the determination, did not possess before, or "beschikkingen welke iets toestaan wat tevoren niet geoorloofd was" (determinations that allow something previously prohibited).[16]

A permit is a juridical instrument in the form of a constitutive determination used by the government to address or establish specific events. As a determination, a permit is created with the provisions and requirements applicable to determinations in general, as mentioned above.

Regarding this authority, H.D. Stout stated that: *" Wewenang is a concept from administrative organization law, which can be defined as the system of rules relating to the acquisition and exercise of administrative powers by public legal subjects in the administrative legal context*". According to FPCL. Tonnaer, "Government authority is understood in this context as the ability to establish positive law and thereby create legal relationships between citizens and between government and legal entities ".

The ability to perform certain legal actions (actions intended to have legal consequences, including those related to rights and obligations) is derived from the prevailing legal regulations. R.J.H.M. Husman expressed the following opinion: *"An administrative body cannot claim authority for itself. Only the law can grant powers. The legislator can attribute authority not only to an administrative body but also to officials (such as tax inspectors, environmental inspectors, etc.) or to special bodies (such as the electoral council, the tenancy board) or even to private legal entities)*".[17]

Policies in the form of permits must reflect a policy that aligns with the well-being and comfort of the entire society, so that the goals of the state within the concept of a welfare state, as stipulated in the fourth paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia, can be achieved. In the opening of the 1945 Constitution, to realize the welfare state, it has been mandated that: 1) The State is obligated to provide protection for all Indonesian citizens and the entire territorial region of Indonesia, 2) The State is obligated to advance the general welfare, and 3) The State is obligated to educate the nation's life.

The concept of a welfare state is closely related to the role of administrative law in the state. In the concept of a welfare state, the role of the state and government becomes more dominant. A welfare state refers to the active role of the state in managing and organizing the economy.[18]

In the study of State Administrative Law, understanding the sources and methods of acquiring governmental authority is crucial, as it relates to the principle of accountability (rechrelijke verantwoording) in the use of that

[16] Aminuddin Ilmar, *Hukum Tata Pemerintahan* (Jakarta: Kharisma Putra Utama, 2014).
[17] Tedi Sudrajat and Endra Wijaya, *Perlindungan Hukum Terhadap Tindakan Pemerintahan* (Jakarta: Sinar Grafika, 2020).
[18] Tanti Rismika and Eko Priyo Purnomo, 'Kebijakan Pengelolaan Ekosistem Laut Akibat Pertambangan Timah Di Provinsi Bangka Belitung', *Publisia (Jurnal Ilmu Administrasi Publik)*, 4.1 (2019), 63–80.

authority, in line with one of the principles of a rule of law state, "geen bevoegdhcid zonder verantwoordelijkheid" or "there is no authority without responsibility." In every delegation of authority to specific government officials, there is an implied responsibility on the part of the respective officials.[19]

Based on the information provided above, it is apparent that authority acquired through attribution is original in nature and originates from legal regulations. In other words, governmental organs directly acquire authority by virtue of specific articles within a legal regulation. In the context of attribution, the recipient of authority can either be assigned new authority or expand existing authority, with both internal and external responsibilities for the implementation of the attributed authority resting entirely on the recipient of authority (attributaries). In delegation, authority is not transferred; rather, it involves the conveyance of authority from one official to another. Responsibility no longer lies with the delegator (delegans) but rather with the delegatee (delegataris), who receives the delegation.[20]

Environmental Permit

An environmental permit is granted to individuals undertaking business and activities that are subject to Environmental Impact Assessment (AMDAL) or Environmental Management and Monitoring Plans (UKL-UPL) as prerequisites for obtaining business and activity permits. A permit is an administrative legal instrument that can be utilized by authorized government officials to regulate how entrepreneurs conduct their businesses. The legal basis for the existence of environmental permits in Indonesia is the Environmental Protection and Management Law (UUPPLH) of 2009, particularly Articles 36, 37, 38, 39, and 40 of UUPPLH. Further regulations for environmental permits are formulated in implementing laws, such as Government Regulation No. 27 of 2012 concerning Environmental Permits (Official Gazette of 2012 No. 48) - hereinafter abbreviated as GR No. 27 of 2012.[21]

In a permit, the authorized official stipulates conditions or provisions in the form of commands or prohibitions that must be complied with by the company. Thus, a permit constitutes an individual-level legal regulation or subjective legal norm as it is already associated with a specific legal subject. Licensing has a preventive function, meaning it serves as an instrument for preventing issues arising from business activities. In the context of environmental law, licensing falls under the realm of environmental administrative law.

Under the Indonesian legal system prior to the enactment of the Environmental Protection and Management Law (UUPPLH) in 2009, various types of permits existed that could be categorized as environmental management permits based on the criterion that these permits were intended or functioned to prevent environmental pollution or disturbances, prevent environmental

[19] W Riawan Tjandra, *Hukum Administrasi Negara* (Jakarta: Sinar Grafika, 2021).
[20] Dkk Hardi Fardiansyah, *Pengantar Ilmu Hukum* (Bali: CV. Intelektual Manifes Media, 2023).
[21] Vica J E Saija, 'Wewenang Pemerintah Daerah Dalam Pemberian Izin Lingkungan Hidup', *SASI*, 20.1 (2014), 71–83.

damage resulting from the extraction of natural resources, and regulate spatial planning. Spatial planning is a part of environmental management. These permits include Hinder Ordonansi Permit, Business Permit, Wastewater Discharge Permit, Dumping Permit, Hazardous and Toxic Waste Management Facility Operation Permit (B3), Location Permit, and Building Permit. These permits are regulated by different legal regulations.

Permits are legal instruments used by the government in a preventive juridical manner, acting as administrative tools to control societal behavior. Therefore, the nature of a permit is preventive, as the permit instrument cannot be separated from the commands and obligations that must be adhered to by the permit holder. Additionally, permits also serve a repressive function. Permits can function as instruments to address environmental issues caused by human activities associated with the basis of the permit. This means that businesses obtaining permits for environmental management are obligated to address pollution or environmental damage arising from their activities.

Licensing represents a form of governmental decision-making in administrative law. As a governmental decision, a permit is a legal action by the government based on public authority that legally allows or permits an individual or legal entity to engage in a certain activity. Permit instruments are necessary for the government to concretize its authority. This is carried out through the issuance of administrative decisions by the state.

In Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH), there are two types of permits: first, an environmental permit is granted to individuals undertaking businesses or activities that are subject to Environmental Impact Assessment (AMDAL) or Environmental Management and Monitoring Plans (UKL-UPL) as prerequisites for obtaining business or activity permits (Article 1, Section 35). Second, a business or activity permit is issued by technical agencies to conduct businesses or activities (Article 1, Section 36). In this law, an environmental permit is a requirement to obtain a business or activity permit. To obtain a business or activity permit, individuals or legal entities first need to apply for and obtain an environmental permit. Meanwhile, the environmental permit itself is obtained after fulfilling the requirements and undergoing administrative procedures.[22]

Business permits are regulated by different sectoral regulations. Industrial Business Permits are governed by Law No. 5 of 1984 concerning Industry and various implementing regulations. Permits for the Utilization of Timber Forest Products (IUPHHK), formerly known as Timber Concession Rights, are regulated by Law No. 41 of 1999 concerning Forestry, as amended by Law No.

[22] Muhammad Ridwansyah, 'Pengaturan Tindak Pidana Dalam Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup (Tinjauan Fiqh Al-Bi'ah)', *Jurnal Hukum Dan Peradilan*, 6.2 (2017), 173–88 <https://doi.org/10.25216/jhp.6.2.2017.173-188>.

19 of 2004. Business permits in the mining sector are referred to as Mining Licenses, which are regulated by mining sector regulations.[23]

Location Permit and Building Construction Permit (IMB) fundamentally refer to spatial planning regulations, but the operational formulation of IMB is defined in the respective local regulations of each city or district. The importance of Location Permits and IMBs as permitting instruments in environmental management in general and spatial planning in particular can be seen through the case of constructing a plaza in Medan. The Medan City Government granted a Location Permit and IMB for the construction of an eight-story plaza, without considering its location which was precisely in the flight path of planes taking off from Polonia Airport, Medan.[24]

Pilots flying aircraft felt greatly disturbed by the presence of the building, leading them to threaten that they would not operate flights to and from Medan if the height of the plaza building was not reduced to a safe altitude for aviation. Thus, academically, the understanding of environmental permits encompasses not only permits regulated by environmental laws and regulations, but also those governed by sectoral regulations and local regulations, as long as these permits serve as environmental management instruments.

The issuance of multiple permits for a business activity can create gaps that hinder environmental law enforcement. A well-known example is the case of PT SM in Medan, suspected of polluting a river. Residents living near the river protested to the Mayor of Medan, urging sanctions against PT SM. The Mayor imposed sanctions by revoking PT SM's operational permit (HO), but PT SM argued that it was still legally operational because it held an industrial business permit. At that time, the Minister of Industry, authorized to issue industrial business permits, did not intend to revoke PT SM's permit.

The existence of multiple permits for a business entity not only impedes law enforcement efforts, as seen in the case of PT SM in Medan, but also imposes investment costs on businesses seeking to operate in Indonesia. This situation has earned Indonesia a reputation as a high-cost economy, deterring foreign investors. This factor is often used as a basis to pit economic growth against environmental management, although according to the concept of sustainable development, economic growth and environmental protection must be integrated.

Based on this, discourse has long emerged among Indonesian environmental legal scholars advocating the importance of updating environmental permits by integrating various permits related to environmental management into what is known as an integrated environmental licensing system.

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[23] Rahmanisa Anggraeni, 'Pentingnya Legalitas Usaha Bagi Usaha Mikro Kecil Dan Menengah', *Eksaminasi: Jurnal Hukum*, 1.1 (2021), 77–83.

[24] Rizky Noor Fajrina and Ana Silviana, 'Izin Mendirikan Bangunan (IMB) Sebagai Pengendalian Pembangunan Di Kota Semarang', *Notarius*, 16.1 (2023), 485–99 <https://doi.org/10.14710/nts.v16i1.41530>.

From an academic perspective, the concept of an integrated environmental permit can be viewed from two aspects. Firstly, it pertains to delegating permit issuance authority to a single institution, thus eliminating the current division between two or more institutions. The second aspect is related to the question of what types of business activities the environmental permit should apply to, whether it should only cover activities causing environmental pollution (brown issues), or also encompass activities that can lead to environmental damage (green issues),

From the perspective of administrative law enforcement, the consolidation of permitting authority into a single institution would have a positive impact as it would ensure greater consistency in law enforcement to achieve sustainable development or environmentally conscious business activities. Additionally, such consolidation would lead to reduced permit processing costs. However, the idea of unifying or integrating permitting authority into one institution alone is not realized. This fact can be seen from the formulation of Article 36 paragraph (4) of the Environmental Protection and Management Law (UUPPLH), which states: "environmental permits are issued by the Minister of Environment and Forestry, governors, or regents/mayors in accordance with their authority."

The inability to integrate permitting authority into a single institution is due to at least three factors. First, the complex distribution of administrative authority between central, provincial, and district/city levels since the implementation of regional autonomy following post-reformasi regional autonomy laws. Second, unification of authority would face opposition or challenges from various levels of government, including central institutions, especially sectoral institutions, as well as provinces and districts/cities. This challenge would be even more pronounced if the authority were granted to the Ministry of Environment and Forestry, as it could be perceived as contradictory to the trend of regional autonomy post-reformasi.

Even if the unification of authority were granted to the Ministry of Environment and Forestry, this institution would not be able to effectively carry out such authority due to the vast number of business activities that would fall under the environmental permit regime. The Ministry of Environment and Forestry has limited resources and is primarily tasked with coordination functions, as stipulated in Article 8 paragraph (3) of Law No. 39 of 2008 on State Ministries (Number 166 of 2008).

Thirdly, consolidating authority into a single institution would necessitate significant changes to legislation or laws, requiring time-consuming and resource-intensive battles and political processes. Therefore, from both political and legal standpoints, the realistic choice is to maintain the existing scheme of permitting authority at various levels in accordance with the prevailing laws, as formulated in Article 36 paragraph (4) of the UUPPLH.

From the perspective of which activities environmental permits will be applied to, environmental permits under the UUPPLH are applied to categories of activities that can cause environmental pollution or damage. This can be seen from the definition of environmental permits as formulated in Article 1 point 35

of the UUPPLH, which states: "permits granted to anyone who carries out business and/or activities that require an Environmental Impact Assessment (Amdal) or Environmental Management Efforts (UKL-UPL) in the framework of environmental protection and management as a prerequisite to obtain business and/or activity permits." From the formulation of Article 1 point 35, two things can be understood. First, that environmental permits are applied to activities that require Amdal and UKL-UPL.

Since Amdal and UKL-UPL are required for activities that dispose of waste or extract natural resources, this means that environmental permits are applied to activities that can cause environmental pollution or damage. The substance or content of environmental permits can be understood from the provision of Article 3g paragraph (3) of the UUPPLH, which states that "environmental permits must include the requirements stated in the environmental feasibility and UKL-UPL decisions." Environmental feasibility is determined by authorized officials issuing permits based on the assessment results of the Environmental Impact Assessment Commission. Therefore, an environmental permit is one that includes the environmental requirements that must be complied with by the business activities bound by the permit.

Second, an environmental permit is a prerequisite for obtaining a business permit as formulated in Article 1 point 35 and Article 40 paragraph (1) of the UUPPLH. The consequence of these two articles is that an environmental permit is a prerequisite for obtaining a business permit, and if the environmental permit is revoked, the business and/or activities permit is cancelled.

Given that various types of permits have been in effect based on various laws and regulations prior to the enactment of the UUPPLH, both those directly related to environmental management, especially pollution control, and those unrelated to pollution control, the formulation of an integrated environmental permit must be capable of addressing separate permits. The issue that arises is which of the various existing permits should or can be integrated, considering that each permit empirically represents a source of power for officials or permit-issuing institutions.

Therefore, officials of the Ministry of Environment and Forestry involved in the discussion of the UUPPLH Bill should be aware of this empirical fact, as they are not prepared or willing to confront their fellow government officials at the central level. The realistic option is to integrate only the permits issued by the Minister of Environment and Forestry, governors, and regents/mayors, or permits based on environmental laws and regulations, such as wastewater disposal permits issued by regents/mayors. Essentially, permits issued by the Minister of Environment and Forestry are related to pollution control, such as permits for hazardous and toxic waste management and dumping.

Building permits (Izin HO), under the authority of regents/mayors, although not explicitly mentioned in Article 123 of the UUPPLH, are included permits that must be integrated into environmental permits. The concept of integrated environmental permits is stated in Article 123 of the UUPPLH, which states: "All permits in the field of environmental management issued by the

minister, governors, regents/mayors in accordance with their authority must be integrated into environmental permits no later than 1 (one) year from the date this law is enacted."

Environmental permits are issued based on environmental feasibility decisions issued by the Minister of Environment and Forestry, governors, regents/mayors, or UKL-UPL recommendations..

Environmental Administrative Law Sanctions

Administrative law sanctions are legal sanctions that can be imposed by government officials without going through a judicial process against individuals or businesses that violate environmental administrative laws. Some examples of violations of environmental administrative laws include operating a business without the necessary permits, conducting business activities such as industries, hotels, and hospitals, disposing of wastewater without a wastewater disposal permit, having a wastewater disposal permit but exceeding the wastewater quality standards specified in the permit, and engaging in activities that require an Environmental Impact Assessment (Amdal) without completing the Amdal documentation. The UULH 1997 includes three types of administrative law sanctions, as regulated in Article 25, Article 26, and Article 27, namely administrative enforcement, payment of a sum of money, and revocation of business or activity permits. In the practice of environmental law enforcement in Indonesia, governors or regents/mayors often use written warnings to companies that do not comply with administrative legal requirements, even though the UULH 1997 does not specifically include this provision.[25]

The UUPPLH includes four types of administrative law sanctions, as stated in Article 76 paragraph (2), namely written warnings, government enforcement, suspension of environmental permits, and revocation of environmental permits. In the initial draft, compulsory fines were also included as a sanction, but members of the DPR who were part of the Working Committee for the RUUPPLH proposed the removal of compulsory fines due to concerns that their implementation could be abused by authorized officials. These concerns can be alleviated through the creation of implementation provisions in the Government Regulation (RPP) regarding administrative sanctions that limit the discretion of officials enforcing environmental administrative law.

The absence of compulsory fines is regrettable, as they could serve as an alternative to government enforcement. Compulsory fines could be an effective instrument to compel businesses to comply with environmental administrative law provisions, as non-compliance would result in them losing anticipated profits by having to pay a certain amount of money. However, Article 81 of the UUPPLH contains provisions that serve as the legal basis for the issuance of fines by officials granting environmental permits or enforcing environmental

[25] Sri Nur Hari Susanto, 'Karakter Yuridis Sanksi Hukum Administrasi: Suatu Pendekatan Komparasi', *Administrative Law and Governance Journal*, 2.1 (2019), 126–42 <https://doi.org/10.14710/alj.v2i1.126-142>.

administrative law for any delays in implementing government enforcement sanctions. Therefore, the UUPPLH provides five types of administrative law sanctions: written warnings, government enforcement, fines, suspension of environmental permits, and revocation of environmental permits.[26]

The UUPPLH includes the sanction of written warnings, while the UULH 1997 did not recognize written warnings as a sanction. However, during the enforcement of environmental administrative law when the UULH 1997 was in effect, officials responsible for enforcing environmental administrative law often used written warnings to address violations of environmental administrative law provisions, such as violations of waste quality or emission standards.

For this reason, the drafters of the UUPPLH formalized written warnings as one of the administrative law sanctions. The Forest Management and Forest Area Utilization Planning Regulation (Government Regulation No. 34 of 2002) applies six types of administrative sanctions: temporary suspension of administrative services, temporary suspension of field activities, administrative fines, reduction of work areas, and revocation of permits. These administrative sanctions are applicable to violations listed from Article 88 to Article 97. Most of the violations subject to administrative sanctions are related to technical aspects of forestry operations.

Article 80 paragraph (2) of Law No. 41 of 1999 stipulates that permit holders in the forestry sector can face administrative sanctions for violating Article 78, but without specifying the types and procedures for imposing such administrative law sanctions in detail. Further regulations on administrative sanctions in the forestry sector are detailed in Government Regulation No. 34 of 2002 regarding Forest Management and Forest Area Utilization Planning. This regulation applies six types of administrative sanctions: temporary suspension of administrative services, temporary suspension of field activities, administrative fines, reduction of work areas, and revocation of permits. These administrative sanctions are applicable to violations listed from Article 88 to Article 97. Most of the violations subject to administrative sanctions are related to technical aspects of forestry operations.[27]

In the UULH 1997, the authority to impose government coercion sanctions was vested solely in the governor, as stated in Article 25 paragraph (1) of the UULH 1997. Article 25 paragraph (1) of the UULH 1999 grants the governor the authority to impose administrative coercion sanctions in the form of taking the following actions: prevention and cessation of the violations that have occurred, salvage, and mitigation or restoration at the expense of the responsible party. In the UUPPLH, the authority to impose government coercion sanctions is held by

[26] Sandy Gustiawan Ruhiyat, Imamulhadi Imamulhadi, and Yulinda Adharani, 'Kewenangan Daerah Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup Pasca Berlakunya Undang-Undang Cipta Kerja', *Bina Hukum Lingkungan*, 7.1 (2022), 39–58 <https://doi.org/10.24970/bhl.v7i1.298>.

[27] Eric Rahmanul Hakim, 'Penegakan Hukum Lingkungan Indonesia Dalam Aspek Kepidanaan', *Media Keadilan: Jurnal Ilmu HukumJurnal Ilmu Hukum*, 11.1 (2020), 43–54 <https://doi.org/https://doi.org/10.31764/mk:%20jih.v11i1.1615>.

three officials: the Minister of Environment and Forestry, the governor, and the regent/mayor, as stipulated in Article 76 paragraphs (1) and (2) of the UUPPLH.

Government coercion sanctions in the form of preventive and cessation actions can be taken, for example, when a business owner is constructing a facility or disposing of waste without a permit. The authorized official, after an examination reveals the absence of necessary permits, can take coercive measures to halt the illegal activities or to stop the operation of machinery and equipment used by the business until it complies with the administrative law provisions, meaning it obtains the required permits.

Salvage actions can be employed, for instance, when hazardous and toxic waste is found at a business location without proper handling by the company, potentially causing environmental pollution. The competent government official can gather and transport the waste to a legitimate treatment facility or suspend the operation of the business until the company properly manages its waste as per the applicable regulations.

Mitigation and restoration actions may be taken if, due to violations of environmental administrative law provisions by a business activity, negative impacts have occurred, such as contamination of rivers, soil, or endangered species. Consequently, the government engages in efforts for mitigation and restoration, including evacuating residents or employees to safe locations and subsequently developing and implementing programs to clean up contaminated rivers and soil.

Article 80 paragraph (1) of the UUPPLH lists several forms of government coercion actions, including: a. Temporary cessation of production activities; b. Relocation of production facilities; c. Closure of wastewater or emission discharge channels; d. Demolition; e. Seizure of items or equipment that have the potential to cause violations; f. Temporary suspension of all activities:

Other actions that can also be categorized as forms of government coercion are mentioned in Article 82 paragraphs (1) and (2). Article 82 paragraph (1) grants authority to the Minister of Environment and Forestry, the governor, and the regent/mayor to "force the responsible party of a business and/or activity to undertake environmental restoration due to pollution and/or environmental damage caused by their actions." Article 82 paragraph (2) authorizes the Minister of Environment and Forestry, the governor, and the regent/mayor to appoint a third party to conduct environmental restoration due to pollution and/or environmental damage caused by their actions, at the expense of the responsible party of the business and/or activity. In principle, the application of government coercion sanctions is imposed after being preceded by a warning. Government coercion sanctions can be applied without prior warning if the violation committed poses:

1. A serious threat to human and environmental life.
2. Larger and broader impacts if pollution or damage is not immediately stopped.

3. Greater harm to the environment if pollution or damage is not immediately stopped.
4. Freezing of Permits and Revocation of Environmental Permits.[28]

4. Conclusion

The relationship between environmental permits and business or activity permits is evident in their scope and legal connection, where the environmental permit serves as an instrument to obtain and carry out business or activity permits related to environmental management. First, the scope of the environmental permit is related to prerequisites for managing hazardous and toxic waste, industrial business permits, building permits, dumping permits, and location permits. Although these permits are not primary permits (business or activity permits) sought by permit applicants, they are integral to environmental protection and management. Several coercive government actions that are part of administrative sanctions include temporary cessation of production activities, relocation of production facilities, closure of wastewater or emission discharge outlets, and demolition. The legal relationship between the two is that the environmental permit is a mandatory requirement for business or activity permits. As a consequence, the environmental permit is a prerequisite for obtaining business or activity permits; if a violation of the environmental permit occurs, the business or activity permit is revoked. Similarly, if the environmental permit is revoked, the business or activity permit is canceled.

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