

# Fallacy Orientation In Environmental Administrative Sanctions: A Democracy And Environmental Justice Perspective

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## **Abstract**

Environmental protection is mandated by the 1945 Constitution of the Republic of Indonesia regarding the right to a good and healthy environment. Changes in the regulation of administrative sanctions in Law No. 32/2009 with Law No. 6/2023 should be a solution, but in fact there are still many violations that cause pollution and / or environmental damage. The purpose of this research is to analyze the concept of administrative sanctions applicable in Indonesia and



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whether it has been able to meet legal needs to protect the environment. This research uses statutory and conceptual approaches with primary and secondary legal materials. The results shows that administrative sanctions in the field of environmental protection and management in Indonesia are not oriented towards recovery and not prioritized in certain formal criminal acts. This causes not fulfilling 2 elements of the purpose of imposing administrative sanctions, namely tackling pollution and/or environmental damage; and restoring the quality of the environment due to pollution and/or environmental damage, and not in accordance with the nature of administrative sanctions, namely reparatoir-condemnatoir. In terms of environmental protection, the government should prioritize and make sanctions that are oriented towards maximum protection and recovery, not just stopping violations that make the environment no longer considered. Because, the environment needs more protection and recovery actions. Administrative sanctions that don't restore the environment can have long-term impacts and affect public health, quality of life in general, and future generations.

## **Keywords**

*Environmental Law; Administrative Sanction; Job Creation Law*

## **I. Introduction**

The 1972 Stockholm Conference established by the United Nations (UN) contains 26 principles related to environmental protection. Indonesia, which is one of the hundreds of UN

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member countries, adopted it by passing Law No. 4/1982 on the Basic Provisions of Environmental Management (Law No. 4/1982) which was later replaced by Law No. 23/1997 on Environmental Management. Then Law No. 23/1997 was replaced by Law No. 32 of 2009 on Environmental Protection and Management (Law No. 32/2009) in conjunction with Law No. 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law No. 2 of 2022 on Job Creation into Law (Law No.6/2023).

Then, through the UN General Assembly No. A/76/L.75 issued on 26 July 2022, the UN declared the right to a good and healthy environment as a human right. This has also influenced legislation in Indonesia.<sup>1</sup> This human right cannot be reduced under any circumstances.<sup>2</sup> Protection of the environment is one of the mandates in Article 28H of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which stipulates that everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and the right to obtain health services.

Environmental democracy is a concept in which decision-making processes related to environmental management reflect democratic principles such as public participation, transparency, accountability, and justice. This concept prioritises the active involvement of the community in every

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<sup>1</sup> Andang Binawan and Maria Grasia Sari Soetopo, "Implementasi Hak Atas Lingkungan Hidup Yang Bersih, Sehat, Dan Berkelanjutan Dalam Konteks Hukum Indonesia," *Jurnal Hukum Lingkungan Indonesia* 9, no. 1 (2022): 124.

<sup>2</sup> Toar Neman Palilingan, Donna Okthalia Setiabudhi, and Toar K.R. Palilingan, "Environmental Policy, Public Health and Human Rights: Assessing the Regional Regulation on Waste," *Hasanuddin Law Review* 4, no. 3 (2018): 340.

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stage of environmental policy making, from planning, implementation, to monitoring. This means that the community is not only the recipient of the impact of environmental policies, but also plays an active role in determining the direction and objectives of these policies. In environmental democracy, this community involvement enables decisions that are more in line with local needs and aspirations.

In relation to environmental protection efforts, there are preventive or prevention and repressive or punishment efforts.<sup>3</sup> One of the repressive efforts is the imposition of administrative sanctions. Administrative sanctions are imposed in several countries because they are considered affordable and effective in addressing environmental violations. Some countries that have mechanisms for enforcing administrative sanctions in the field of environmental protection and management are Denmark, Germany, Norway and Sweden.<sup>4</sup> These countries are also proven to have a reputation for handling environmental challenges according to the Environmental Performance Index and have a reputation for the best climate protection progress in the world according to the Climate Change Performance Index (CCPI) with these sanctions.<sup>5</sup>

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<sup>3</sup> Fitri Nur Aini Prasetyo and Abdul Kadir Jaelani, "The Changing of Environmental Approval Administrative Law Perspective," *Journal of Human Rights, Culture and Legal System* 2, no. 3 (2022): 193.

<sup>4</sup> The Network of Prosecutors on Environmental Crime, *Prosecuting Environmental Crime in the Baltic Sea Region* (The Network of Prosecutors on Environmental Crime (ENPRO), 2020), 26.

<sup>5</sup> Jan Burck et al., *The Climate Change Performance Index Results 2022* (German: Germanwatch, 2022), 18.

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Administrative sanctions in the field of environmental protection and management in Indonesia are regulated in Article 82C of Law No. 32/2009 in conjunction with Law No. 6/2023 and Minister of Environment Regulation No. 2 of 2013 concerning Guidelines for the Application of Administrative Sanctions in the Field of Environmental Protection and Management (Permen LHK No. 2/2013) in the form of written warnings, government coercion, administrative fines, suspension of Business Licences, and/or revocation of Business Licences. Law No. 32/2009 applies the *ultimum remedium* principle in applying sanctions. However, in the law, the *ultimum remedium* principle is only intended for certain formal criminal offences, namely violations of wastewater quality standards, emissions, and nuisance.

These administrative sanctions differ in type from the previous regulation in the form of written warnings, government coercion, suspension of environmental permits, or revocation of environmental permits. The difference is that for government compulsion sanctions that were previously not implemented, a fine will be imposed for each delay in implementing the government compulsion sanction, and the fine is called an 'administrative sanction'.

The latest regulation differentiates between the two fines. Fines for late implementation of government coercive sanctions are different from administrative fines. Administrative fines are administrative sanctions imposed on the person in charge of the Business and/or Activity with the following criteria: does not have an Environmental Approval but already has a Business Licence; does not have an Environmental Approval and a Business Licence; performs actions that exceed the Wastewater Quality Standard and/or Emission Quality Standard, in accordance with the Business Licence; does not carry out the obligations in the Business

Licence related to Environmental Approval; prepares an EIA without an EIA compiler's certificate of competence; negligently perform actions that result in the exceeding of Ambient Air Quality Standards, Water Quality Standards, Seawater Quality Standards, disturbance quality standards, and/or Environmental Damage Standard Criteria, which are not in accordance with the Business Licence related to the Environmental Approval; and/or perform actions that result in Environmental Pollution and/or Environmental Damage, where such actions are carried out due to negligence and do not cause harm to human health and/or injuries and/or serious injuries, and/or death of persons.

Despite the existence of sanctions, various laws and regulations on environmental protection and management have not yet had a consistent significant effect on reducing cases of environmental damage. This is indicated by the fluctuating data on the imposition of Administrative Sanctions by the Directorate General of Law Enforcement (Ditjen Gakkum KLHK). The following data shows the fluctuating level of imposition of sanctions:

**Tabel 1.** Data on the Number of Administrative Sanctions Implemented by the Directorate General of Gakkum KLHK Based on the Type of Sanctions from 2015 to 2022

| Type of Administrative Sanctions | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 |
|----------------------------------|------|------|------|------|------|------|------|------|
| Warning Letter                   | 0    | 115  | 0    | 0    | 316  | 175  | 297  | 112  |
| Written Reprimand                | 8    | 15   | 0    | 0    | 153  | 12   | 14   | 7    |
| Government Coercion              | 15   | 90   | 125  | 158  | 347  | 153  | 208  | 238  |

|                                       |    |     |     |     |     |     |     |     |
|---------------------------------------|----|-----|-----|-----|-----|-----|-----|-----|
| Suspension of Business Permit/Licence | 16 | 0   | 0   | 0   | 0   | 0   | 0   | 0   |
| Revocation of Business Permit/Licence | 3  | 0   | 1   | 0   | 0   | 0   | 0   | 0   |
| <b>Total</b>                          | 42 | 220 | 126 | 158 | 816 | 340 | 519 | 312 |

Based on the data above, it can be seen that the imposition of administrative sanctions has fluctuated from 2015 to 2022. Data for 2023 is not included because it is data in the current year. It can be seen that there was a drastic increase in the imposition of sanctions from 2018 to 2019 and then a drastic decrease in 2020. However, since the enactment of Law No. 11/2020, the level of sanctions has increased, then decreased again in 2022.

The data can show various insights. First, the high or low level of government activeness in imposing sanctions as a follow-up condition to supervision. Second, the high or low number of businesses and/or activities supervised and subject to sanctions. Third, the data does not show the actual conditions in the year when the violation occurred because the imposition of sanctions can take a long time. Fourth, the data does not show the high or low level of compliance of business actors with the sanctions imposed, but only the number of imposition. Fourth, the data also does not show whether the government imposed sanctions as soon as possible when the violation occurred or after several years later.

Nonetheless, it can be seen that the level of violations of laws and regulations in the field of environmental protection and management that cause impacts in the form of environmental pollution and/or damage fluctuates. Supposedly, the number of sanctions imposed decreased significantly due to changes in the legislation. In Indonesia,

there are many businesses and/or activities in various industrial fields that contribute to environmental pollution. Some of them are coal, multi-feedstock biodiesel production industry<sup>6</sup>, livestock industry<sup>7</sup>, even related to waste management<sup>8</sup>, and so on. Therefore, these regulatory changes should have a significant impact on environmental protection.

There are 5 factors that influence law enforcement and one of them is the law itself, law enforcement.<sup>9</sup> In addition to legal factors, there are also factors that affect other law enforcement, namely society and culture. It can be seen that the inhibiting factors for the application of State Administrative Law (HAN) in environmental law enforcement are internal and external barriers. Internal barriers come from organisations such as lack of knowledge, human resources, manager awareness, facilities and infrastructure. External barriers are public ignorance, and public misinterpretation of applicable regulations.<sup>10</sup>

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<sup>6</sup> Yoyon Wahyono et al., "Evaluating the Environmental Impacts of the Multi-Feedstock Biodiesel Production Process in Indonesia Using Life Cycle Assessment (Lca)," *Energy Conversion and Management* 266 (2022): 13.

<sup>7</sup> Zegovia Parera, Salvadoris Pieter, and Rudini Hasyim Rado, "Conflict Prevention Mechanisms and Legal Consequences Utilization of Natural Resources with Environmental Impact Analysis" (paper presented at the International Conference on Environmental Ecology of Food Security, 2022).

<sup>8</sup> Palilingan, Setiabudhi, and Palilingan, "Environmental Policy, Public Health and Human Rights: Assessing the Regional Regulation on Waste," 343.

<sup>9</sup> Ridwan HR, *Hukum Administrasi Negara*, 17 ed. (Depok: PT RajaGrafindo Persada, 2022), 293.

<sup>10</sup> Juliadi Rusydi, Januri, and Rika Santina, "Tanggungjawab Pemerintah Dalam Penegakan Hukum Lingkungan Hidup Di Tinjau Dari Persepektif Hukum Administrasi Negara," *Jurnal Penelitian Hukum* 2, no. 1 (2023).

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Prior to the changes, there was a misconception of administrative sanctions in the field of environmental protection and management. First, there was a misunderstanding of government coercion and confusion between forced money and administrative fines.<sup>11</sup> Second, the *ultimum remedium* principle in the field of environment should be the main sanction in environmental law enforcement.<sup>12</sup> Third, there are overlapping regulations that violate the constitution regarding environmental protection in general.<sup>13</sup>

Administrative sanctions are essentially imposed with the general purpose of punishing violators and protecting the environment. This is in line with the urgency of the enactment of Law No. 39/2009, namely that the declining quality of the environment has threatened the survival of human life and other living things, so it is necessary to protect and manage the environment seriously and consistently by all stakeholders.

Furthermore, in Permen LHK No. 2/2013, the purpose of administrative sanctions is to protect the environment from pollution and / or destruction caused by a business and / or activity, overcome pollution and / or environmental damage, restore the quality of the environment caused by pollution and / or environmental damage, and provide a deterrent effect to those responsible for businesses and / or activities that violate laws and regulations in the field of

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<sup>11</sup> Andre Gunawan Wibisana, "Tentang Ekor Yang Tak Lagi Beracun: Kritik Konseptual Atas Sanksi Administratif Dalam Hukum Lingkungan Di Indonesia," *Jurnal Hukum Lingkungan Indonesia* 6, no. 1 (2019): 64-65.

<sup>12</sup> *Ibid.*

<sup>13</sup> Albertus Sentot Sudarwanto et al., "The Policy on Illegal Oil Palm Plantation Reform in Forest Area During Jokowi's Presidency " *Hasanuddin Law Review* 8, no. 2 (2022): 172.

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environmental protection and management as well as provisions in Environmental Permits which have now changed to Environmental Permits.

In this regard, it is interesting to discuss whether administrative sanctions in environmental protection and management in Indonesia are recovery-oriented, in accordance with the purpose of their imposition. Then the author will present solutions that can answer these problems.

## **II. Research Method**

This research is a legal research with a statute approach and conceptual approach. The approach used explains that this research is carried out by examining various rules related to the problem and building concepts from views and doctrines that develop in legal science. The legal materials used are primary legal materials in the form of legal provisions relating to environmental protection and management in Indonesia, namely the 1945 Constitution of the Republic of Indonesia, Law No. 32 of 2009, Law No. 6 of 2020, PP No. 22 of 2021, and Permen LHK No. 2/2013. Secondary legal materials used are books, journals, proceedings, theses, theses, dissertations, reports, websites, and other scientific works related to the problem. This research is prescriptive in nature to formulate and obtain suggestions related to the issues discussed.

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### III. Result and Discussion

According to Soerjono Soekanto, there are 5 factors that influence law enforcement, namely the law itself, law enforcers, facilities or facilities that support, society, and culture. The five factors are interrelated. This is because these five factors are the core of law enforcement and become the benchmark of the effectiveness of law enforcement.<sup>14</sup> Then, the means of law enforcement in HAN according to P. Nicolai are supervision of government organs and sanctions. This is in line with the opinion of Nicolai and Philipus M. Hadjon who said that the instruments of HAN enforcement include supervision and enforcement of sanctions. Sanctions are needed as repressive measures to enforce compliance.<sup>15</sup>

In HAN, the application of administrative sanctions is one form of application of government authority whose authority comes from written and unwritten HAN rules. In general, the granting of authority to the government to establish HAN norms is also accompanied by the authority to enforce these norms through the application of sanctions for violators.<sup>16</sup>

According to JJ. Oosternbrink, administrative sanctions are sanctions arising from the government's relationship with citizens and which are carried out without the intermediary of a third party, namely without the intermediary of judicial power, but can be directly implemented by the administration itself. Without the intermediary of a judge, meaning that basically administrative sanctions are carried out without the intermediary of a judge. However, in some cases, administrative sanctions must go through a judicial process.

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<sup>14</sup> HR, *Hukum Administrasi Negara*, 293.

<sup>15</sup> *Ibid.*, 296.

<sup>16</sup> *Ibid.*, 299.

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Therefore, there are also sanctions imposed by administrative judges or administrative appeal bodies.<sup>17</sup>

Another definition of administrative sanctions is as a tool of power in the nature of public law that can be used by the government as a reaction to non-compliance with the obligations contained in the norms of HAN. There are 4 elements in this definition, namely a tool of power (*machtmiddelen*), public law (*publiekrechtelijke*), used by the government (*overheid*), and as a reaction to non-compliance (*reactie op niet-naleving*).

In relation to democracy, it is also related to the role of government, law enforcement, and community participation in environmental protection. In a democracy, environmental protection does not only depend on government action, but also involves the community as the holder of the right to live in a good and healthy environment, as mandated by the 1945 Constitution.

The principle of democracy emphasises community involvement and government accountability. In the context of administrative sanctions for environmental protection, community participation in proposing policies and encouraging government accountability is important. Democracy opens space for the community to demand policies that not only stop environmental violations, but are also oriented towards recovery and improvement. This is in line with the idea that environmental protection must be oriented towards reparations for the benefit of the wider community and future generations.

In addition, administrative sanctions oriented towards environmental prevention and restoration can strengthen the principle of environmental justice in democracy. By providing

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<sup>17</sup> *Ibid.*

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a deterrent effect and encouraging recovery, this policy not only protects the environment from adverse impacts, but also pays attention to the rights of people affected by environmental pollution. In a democracy, the government is obliged to respond to the public interest, and this includes maintaining the quality of life of the community through a healthy environment.

Ultimately, the success of remedy-oriented administrative sanctions in a democracy depends on transparency, active public participation, and strict oversight of violations. The implementation of this policy must be accompanied by opportunities for the public to contribute to decision-making, which ultimately reflects democratic principles in environmental management.

Regarding their targets in the NAP, there are two types of sanctions: reparatory and punitive. Reparatory sanctions are reactions to norm violations to return to the original condition or place in a situation according to the law. Restore to the original state, which is before the violation. While punitive sanctions are sanctions that are solely to punish someone. Examples of reparatory sanctions are government coercion (*bestuursdwang*) and the imposition of forced money (*dwangsom*). An example of punitive sanctions is administrative fines. In addition, according to J.B.J.M. ten Berge, there are regressive sanctions that are applied as a reaction to non-compliance with the provisions contained in the decision issued. This sanction is intended to restore the legal situation to what it was before the decision was issued. Examples are withdrawal, postponement, and change of decision.<sup>18</sup>

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<sup>18</sup> *Ibid.*

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In terms of the purpose of applying sanctions, regressive sanctions have the same purpose as reparatory sanctions. The difference lies in the scope of its imposition. Reparatory sanctions are imposed on violations of Administrative Law norms in general, regressive sanctions only on violations of provisions in a decision.<sup>19</sup> In terms of the target of its application, administrative sanctions are aimed at the act, while criminal sanctions on the perpetrator. The nature of administrative sanctions is reparatory-condemnatory, namely restoring back to the original state and providing punishment, while criminal sanctions are condemnatory.<sup>20</sup>

Then, the government issued Permen LH No. 2/2013 as a guideline for the application of administrative sanctions. This regulation is present as a guideline for the application of administrative sanctions in environmental law enforcement. The types of administrative sanctions in the field of environmental protection and management are written warnings, government coercion, administrative fines, suspension of Business Licences, and/or revocation of Business Licences.<sup>21</sup>

A written warning is imposed if the person in charge of the Business and/or Activity violates the provisions in the Business Licence, or Government or Local Government Approval related to Environmental Approval, and laws and regulations in the field of Environmental Protection and Management that are administrative in nature. This warning

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<sup>19</sup> *Ibid.*, 301.

<sup>20</sup> *Ibid.*, 304.

<sup>21</sup> I Gusti Ayu Ketut Rachmi Handayani et al., "The Politics Settlement of Land Tenure Conflicts During Jokowi's Presidency," *JILS (Journal of Indonesian Legal Studies)* 7, no. 2 (2022): 514.

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must be obeyed and implemented within the stipulated time period.

Furthermore, if the written warning is not complied with within the specified time period, the person in charge of the Business and/or Activity is also subject to government coercion sanctions. Government coercive sanctions can be imposed without a written warning first if the violation poses a very serious threat to humans and the environment, a greater and wider impact if the pollution and/or destruction is not stopped, and/or greater environmental losses if the pollution and/or destruction is not stopped immediately.

These government coercive sanctions are carried out in various forms, namely temporary cessation of production; removal of production facilities; closure of waste water or emission disposal channels; demolition, confiscation of goods or equipment that have the potential to cause violations; temporary suspension of all or part of the business and/or activities; obligation to prepare an Environmental Evaluation Document or *Dokumen Evaluasi Lingkungan Hidup* (DELH) or Environmental Management Document or *Dokumen Pengelolaan Lingkungan Hidup* (DPLH); and/or other actions aimed at stopping violations and taking measures to restore environmental functions..

Furthermore, it is also stipulated that the minister, governor, or regent/mayor in accordance with their authority requires the person in charge of the business and/or activity to carry out environmental restoration due to environmental pollution and/or damage. The minister, governor, or regent/mayor in accordance with their authority can also appoint a third party to carry out the restoration of environmental functions due to environmental pollution and/or damage at the expense of the person responsible for the business and/or activity that committed the violation. The

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funds can be sourced from the environmental function recovery guarantee fund.

If the person in charge of the business and/or activity does not implement government compulsion, a fine may be imposed for the delay in implementing the government compulsion. The fine is determined based on the calculation of the percentage of violations multiplied by the maximum fine value. This fine is a non-tax state revenue that must be deposited into the state treasury in accordance with the provisions of laws and regulations regarding Non-Tax State Revenue.

Based on the description of these sanctions, government coercion sanctions are the most recovery-orientated sanctions than other administrative sanctions. However, the sanction of government compulsion that is not implemented actually has a reaction in the form of a fine for the delay in implementing government compulsion; recovery with a third party that is not further regulated who the party is, whether the government, the person in charge of the business and / or activity, or other communities; and the use of guarantee funds for the restoration of environmental functions is also not regulated to involve affected communities so that the community does not know its use.

This means that this sanction is still oriented towards stopping violations only, not towards environmental restoration. Not only that, the role of third parties is not further regulated, making their involvement unaccountable. It also does not regulate the use of guarantee funds for the restoration of environmental functions involving affected communities, making it not really accountable. In fact, according to Government Regulation No. 46/2017 on Environmental Economic Instruments (PP No. 46/2017), guarantee funds for the restoration of environmental functions that were

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previously disbursed to affected communities are not truly accountable. Whereas according to Government Regulation Number 46 of 2017 concerning Environmental Economic Instruments (PP No. 46/2017) guarantee funds for the restoration of environmental functions, previously called environmental recovery guarantee funds, are one of the environmental economic instruments, namely in the type of environmental funding instruments.

Furthermore, there are administrative fines imposed on the person in charge of the Business and/or Activity with several criteria. These criteria are not having an Environmental Approval but already having a Business Permit; not having an Environmental Approval and a Business Permit; taking actions that exceed the Wastewater Quality Standard and/or Emission Quality Standard, in accordance with the Business Permit; not carrying out the obligations in the Business Permit related to the Environmental Approval; preparing an EIA without a certificate of competence for preparing an EIA; due to negligence perform actions that result in the exceeding of Ambient Air Quality Standards, Water Quality Standards, Seawater Quality Standards, disturbance quality standards, and/or Environmental Damage Standard Criteria, which are not in accordance with the Business Licence related to the Environmental Approval he/she holds; and/or perform actions that result in Environmental Pollution and/or Environmental Damage, which are carried out due to negligence and do not cause harm to human health and/or injuries and/or serious injuries, and/or death of persons.

Administrative fines are non-tax state revenues that must be deposited into the state treasury. This fine can be imposed together with government coercion. The amount with the criteria of not yet having an Environmental Approval but already having a Business Licence is 2.5% multiplied by the

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investment value of the Business and/or Activity. The imposition of a fine is a maximum of Rp3,000,000,000.00 (three billion rupiah). Meanwhile, the nominal fine with the criteria of not having an Environmental Approval and Business Licence is calculated at 5% of the investment value of the Business and/or Activity with a maximum nominal of Rp3,000,000,000 (three billion rupiah). Furthermore, administrative fines with criteria for performing actions that exceed the Wastewater Quality Standard and/or Emission Quality Standard are calculated based on pollutant load units that exceed the Wastewater Quality Standard and/or Emission Quality Standard of stationary sources. The unit of pollutant load is calculated based on the difference between the actual concentration of Wastewater or Emission and the concentration of the quality standard multiplied by the discharge/water rate and the length of time of the violation. Overall, the maximum fine for this criterion is Rp3,000,000,000,- (three billion rupiah).

The amount of administrative fines with the criterion of not implementing obligations in Business Licensing related to Environmental Approval is determined based on the level of violation, namely light [Rp1,000,000.00 (one million rupiah) to Rp5,000,000.00 (five million rupiah)], medium [Rp10,000,000.00 (ten million rupiah) to Rp15,000,000.00 (fifteen million rupiah)], or heavy [Rp20,000,000.00 (twenty million rupiah) to Rp25,000,000.00 (twenty-five million rupiah)]. The amount of the fine is determined accumulatively for each violation with a maximum nominal value of Rp3,000,000,000.00 (three billion rupiah).

Administrative sanctions in the form of fines are further regulated in Law Number 9/2018 on Non-Tax State Revenue (Law No. 9/2018). This is confirmed in Article 2 letter b, namely to support government policies in the context of

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preserving the environment for intergenerational sustainability while still considering aspects of justice. Fines are collected with a Non-Tax State Revenue (PNBP) Collection Letter as PNBP Payable. Fines are paid to the state treasury through a payment centre appointed by the minister and in certain cases through the PNBP Management Agency or Partner Agency.

The time for payment of fines is also set for 24 months or 2 years. The perpetrator will also be subject to a fine of 2% (two per cent) per month of the amount of PNBP Payable if late. If there is an underpayment, the agency or partner will determine the PNBP Payable again with a PNBP Collection Letter. If not paid, an administrative sanction in the form of a fine of 2 times the PNBP Payable or underpayment will be added.

The person in charge of the business and/or activity can apply for a PNBP Payable waiver to the PNBP management agency. The relief is based on matters including beyond the ability of the obligor to pay or force majeure conditions; liquidity difficulties; and / or government policy. Later, the head of the PNBP management agency will issue an approval letter, which has been approved by the minister, in the form of postponement, instalment, reduction, and / or exemption.

Regarding its use, the PNBP management agency will propose it to the minister. The minister then gives approval or rejection by considering the state's financial condition, fiscal policy, and/or the funding needs of the PNBP management agency. State financial conditions, namely considering the state's ability to finance state spending. Granting permission to use PNBP funds must be selective, both in terms of amount and type of activity. Meanwhile, fiscal policy is a policy to increase the capacity of state revenue and the policy of prioritising expenditure

allocation in certain fields or sectors. The funding needs of PNPB management agencies for PNPB services are prioritised.

There are several things that need to be observed in the imposition of these administrative fines. First, the fine can be considered very small when considering the nominal and financial capacity of the company. In Indonesia, the nominal is still very affordable by those responsible for Businesses and/or Activities that fall into the category of Micro, Small and Medium Enterprises (MSMEs), especially for those that are not included in MSMEs. The criteria for Micro Enterprises according to Government Regulation No. 7 of 2021 concerning Ease, Protection, and Empowerment of Cooperatives and Micro, Small, and Medium Enterprises (PP No. 7/2021) are for Micro Enterprises, which have a business capital of IDR 0 to a maximum of IDR 1,000,000,000,- (one billion rupiah) excluding land and buildings for business premises, Small Enterprises have a business capital of more than IDR 1,000,000,000,- (one billion rupiah) to a maximum of IDR 5,000,000,000,- (five billion rupiah) excluding land and buildings for business premises. The criteria for medium-sized enterprises are business capital of more than Rp5,000,000,000,- (five billion rupiah) up to a maximum of Rp10,000,000,000,- (ten billion rupiah).

Then, based on the annual sales result criteria, Micro Enterprises are Rp0 up to a maximum of Rp2,000,000,000,- (two billion rupiah). Furthermore, the criteria for Small Enterprises are more than Rp 2,000,000,000,- (two billion rupiah) to a maximum of Rp 15,000,000,000,- (fifteen billion rupiah), and Medium Enterprises are more than Rp 15,000,000,000,- (fifteen billion rupiah) to a maximum of Rp 50,000,000,000,- (fifty billion rupiah). Thus, the nominal is still affordable by MSMEs and non-MSMEs.

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This means that if the administrative fine sanction is imposed with a cumulative maximum of IDR 3 billion, then the sanction will not achieve its nature, namely as a punitive sanction. Business and/or Activity actors will not be deterred because it is still very affordable, especially for those responsible for Business and/or Activities whose Business and/or Activities are large-scale, no longer MSMEs. Fines can be considered disproportionate and have a punitive effect if those affected by this sanction are companies that have very good financial conditions/not included in the MSME category.

Second, administrative fines earmarked for environmental restoration may not be intended for that purpose. This is because there are priorities for the use of funds that consider the state's financial condition, fiscal policy and/or the funding needs of the PNPB management agency. This means that if these three considerations are more important, then environmental recovery will be put aside. Finally, the longer recovery of the environment will also have a long impact on local life and ecosystems.

The next administrative sanction in the field of environmental protection and management is Suspension of Business Licences. This sanction is stipulated against the person in charge of the Business and/or Activity who does not implement government compulsion, does not pay administrative fines, and/or does not pay fines for every delay in implementing government compulsion.

This sanction is a sanction that is considered more severe than the previous sanctions because it is a reaction if the sanction is not carried out. This sanction is oriented so that the person in charge of the Business and/or Activity cannot operate because his Business Licence is being frozen. This freeze takes the form of legal action to temporarily not enforce the environmental permit and/or management protection

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permit. As a result, the business and/or activity cannot operate until a certain limit is set. This business licence suspension can be carried out with or without a time limit.

The sanction of Freezing Business Licences is able to stop the person in charge of the business and/or activity from polluting and/or damaging the environment. However, this sanction is still oriented towards stopping violations, not restoring the environment. The impacts arising from a violation are not the main focus to be restored. It is also not regulated what matters are obligatory for the imposition of the Business Licence Suspension sanction.

The last type of administrative sanction in the field of environmental protection and management is Revocation of Business Licence. This sanction is applied to the person in charge of the Business and/or Activity who does not carry out the obligations of government coercion, does not pay administrative fines, does not pay fines for delays in implementing government coercion, does not carry out the obligation to freeze Business Licences or Government Approval, and/or commits pollution and/or destruction that cannot be overcome or is difficult to recover.

Administrative sanctions in the form of revocation of Business Licences also focus on whether the person responsible for the Business and/or Activity can operate. In short, it can be understood that this sanction also focuses on stopping violations so that the environment is not further polluted and/or damaged, but is not oriented towards environmental restoration.

Based on the explanation above, it can be seen that sanctions are a means and instrument of HAN enforcement. Administrative sanctions are present as repressive measures to enforce compliance. Administrative sanctions are a form of application of government authority, without third party

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intermediaries, and become a tool of power that is public law to be given as a reaction to non-compliance with obligations in HAN norms.

Administrative sanctions are also distinguished based on various categories, namely according to the purpose, and the target of the violation. According to its purpose, administrative sanctions are reparatoir (to restore to the original condition or a situation according to the law) and punitive (to punish someone). According to the target of the violation, administrative sanctions are regressive (imposed on violations of HAN norms in general) and reparatoir (only on violations of provisions in the decision). Administrative sanctions are aimed at the act, while criminal sanctions on the perpetrator. The nature of administrative sanctions is reparatoir-condemnatoir, namely restoring back to the original state and providing punishment, while criminal sanctions are condemnatoir or punishment.

According to Permen LHK No. 2/2013, the imposition of administrative sanctions aims to protect the environment from pollution and/or destruction due to a business and/or activity, overcome pollution and/or destruction, restore the quality of the environment due to pollution and/or destruction of the environment, and provide a deterrent effect for those responsible for businesses and/or activities that violate the laws and regulations in the field of environmental protection and management and the provisions in the Environmental Permit which has now changed to Environmental Approval. However, it appears that administrative sanctions in the field of environmental protection and management are more oriented towards punishing perpetrators of violations of environmental protection and management regulations, not on environmental restoration.

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In line with the elements of the purpose of imposing administrative sanctions in Permen LHK No. 2/2013, the element that is fulfilled is protecting the environment from pollution and/or destruction due to a business and/or activity due to efforts to prevent and stop violations in the form of written warnings, government coercion, suspension of Business Licences, and/or revocation of Business Licences. The second element that is fulfilled is to provide a deterrent effect for the person in charge of the business and/or activity who violates the laws and regulations in the field of environmental protection and management and the provisions in the Environmental Permit which has now changed to Environmental Approval due to the punitive administrative sanctions, namely administrative fines, suspension of Business Licensing, and/or revocation of Business Licensing.

However, there are 2 other objectives that are not fulfilled, namely tackling pollution and/or destruction, and restoring the quality of the environment due to environmental pollution and/or destruction. This is because the existing administrative sanctions are oriented towards stopping violations. Sanctions that stop the violation are written warnings, administrative fines, suspension of Business Licences, and revocation of Business Licences.

Sanctions that tend to be able to restore the environment, namely, government coercion sanctions, are ultimately oriented towards stopping violations. The understanding that the orientation of administrative sanctions in the field of environmental protection and management only focuses on stopping violations is further strengthened by the most severe administrative sanction is the revocation of Business Licences. The overall orientation and basis for the imposition of other sanctions after government coercion is also a temporary cessation of violations.

Whereas when it comes to the environment, cessation of violations is necessary, but the orientation towards environmental restoration should be prioritised. This is because future generations have the right to a good and healthy environment and to obtain natural resources just as easily as the present generation.<sup>22</sup> Administrative sanctions that do not restore the environment can have long-lasting impacts that affect public health and quality of life in general.<sup>23</sup>

The opportunity to maximise administrative sanctions can be even greater, because the government coercive sanctions also offer a variety of actions that can be adjusted to the situation in the field.<sup>24</sup> Some ways are first, it can be combined with coaching or technical guidance actions by the government or agencies engaged in environmental protection and management so that it is maximally complied with.<sup>25</sup> Second, the development of environmentally friendly infrastructure and enforcement practices oriented towards

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<sup>22</sup> I Nyoman Nurjaya, "Prinsip-Prinsip Dasar Pengelolaan Sumber Daya Alam Yang Berkeadilan, Demokratis, Dan Berkelanjutan" (2023).

<sup>23</sup> Thomas Abdallah, *Sustainable Mass Transit: Challenges and Opportunities in Urban Public Transportation*, Chapter 4 - Environmental Impacts (Elsevier Inc., 2017), 58-59.

<sup>24</sup> I Made Arya Utama and I Nengah Suharta, "The Challenges of Water Pollution: Enforcement of Water Pollution Control," *Hasanuddin Law Review* 4, no. 1 (2018): 85.

<sup>25</sup> Muhammad Bagus Adi Wicaksono, I Gusti Ayu Ketut Rachmi Handayani, and Lego Karjoko, "Making the Administrative Law Enforcement in Indonesia Effective as an Effort to Prevent Violations Reclamation and Post-Mining Obligations (Study in East Kalimantan Province)" (paper presented at the International Conference on Environmental and Energy Policy, 2021), 154.

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comprehensive environmental restoration.<sup>26</sup> Third, providing guidance regarding the responsibilities of business actors to restore the environment more extensively.<sup>27</sup> Fourth, tightening the obligation to restore with the threat of revocation of the right to establish a business and/or activity in the future - after the sanction of revocation of business licences - if the person in charge of the business and/or activity does not restore the environment. This is done as an effort to stop violations while also oriented towards maximum recovery.

Fifth, opening opportunities for community participation in the form of proposing enforcement policies.<sup>28</sup> This community participation can also be done to increase initiative, support, and so on.<sup>29</sup> Such participation can also be in the form of encouraging the role of women to simultaneously achieve gender equality and justice through environmental policies, thus minimising the marginalisation of women. Because, according to Van Metter and Van Horn in Agustino, there are 6 factors that influence policy implementation, some of which are human resources who play an important role, both men and women, the tendency of

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<sup>26</sup> Arnab Banerjee et al., "Ecorestoration for Environmental Sustainability-an Introductory Framework," in *Ecorestoration for Sustainability* (Wiley Blackwell 2023), 1.

<sup>27</sup> Muhammad Bagus Adi Wicaksono, I Gusti Ketut Rachmi Handayani, and Lego Karjoko, "The Administrative Law Enforcement on Coal Reclamation Obligations Violations Inindonesia," *BiLD Law Journal* 7, no. 2 (2022): 466.

<sup>28</sup> Utama and Suharta, "The Challenges of Water Pollution: Enforcement of Water Pollution Control," 85.

<sup>29</sup> Al Sentot Sudarwanto and I Gusti Ayu Ketut Rachmi Handayani, "Reconstruction of Society Endeavoring through Establishing the Live Environment Cadre as an Embrio of Service Suplying Institution of the Resolution of the Live Environment Dispute out of the Court," *International Journal of Advanced Science and Technology* 28, no. 20 (2019): 98-99.

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policy implementers, and external environments such as social and political.<sup>30</sup> The next policy influencing factor is politicians.<sup>31</sup> This means that all parties can be involved and play a role in environmental protection.

Another urgency in maximising environmental protection is because the government, through Presidential Regulation No. 59/2017 on the Implementation of Achieving Sustainable Development Goals (Perpres No. 59/2017), is committed to joining the United Nations in the success of the Sustainable Development Goals (SDGs). Therefore, the government also focuses on implementing them, one of which is related to the environment.<sup>32</sup>

In addition, the provisions related to the *ultimum remedium* principle in Law No. 32/2009 have a significant effect on the application of administrative sanctions. This is because, in the regulation, this principle is only intended for certain formal criminal offences, namely violations of wastewater quality standards, emissions, and disturbances, and also reduces the scope of offences that can be subject to administrative sanctions. This means that administrative law enforcement is prioritised over criminal law but only for certain formal criminal offences.

In terms of expediency, this regulation overrides the existence of administrative sanctions which are easier,

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<sup>30</sup> E D Saputri et al., "Gender Equality as a Challenge for the Implementation of Environmental Law" (paper presented at the IOP Conf. Series: Earth and Environmental Science, 2020), 3.

<sup>31</sup> Eric Sjöberg, "An Empirical Study of Federal Law Versus Local Environmental Enforcement Author Links Open Overlay Panel," *Journal of Environmental Economics and Management* 76 (2016): 14-15.

<sup>32</sup> Agus Sutopo, Dian Fitriana Arthati, and Utari Azalika Rahmi, *Kajian Indikator Sustainable Development Goals (Sdgs)* (Badan Pusat Statistik, 2014).

cheaper, quicker procedures, and more effective, so that they are better able to overcome environmental pollution and/or damage because they are oriented in this way.<sup>33</sup> Administrative sanctions are needed for environmental restoration as part of the government's forced rehabilitation efforts. Protection of water has been prioritised by the Law on Water Resources as an embodiment of the welfare state doctrine.<sup>34</sup> But not only water, issues related to land degradation also damage soil quality and if damaged and/or polluted soil is not protected, its quality deteriorates.<sup>35</sup>

The interpretation that arises in the regulation is that law enforcement against criminal offences other than formal criminal offences applies the principle of *primium remedium* or criminal law enforcement that is enforced as the first choice, not the last choice. This means that this also reduces the effectiveness of law enforcement in the environmental sector. If this applies, then criminal offences relating to offences in the form of land damage and waste that is not in the form of water or smoke such as objects or garbage will not be phased in with administrative sanctions. This arrangement may cause environmental offences to be oriented towards the offence and

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<sup>33</sup> Kleoniki Pouikli, Vomácka Vojtech, and András Csúri, "Relationship between Criminal and Administrative Enforcement and Sanctioning for Environmental Crimes," European Commission, [https://www.era-comm.eu/combating\\_waste\\_crime/module\\_2/module\\_2\\_5.html](https://www.era-comm.eu/combating_waste_crime/module_2/module_2_5.html).

<sup>34</sup> I Gusti Ayu Ketut Rachmi Handayani, "Hak Menguasai Negara Dalam Pengelolaan Sumber Daya Air Sebagai Perwujudan Doktrin Negara Hukum Kesejahteraan," *Maslaah-Masalah Hukum* 44, no. 2 (2015): 138.

<sup>35</sup> P. R. Oraon, Vidya Sagar, and Kumari Beauty, "Ecological Restoration of Degraded Land through Afforestation Activities," in *Land and Environmental Management through Forestry* (2023), 205.

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the offender's sense of deterrence, rather than environmental restoration.

## IV. Conclusion

Based on the description in this study, it can be seen that administrative sanctions have the aim of tackling pollution and/or destruction, and restoring the quality of the environment because of it. However, administrative sanctions applicable in Indonesia are not recovery-oriented, instead prioritising the termination of violations only. The closest sanction to this goal is government coercion, but in the end, fines are present as a reaction to the non-implementation of these sanctions. In addition, the application of the *ultimum remedium* principle, which is only for formal criminal offences, overrides administrative sanctions in excluded offences. In an effort to protect and restore the environment, the government should make administrative sanctions oriented towards maximum environmental protection and restoration in accordance with the nature of administrative sanctions, namely *reparatoir-condemnatoir*, and apply the *ultimum remedium* principle to all violations in the field of environmental protection because administrative sanctions are more affordable, effective, efficient, fast, and more complied with. The environment needs protection and recovery actions rather than the dominance of punitive sanctions and the cessation of violations alone.

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# Presumption of innocence