

ADMINISTRATIVE PENALTY ON LICENSES VIOLATION OF ENVIRONMENTAL PROTECTION AND MANAGEMENT ON REGENCIES/CITIES IN CENTRAL JAVA PROVINCE^Ω

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Abstract

The Government of Republic Indonesia has issued a policy to provide environmental protection and management. For its effectiveness, it has been stipulated control policies and administrative penalty in case of license violation of environmental protection and management. This legal research analyzes regencies/city government policies in Central Java Province on administrative penalty on licenses violation of environmental protection and management by applying statute approach. In determining sample, this research uses purposive sampling method and secondary data analysis is done qualitatively. Based on research result, it shows that the policies of regencies/city government in Central Java Province region on environmental protection and management refer to the Law of Republic of Indonesia Number 32 Year 2009 on the Environmental Protection and Management. For the implementation, the policy was subsequently published in accordance with the needs of each region in the form of local regulations which includes administrative penalty on licenses violation of environmental protection and management.

Keywords: environment, local government, administrative penalty

Abstrak

Pemerintah Republik Indonesia telah mengeluarkan kebijakan guna memberikan perlindungan dan pengelolaan lingkungan hidup. Dalam rangka efektivitas berlakunya hukum telah ditetapkan kebijakan pengawasan dan sanksi administratif bila ada pelanggaran perizinan terhadap perlindungan dan pengelolaan lingkungan hidup. Penelitian *legal research* ini menganalisis kebijakan Pemerintah Kabupaten/Kota di Provinsi Jawa Tengah tentang sanksi administrasi terhadap pelanggaran perizinan bidang perlindungan dan pengelolaan lingkungan, dengan pendekatan perundang-undangan. Penentuan sampel menggunakan metode *purposive sampling* dan analisis data sekunder dilakukan secara kualitatif. Berdasar hasil penelitian diketahui bahwa kebijakan Pemerintah Kabupaten/Kota di wilayah Provinsi Jawa Tengah bidang perlindungan dan pengelolaan lingkungan merujuk Undang-Undang Republik Indonesia Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup. Untuk pelaksanaannya kemudian diterbitkan kebijakan sesuai dengan kebutuhan daerah masing-masing dalam bentuk peraturan daerah yang didalamnya memuat sanksi administrasi jika terjadi pelanggaran perizinan bidang perlindungan dan pengelolaan lingkungan.

Kata kunci: lingkungan, pemerintah daerah, sanksi administrasi.

Introduction

The 1945 Constitution of the Republic of Indonesia has provided a regulation on the right of good and healthy environment. This right is classified into the very basic type of human

rights.¹ The constitutional mandate is then followed up by Government by issuing some envi-

^Ω Result of Competitive Research "Pengawasan dan Penerapan Sanksi Administratif Terhadap Pelanggaran Perizinan Bidang Perlindungan dan Pengelolaan Lingkungan Hidup bagi Usaha Industri Kecil pada Kabupaten/Kota di Wilayah Provinsi Jawa Tengah", Tahun 2016, Duty Num-

ronmental policies. In 2009, Indonesian Government issued a policy related to environmental arrangement through Law Number 32 Year 2009 on Environmental Protection and Management (UUPPLH), which replaces Law Number 23 Year 1997 on Environmental Management perceived as less powerful in imposing penalty on environmental licenses violation. Legally, the rules of the Law on Environmental Protection and Management are more comprehensive in the regulation of environmental protection and management because in addition to refining also have incorporated various principles/principles related to the environment that developed at the international level.²

Furthermore, the Government issues the implementing regulation of the Environmental Protection and Management Act through Government Regulation of the Republic of Indonesia Number 27 Year 2012 on Environmental Licenses. In consideration of Government Regulation of the Republic of Indonesia Number 27 Year 2012, it is stated that in order to implement the provisions of Article 33, Article 41, and Article 56 of the Law on Environmental Protection and Management, it is necessary to stipulate a Government Regulation on Environmental Licenses", thereby the provisions of Environmental Protection and Management Act can already be implemented.

The provisions in Article 33 and Article 41 of Government of the Republic of Indonesia Regulation Number 27 Year 2012 concerning Environmental Licenses shall govern two instruments of environmental protection and management, namely environmental assessment instruments (in the form of Environmental Impact Assessment or Environmental Management Efforts and Environmental Monitoring Efforts or AMDAL and UKL-UPL) as well as environmental

licenses instruments. An amalgamation of the substance of environmental protection and environmental licenses in this PP is conducted by considering that AMDAL/UKL-UPL and environmental licenses are a unity. This is in line with licensing position as an prevention instrument of environmental pollution and damage and it is part of compliance through environmental law enforcement known as the command and control (CAC) approach.³

Furthermore, in the context of the legislation implementation, Minister of Environment of Indonesia issued a Regulation of Minister of Environment of the Republic of Indonesia Number 16 Year 2012 on Guidelines for the Preparation of Environmental Documents. The document includes Environmental Impact Analysis documents, Environmental Management Effort and Environmental Monitoring Efforts, and Environmental Management and Monitoring Statement.

In order to improve the effectiveness of administrative penalty implementation, the government issued a new policy through Minister of Environment Regulation Number 2 Year 2013 on Guidelines for Implementing Administrative penalty in a Field of Environmental Protection and Management. The policy regulates types of violations and administrative law enforcement in the field of environmental protection and management. This type of violation is based on 2 (two) important instruments namely supervision and implementation of administrative penalty. This supervision is a preventive law enforcement while the application of administrative penalty is a repressive law enforcement. Proper supervision will at least prevent the violation of administrative law norms. Thus, any potential environmental pollution can be avoided. Basically, in order to ensure legal certainty as the foundation for the protection and management of natural resources and other development activities, therefore, it is not only administrative law aspect but also criminal law as-

ber No.0581/E3/2016, Contract Number No.195/USM.H9/L/2016.

¹ Bambang Sutrisno, "Kerancuan Yuridis Kewenangan Perlindungan dan Pengelolaan Lingkungan Hidup dalam Perspektif Otonomi Daerah", *DIH, Jurnal Ilmu Hukum*, Vol. 9 Number 17, p. 23.

² Ida Nurlinda, "Kebijakan Pengelolaan Sumber Daya Alam dan Dampaknya terhadap Penegakan Hukum Lingkungan Indonesia", *Jurnal Bina Hukum Lingkungan*, Vol. 1 Number 1, October 2016, p. 2.

³ Marhaeni Ria Siombo, "Tanggung Jawab Pemda Terhadap Kerusakan Lingkungan Hidup Kaitannya dengan Kewenangan Perizinan di Bidang Kehutanan dan Pertambangan", *Jurnal Dinamika Hukum*, Vol. 14 Number 3, September 2014, p. 399.

pect and civil law aspect are developed in a system of protection and environmental management which is clear and thorough.⁴

Generally speaking, this penalty is a form of coercion from the state administration (government) to the citizens in the case of any orders, obligations or restrictions stipulated in the laws and regulations issued by the state administration (government). These penalty are necessary to ensure legal certainty, consistency of law enforcement, and also law enforcement.⁵ In a sociological context, penalty are a form of law enforcement effort. Law enforcement is a process for realizing legal will into reality. These are the ideas of the legislatures formulated in the law regulations.⁶

Adhering to the Law on Environmental Protection and Management as the basis for environmental protection and management functioning as an umbrella act, it becomes the basic stipulation of existing environmental regulations (*lex lata*) and for further regulations under it (*lex ferendai*).⁷ Therefore, the implementation regulations issued at the regional level in this case the district/city should also refer to the Law on Environmental Protection and Management without having to ignore the local wisdom of each district/city. It is suspected that there are still regencies/cities that have not made adjustments to the provisions as stipulated in the law.

Based on this description, the focus of this study is to examine administrative penalty of license violation of environmental protection and management determined by city/regency in the province of Central Java by formulating the problems; *first*, how is the policy of en-

vironmental protection and management of city/regency in the province of Central Java?; and *second*, how is the administrative penalty determined by the Regency/City Government in the Central Java Province if license violation of environmental protection and management occurs?

Research Method

Type of this research is legal research with legal approach. This approach applies legislation and regulation. This is in order to achieve research objectives based on legal provisions. This research was conducted in three regencies/cities in Central Java Province. Those 3 locations are Semarang, Kudus, and Pekalongan City. The selection of research location as sample is based on purposive sampling method which is sample selection for certain purpose/consideration. The data used are secondary data collected through literature study. Data from the results of the study were analyzed qualitatively. Qualitative analysis is intended to express the results of research and results of synchronization described in the form of formulations and descriptions.

Discussion

Policy on Environmental Protection and Management of Regencies/Cities in Central Java Province Region

Law Number 32 Year 2009 on Environmental Protection and Management has stipulated that every person who runs business and/or activity must have an environmental license. Environmental License is a license granted to any person running a business and/or activity required to have environmental impact analysis (EIA) or Environmental Management Efforts and Environment Monitoring Efforts (*UKL-UPL*) of environmental protection and management as a prerequisite for obtaining a business license and/or activity. Article 36 of the Environmental Protection and Management Law stipulates that every business and/or activity required an EIA or UKL-UPL as environmental license. The environmental license is issued based on an environmental feasibility decision or a UKL-UPL recommendation. Decisions on feasibility or in-

⁴ Vica J. E. Saija, "Wewenang Pemerintah Daerah dalam Pemberian Izin Lingkungan Hidup", *Jurnal Sasi*, Vol. 20 Number 1, January - July 2014, p.71.

⁵ Endah Pujiastutti, Efi Yulistyowati, dan Doddy Kridasak-sana, "Sanksi Administrasi terhadap Pelanggaran di Bidang Perizinan", *Jurnal Dinamika Sosial Budaya*, Vol. 14 Number 1, June 2012, p.42.

⁶ Satjipto Rahardjo, 1984, *Masalah Penegakan Hukum-Suatu Kajian Sosiologis*, Bandung : Sinar Baru, p.24.

⁷ Dahlia Kusuma Dewi, et.al., "Izin Lingkungan dalam Kaitannya dengan Penegakan Administrasi Lingkungan dan Pidana Lingkungan Berdasarkan UU Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup (UUPPLH)", *USU Law Journal*, Vol. II Number 1, January 2014, p.124.

appropriateness of the environment shall be determined by the Minister, governor or regent/mayor in accordance with their authority based on the assessment result of the EIA's Appraisal Commission. The environmental license shall include the requirements contained in the environmental feasibility decision or recommendation of UKL-UPL. The environmental licenses referring to Environmental Protection and Management Act shall be issued by the Minister, Governor or Regent/Mayor in accordance with their authority.

In line with the implementation of regional autonomy policy, authority is given to the regions to make local policies to provide services to increase the participation, initiation, and community empowerment aimed at improving people's welfare.⁸ Local government policies on environmental issues can be environmental regulations, institutional strengthening, and application of environmental documents in licensing process, socialization/education, quality improvement and quantity of coordination among agencies, supervision, formulation of forms and penalty, as well as funding improvement in environmental management.⁹

Furthermore, to follow up the Law on Environmental Protection and Management of regency/city governments, Semarang Local Government, Pekalongan Local Government, and Kudus Local Government have policies in terms of local regulations on environmental protection and management. Semarang administration stipulates Local Regulation Number 13 Year 2006 on Environmental Control, Pekalongan City stipulates Local Regulation Number 3 Year 2010 on Environmental Protection and Management, and Kudus Regency has issued Regency Regulation Number 6 Year 2014 on Environmental Protection and Management. In addition to

these local regulations, the three regencies also have regents/mayors regulations which are the substance of the regulation related to environment protection and management.¹⁰

In regards to environmental protection and management policy, Semarang Government stipulates environmental licenses through Regional Regulation Number 13 Year 2006 on Environmental Control. It determines that: *first*, any business plan and/or activity that has the potential to create environmental impacts must obtain a license or recommendation from the Mayor; *second*, land use for certain business and/or activity must obtain location license and/or principle license from Regional Government; *third*, the application for a license or a recommendation shall be accompanied by an environmental feasibility study document. Furthermore, Chapter IX of Semarang City Regulation Number 13 Year 2006 on Environmental Control is regulated on the Environmental Feasibility Study Document which consists of environmental impact analysis (EIA), environmental management effort document and environmental monitoring effort (*UKL-UPL*), a statement of environmental management and monitoring (*SPPL*) capability, environmental impact assessment documents and environmental audits. In detail, the arrangements contained in Article 53 to Article 63 of Regional Regulation of Semarang City Number 13 Year 2006 on the Control of the Environment are:

- a. Any business plans and/or activities that have a significant impact on the elements of the environment shall have an Environmental Impact Analysis (EIA) document in accordance with the laws and regulations.
- b. Every business and/or activity must also be accompanied by document of Environmental Management Effort - Environmental Monitoring Effort (*UKL-UPL*) pursuant to legislation.
- c. The proponent of a business plan and/or activity shall prepare a Letter of

⁸ Risno Mina, "Desentralisasi Perlindungan dan Pengelolaan Lingkungan Hidup sebagai Alternatif Menyelesaikan Permasalahan Lingkungan Hidup", *Jurnal Arena Hukum*, Volume 9, Number 2, August 2016, Malang: Universitas Brawijaya, p.156.

⁹ Mustofa, "Dana Bagi Hasil dan Konservasi Sumber Daya Alam di Indonesia Periode Desentralisasi", *Jurnal Ekonomi dan Pendidikan*, Volume 8, Number 2, November 2010, Yogyakarta: Economy Faculty Universitas Negeri Yogyakarta, p.132.

¹⁰ Endah Pujiastuti and Dewi Tuti Muryati, "Kebijakan Perlindungan dan Pengelolaan Lingkungan Hidup Pada Kabupaten/Kota di Wilayah Provinsi Jawa Tengah", *Prosiding SNPK*, Vol 1, September 2016, ISSN. 2540-783X, Tanjung Pinang: Faculty of Social and Political Sciences Universitas Raja Ali Haji, p.127-129.

Declaration on the Capability of Management and Monitoring of the Living Environment (*SPPL*).

- d. Any running business and/or activity that do not have EIA must have an environmental impact assessment document. If not, the mayor may recommend the Minister for environmental audits.

In the context of license in the field of environmental management and protection, Pekalongan administration based on Regulation Number 3 Year 2010 Article 47 to Article 53 provides that:

- a. Any business plan and/or activity that have the potential to cause environmental impacts must obtain a licenses or recommendation from the Mayor or an environmental agency. This licenses or recommendation is a licenses or recommendation for environmental or environmental feasibility.
- b. Land use for certain business and/or activities, must obtain location license and/or principle license from Regional Government.
- c. Application for license or recommendation must be completed with environmental feasibility study document.

Environmental document as regulated in Article 1 Number 50 of Pekalongan City Regulation Number 3 Year 2010 on Protection and Environmental Management of Pekalongan City is a document containing environmental management and monitoring consisting of environmental impact analysis (EIA), environmental management effort life and environmental monitoring efforts (*UKL-UPL*), certificates of environmental management and monitoring (*SPPL*), environmental evaluation documents (*DELH*), environmental management documents (*DPLH*), and Environmental Audits.

Then article 56 to Article 61 regulate the document of environmental feasibility study as follows:

- a. Every business plan and/or activity which has important effect to environmental elements are required to have a document of Environmental Impact Analysis (*ANDAL*) based on the regulations.

- b. Every business and/or activities are required to attach the document of Environmental Management Effort - Environmental Monitory Effort (*UKL-UPL*) based on the regulations.
- c. The business plan and/or activities pioneer is required to arrange a Certificate of Environmental Management and Monitoring (*SPPL*).
- d. Every business plan and/or activities which have already had the business and/or activity licenses but have not had *Amdal* document should hold Environmental Evaluation Document (*DELH*) which is a document of environmental development and monitory as part of the environmental audit process.
- e. The business and/or activities which already have the business and/or activity licenses but do not have *UKL-UPL* must have the Environmental Management Document (*DPLH*) which is a document of the environmental development and monitory.
- f. Environmental Audit is an evaluation conducted to assess the business and/or activity of the person in charge's obedience to legal requirement and government policy.

Likewise, Kudus Regency Government regulates the issue in Regional Law Number 6 Year 2015 on Environmental Protection and Development. According to Article 60 Paragraph (1), every business plan and/or activity required to have *Amdal* or *UKL-UPL* which belongs to the regional authorities and must have the environmental licenses from the regent. Next, according to Article 63 Paragraph (1), every business plan and/or activities producing waste water (B3) must have Environmental Protection and Development Licenses (*PPLH*).

Administrative Penalty Implemented by Local Governments in Central Java Province towards License Violation on Environmental Protection and Development.

The punishment imposition on license violation of environmental protection and development is an instrument which is inseparable from the environmental protection and development policy as a whole. It is in line with

environmental policy to realize a continual eco-friendly development. It is conducted by guaranteeing the legal certainty and protecting people's rights for proper and healthy environment.¹¹ The nature of legal certainty is a certainty of the truth and justice existence in every regulation, policy and decision.¹² In this case, one of environmental policy instruments to apply is the environmental protection and development license. A license is a preventive effort by imposing administrative penalty. Otherwise, the administrative penalty is a law enforcement instrument of the environmental protection and development. This is *recovery* which is relevant to be applied to create environmental preservation. The environmental law enforcement is a forcing act and/or process to obey the law based on the regulations and/or environmental requirements.¹³

As it explained, any license violation on environmental protection and development will be imposed by administrative penalty. In this case, the regent/city government apply the administrative penalty for any violence of license which is written in each regional regulations. According to Article 74 Paragraph (2) Semarang regional Regulation of Environmental Control, the administrative penalties include: *first*, warning; *second*, governmental force and fine; and *third*, licenses revocation or its recommendation of the business or activity.

Administrative penalty of warning is imposed on the person in charge of the business or activity who does the violence for the first time. This punishment is written in form of first, second, and third warning letters orderly delivered. They contain a command to do particular act. Each letter is given per 30 days after the previous letter is arrived. The regional environment monitoring officer (PPLHD) must

supervise and guide along the punishment enforcement. PPLHD is a public officer of the responsible institution of the region, fulfilled certain requirements, and inaugurated by the Mayor.

Second, administrative penalty of governmental force is given when the warning punishment and particular given acts are ignored. This penalty is given in form of: *first*, closing the waste disposal slot; *second*, stopping the polluting production machine; *third*, uninstalling the pollutant source; *fourth*, stopping the waste processing installation; *fifth*, temporarily stopping the business or activity; *sixth*, other actions to stop the pollution. The punishment is imposed in certain time period until it has been obeyed. In this case, PPLHD must supervise and guide along the punishment enforcement.

In the mean time, fine penalty is charged to the offender who ignores the previous punishment. It is in form of: *first*, the fine of waste disposal slot closing; *second*, the fine of polluting production machine stopping; *third*, the fine of uninstalling pollutant sources; *fourth*, the fine of uninstalling waste processing machine; *fifth*, other actions fine to stop the pollution. As long as administrative fine is applied, PPLHD must supervise and guide until the penalty is finished.

Administrative penalty in terms of license revocation/annulment is the last step of the administrative punishment enforcement. They are given to those who gain the business or activity licenses from the Province Government or the Central Government. The punishments determination may be asserted by criminal charge based on the law recommendation.

Implementation of punishment in form of warning, governmental force and fine, revocation/cancellation of licenses or its recommendation is given after the report of PPLHD monitoring. This administrative punishment is given based on violation level.

The form of administrative penalty given by Semarang regional government is the same as that of Pekalongan regional government to those who violate the applicable provisions. The form of administrative punishment is sta-

¹¹ Bachrul Amiq, 2013. *Aspek Hukum Pengawasan Pengelolaan Keuangan Daerah dalam Perspektif Penyelenggaraan Negara yang Bersih*, p. 19.

¹² Imamulhadi. "Perkembangan Prinsip *Strict Liability* dan *Precautionary* dalam Penyelesaian Sengketa Lingkungan Hidup di Pengadilan", *Mimbar Hukum*, Vol. 25, Number 3, October 2013, p. 427.

¹³ Tri Rusti Maydrawati, "Tinjauan Hukum Lingkungan dan Kebijakannya terhadap Perlindungan dan Pengelolaan Keanekaragaman Hayati", *Jurnal Perpektif Hukum*, Vol. 16 Number 1, May 2016, p. 27.

ted in Article 71 Paragraph (2) Pekalongan local regulation Number 3 Year 2010 on Pekalongan Environmental Protection and Management.

Kudus government stated that any violation which is done by director of business/activity will be charged administrative penalty. This penalty is given if through monitoring, violations are found in: environmental licenses, and/or PPLH, and/or regulation in environmental protection and management.

The administrative penalty consists of: *first*, written warning. Written warning is given to director of business and/or activity who violate qualification and obligation in environmental licenses and/or environmental protection and management licenses, yet negative impact on environment has not been proven. *Second*, government force. It is applied if director of business and/or activity violates qualification and obligation in environmental licenses and/or environmental protection and management licenses; and/or causes pollution and/or any environmental damage.

Second, license revocation. It is applied if director of business and/or activity; does not fulfill government coercion; conducts activity beside what is written in environmental license and license of environmental protection and management; and/or presumption of falsifying the qualification document of environmental license and license of environmental protection and management.

Third, licenses annulment. It is applied if director of business hands over the business license to other parties without any written agreement from business license holder; does not do most of government force or even all of government force which have already appointed in particular time; and/or have caused any pollution and/or environmental damage which threatens human safety.

Kudus regional government also determines that administrative punishment does not discharge business and/or activity director from obligation and responsibility of recovery or criminal punishment. Further provisions on administrative penalty are regulated in regional

regulation. Semarang government through Regulation Number 13 Year 2006 on environmental control Article 74 paragraph (1) stipulates 34 Articles which can be punished by administrative penalty if business and/or activity director commits violation. The penalty is given by Mayor. Meanwhile Pekalongan government stipulates 31 Article which become foundation for Mayor to impose penalty on the offenders. Those matter have been regulated in Pekalongan regional regulation Number 3 Year 2010 about Pekalongan environmental protection and management in Article 71 Paragraph (1).

Actually, there is no differences in administrative punishment implementation in Semarang, Kudus, and Pekalongan government if any violation against environmental protection and management is done by small, medium, or big industries. The table below shows policy and administrative penalty in those three cities.

Conclusion

Regional government policy in Central Java Province on environmental protection and management refers to Law Number 32 Year 2009 on Environmental Protection and Management. Those implementations are in accordance with regional autonomy concept, regency or city where this research is conducted. They published a policy as a form of application of law Number 32 Year 2009 on Environmental Protection and management along with regional needs. Those policy is written on regional regulation.

Policy which is applied in regional government in Central Java Province for license violation of environmental protection and management refers to each regional law. Actually, there is no differences in punishment implementation if violation is done by small, medium or big industry. The penalty given to business and/or activity director for their violation is administrative penalty. Form of administrative punishment are written warning, government coercion, environmental licenses suspension, annulment of environmental licenses.

Table of Environmental Protection and Management Policy, Law, and Types of Administrative penalty

Regencies/Cities	Policies	Administrative Saction
Semarang	Semarang Regional Regulation Number 13 Year 2006 on Environmental Control	a. warning b. government Coercion and Fine Annulment/cancellation of licenses or recommendation of business and/or activity annulment/cancellation.
Pekalongan	Pekalongan Regional regulation Number 3 Year 2010 about environmental protection and management.	a. warning b. government Coercion and Forced fine c. Annulment/cancellation of licenses or recommendation of business and/or activity annulment/cancellation.
Kabupaten Kudus Kudus Regency	Kudus regional regulation Number 6 Year 2015 on environmental protection and management	a. written warning; b. government force; c. license suspension d. licenses annulment e. Business and/or activity.

Sources: Processed secondary data

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