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Research paper



Recommendation the Renewal of Environmental Criminal Law System of Premium Toward Remedium Ultimium Remedium

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Abstract

The establishment of law No. 32 of the year 2009 on the management of environmental protection to provide protection for the rights of each person. The authority of the criminal judge has been limited by the enactment of the substance of legislation no. 32 Year 2009 basic enforcement provisions particularly about ultimum remedium. Environmental pollution cases such as the case of the B3 waste imported by PT Asia Pacifik Eco sustainable and mining company PT Freeport in Indonesia since the year 1967 is an example of environmental crime which has led to a permanent change. This study examines whether or not the validity period is still decent basic ultimum remedium. This research is the normative or legal research libraries and analyzed in qualitative descriptive basis. The results obtained.

Keywords: *Environment, Ultimium Remedium, the powers of the judge.*

1. Introduction

Cornerstone fhilosofis establishment Act No. 32 of the year 2009 on the management of environmental protection was established to provide protection for the rights of everyone to get justice for the environment is good. The fact of the damage environment life is still going on for example, is a metal plating activities, plantation, mining, smelting, the use of pesticides, fertilizer use as soil enricher, etc. More worrisome is when the environmental pollution in the productivity of the activity company, because of the scope of management of the company will be bigger than in individual activities.

From the year 2009 to the year 2017 only 2 cases are resolved based on the criminal law of the rest based only on administrative law. This is because the door authority of the criminal judge has been limited by the enactment of the substance of legislation no. 32 Year 2009 basic enforcement provisions, particularly about ultimium remedium for cases relating to the environment (1).

The application of the criminal law as ultimum remedium has been abandoned in the Netherlands, since it resulted in the difference between Fees Officials and understand public prosecutor about when it comes time to criminal law used (2). Protection of environmental management laws in fact, remains bound by administrative law. It can be analyzed in section 100 of the ACT, which States: PPLH if every person who contravenes the raw waste, water quality, raw quality of emissions, or the raw quality of the disorder are convicted, with imprisonment of not longer than three years and a maximum fine of Rp. 3,000,000,000, 00 unless administrative sanctions have been dropped not followed or infringement is done more than once. The existence of provisions governing the ultimum remedium made can not be directly resolved based on the criminal law because interpretation errors about settlement the dispute out of court.

The community holds that in all cases of environmental pollution can be resolved outside the Court. And thus the writing is intended to avoid the weaknesses of the legal structure of the substance-related legislation on the management of environmental protection. The desired end result is a perfect regulation in natural resource management and resultant damage to the environment.

2. Literature Review

The substance of the law that are reflected in the legislation are the rules that have been created by State institutions to follow by all citizens. The substance of the Act is the deciding factor of the quality of a rule of law. The Act became an important factor in the implementation of the Government program will be, among others, in terms of the management of environmental protection. In addition a good or perfect regulation based on the paradigms and values that live and thrive in society (3).

In order to function properly or perfect the legal substance, then should pay attention to four things (4):

1. The problem of legitimacy: that became the Foundation for obedience to the rules.
   Problems of interpretation concerning the determination of the problem, i.e. the rights and obligations of subjects through the process of applying certain rules.
2. The issue of sanctions, i.e. confirms sanctions what, how their application and who applied it.
3. The issue of jurisdiction is about setting the line of authority or power parties enforce legal norms, and subject to what law governed by norms of that device.
4. The same thing is expressed by Robert Biersted, he assesses a regulation has good legal substance or not, then it can be tested through the terms of the legislation, including:
   a) The rules were designed with good, its rules clear, easy to understand and full of certainty.

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b) The regulation should not require or prohibit nature allows.
c) Sanctions shall be appropriate and in accordance with the means of sanctions given to acts that are prohibited.
d) The severity of the sanction should not be excessive means proportional to the offense committed.
e) Organize against acts that are easily visible by naked eye or with special skills, this relates to proof.
f) Contain the prohibition accords with the moral meaning of things not to do it is morally alone is wrong.
g) The implementing law runs its task properly, the dissemination and interpretation of the regulations, uniform and consistent. At this stage, even though it's been perfect in terms of substance, but if implemented the legal apparatus is manifested by an institutional law institutionalization are not uniform and consistent, then law enforcement also cannot be achieved in particular in interpreting the law on the management of environmental protection.

Criticism of the use of the basic principle of remedium ultimium i.e. about the application of criminal law enforcement as a last effort after the application of administrative law enforcement is considered not successful (5) in legislation about The management of environmental protection had ever been raised by research conducted by the Syriac Widayati Lidya a Vice Law Researcher at Center for study, Data processing, and information the Secretariat-General of the house of representatives, from the results of his research he mentions that the enforcement of criminal law in environmental issues is to keep paying attention to basic ultimium remedium is no longer worthy to be maintained when the environmental problems has led to negative impact on the life and the soul human (6).

Will he just examine than Article 100 problem Act management of environmental protection and does not assess based on the framework of the statutory rule formulation is good or perfect as expressed by Alvi Syahren and Robert Biersted. He also did not provide solutions directly related to the substance of the legislation because the legislation recommends that management of environmental protection immediately on revision.

3. Methods

This research is the normative or legal research library that is its main source of research using secondary data or references. Normative or legal research question is the doctrinal research conducted specifically to examine the law as a positive norm (7). While the doctrinal research is research based on a normative reference is called with positive legal norms and doctrines.

3.1 Data Collection

The approach in this research is done legally, namely the approach do to conceive of the normative rules of law the rule of law. It becomes a choice of approaches used in research because that becomes the object of research is the policy shift in criminal law from the basis of the principle of premium became remedium ultimatum remedium in environmental criminal act as well as see the substance of the law is not perfect in the legislation of environmental protection Management.

3.2 Data Analysis

Before analyzed the type of data used in this study i.e. secondary data using the law of primary and secondary legal materials. The legal materials collected through the study of librarianship. In this study, the material used is the primary legal ACT on the environment. While secondary legal materials in the form of literature related to the issue of research. Legal materials obtained through the library study further analyzed in qualitative descriptive.

4. Results

Got here based on the theory of legal system of Friedman, a perfect legal system is expected to be the driving engine in order to upright the laws on environmental protection and management. The legal structure is associated with the renewal law can be seen from:

1. The substance of the law on environmental protection and management.
2. Structure of the law on the law on management and protection of Environment c. law on Cultural communities to upright laws on the management and protection of the environment.

The Act is containing about the expansion of evidence, threats, punishment, besides the minimum maxsimum, punishment for breach of a raw quality, alignment of criminal law enforcement and criminal acts of the Corporation. In the legislation of this reliance on administrative law, criminal law is very evident especially about determining the acts categorized as criminal deeds always (4). The raw quality of usage disruption basic ultimatum remedium also referred to in this Act. The results of his analysis is any person who violates Article 100 paragraph [1] be in violation of the following three things it will be are convicted, that is:

Raw waste water quality

Quality Raw Emissions

Whereas the provisions of random ultimatum found in Article 100 paragraph [2] of the ACT PPLH "criminal offense referred to in subsection [1] may only be worn if the administrative sanctions which have been dropped not followed or infringement done more than one time "in other words, the indicators for the use of criminal law on the basis of this Act is in has gone through a few things:

a. Administrative Sanctions which have been dropped not followed, his analysis is before the criminal law is implemented as a premium random, then must first seek a legal fact that subject such laws ever do the same and violations have been given administrative sanctions. However the law, subject to repeat the same hue. Thus the efforts of other laws, such as the efforts of the civil law and the Administration have done.
b. Valuations carried out more than once. The explanation of this chapter in the chapter description of environmental legislation does not exist so that it appears in various interpretations, include:
    a) Whether the offense committed more than once is counted before administrative sanctions drop means only via a dispute resolution outside the courts.
    b) Whether the offense committed more than one time is calculated after the administrative sanctions provided.

However, before the administrative sanctions which have been dropped not followed in rule this law also regulated regarding environmental dispute resolution outside the courts. Although finished off the Court, but the same authority given by the environmental dispute resolution in court. These authorities include:

a. The form and magnitude of the damages.
b. Pollution recovery Actions and/or destruction.
c. Specific Actions to guarantee will not be a recurrence of the pollution and/or destruction; and/or
d. Action to prevent negative impact on the environment.

In addition to the above 2 things namely concerning administrative sanctions which have been dropped not obeyed and violations carried out more than once then a long process to arrive at authority of criminal law in the case of complete environment. So it becomes a barrier in the enforcement of environmental protection. While the facts of the problem of environmental protection management is happening now so incredible that environmental issues are reflected in the ACT of PPLH, on article 1 of the aforementioned ACT of 14 figures mentioned that environmental pollution is entered or inclusion of any living being, substances, energy, and/or other components into the environment by human activities so as to go beyond the raw quality of the environment that has been established. Whereas in Article 1 point 16 mentioned that

environmental destruction is the Act of a person who raises a change directly or indirectly against the nature of the physical, chemical, biological and/or environmental criteria beyond raw damage so of the environment. Then it is very unjust in giving environmental protection done with how to try.

Opposite ultimium remedium i.e. premium remedium done deals granting criminal vindication of at the beginning. The law criminal the most appropriate applied in order to obtain the benefit in preventing and reducing crime (8). The same thing is expressed also by Barda Nawawi, he mention of criminal law is a tool or the best available means, we have to face the great danger and immediate as well as to face the threat of danger (9). Sholehudin also dissented, he stated that the criminal is justified if it brings a criminal a criminal incident prevents goodness, worse, and there is no other alternative that can provide equivalent results as good (10). Deterrent effect produced is expected to improve the prudence and the obedience of the rule of law as well as environmental awareness by all stakeholders about the importance of the protection and management of the environment for the sake of the lives of today's generation and the future (11).

Look at the number of cases of environmental pollution such as waste B3 cases imported by PT Asia Pacifik Eco sustainable and mining companies namely, PT Freeport in Indonesia since 1967 has produced waste by as much as 6 billion tons or over two-fold compared with the rest of the results of the excavations and in the construction of the Panama Canal (12). It is an example of an environmental crime which has led to a permanent change. See the extent of damage inflicted, it is feared the use of the principle of criminal law or remedium ultimium last as on the effort that is applied. As well as worrying about the ability of the given administrative sanctions can make the destroyer of the environment becomes a deterrent Sedangangkan the restoration of the environment pollution is not easy to do.

Related dispute resolution outside the Court Article 87 paragraph 2 States that the resolution of disputes outside of the Court do not apply to the crime the environment as provided for in this Act. Follow the criminal in intent includes the deeds of people who deliberately or fails to perform the acts that resulted in the ambient air quality beyond raw, raw, raw water quality the quality of sea water, or the criteria of the environmental damage to raw.

Then it should be thus understanding was a settlement out of court settlement in the case didn't become the environment for issues related to the perbuata of people deliberately or negligent conduct acts that result in ambient air quality beyond raw, raw, raw water quality the quality of sea water, or raw damage criteria of environment as well as in addressing environmental crime forms, there are no options that are fit enough to deal with it except through the use of criminal sanctions (13).

5. Discussion

Then it should be thus understood was a settlement out of court settlement in the case didn't become the environment for issues related to the act of people deliberately or negligent conduct acts that result in ambient air quality beyond raw, raw, raw water quality the quality of sea water, or raw damage criteria of environment as well as in addressing environmental crime forms. There are no options that are fit enough to deal with it except through the use of criminal sanctions.

6. Conclusion and Recommendation

a. Conclusion:

That the rule of law on the basis of ultimum remedium on laws on the management and protection of the environment must be transformed into a premium remedium. That is because the legal system consisting of a legal structure, the substance of the law and legal culture is not capable to optimize enforcement because hampered by basic ultimatum remedium.

b. Suggestions:

In order to erect a guarantee for the management and protection of the environment, then the ultimatum remedium principle in the foxes becomes premium remedium.

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