International Journal of Social Science Research and Review

http://ijssrr.com
editor@ijssrr.com
Volume 5, Issue 1
January, 2022
Pages: 68-78

Formulation of Administrative Criminal Sanctions in Law Number 11 of 2020 Concerning Creation of Work: Analysis of the Environment

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http://dx.doi.org/10.47814/ijssrr.v5i1.125

Abstract

This study aims to determine and analyze the formulation of administrative criminal sanctions in the environmental sector in Law Number 11 of 2020 concerning Job Creation and its formulation in the future. The research method used is normative legal research with a statutory approach, conceptual approach, historical approach and comparative approach. Based on the results of the study, it is shown that the regulation of the environmental sector in the work copyright law causes the decriminalization of the provisions on environmental permits and the criminalization of environmental approval acts with the formulation of criminal acts that depend on other laws and regulations. In the future formulation, it is necessary to limit actions that can be categorized as criminal acts in the environmental field by referring to the purpose of punishment based on Pancasila values and oriented to environmental conservation.

Keywords: *Environment; Administrative Criminal Sanctions; Job Creation Act*

Introduction

The high number of unemployed in Indonesia is increasing from year to year. This, as stated by the Central Statistics Agency (BPS) noted that the number of unemployed in Indonesia in February 2020 reached 6.88 million people, an increase of 60 thousand people compared to the previous period.[1]To overcome this problem, the government established Law Number 11 of 2020 concerning Job Creation which was compiled based on the omnibus law method, which is a method that can change several laws at once. The formation of this law is expected to increase the number of investors investing in Indonesia so that it can create many job opportunities. One of the areas regulated is the environmental sector.

The environmental sector is regulated in the third chapter of the third paragraph on environmental agreements. Environmental enforcement uses several other fields of law, one of which is criminal law. As a result of this regulation, resulted in several changes, especially those related to criminal provisions as regulated in article 109, article 111 and article 112.

[1] Viva.co.id, "The Total Unemployment As of February 2020 Reached 6.88 Million People", https://www.viva.co.id/berita/bisnis/1214622-number-pengangguran-per-februari-2020-reach-6-88-juta-orang, accessed on Thursday 14 January 2021, 06:25 WITA

Violations in Article 109, Article 111 and Article 112 of Law Number 11 of 2020 concerning Job Creation, including violations in the field of administrative law, should therefore be subject to administrative sanctions. Meanwhile, if using a criminal law instrument, then the criminal must be used as a last resort or ultimum remidium not used as a primum remidium. Becauseif criminal law is used without paying attention to the signs/principles that apply in criminal law, the policy will not only damage the criminal law system, it can also eliminate the characteristics/severity of the criminal law sanctions themselves, and can even be one of the factors causing the emergence of criminal law crime.[2]

The use of criminal sanctions in the administrative field is known as administrative criminal law. According to Barda Nawawi Arief, the term administrative criminal law is criminal law in the field of administrative law violations.[3] In essence, it is part of the criminal law policy (penal policy).[4] Criminal law policy using penal facilities from a functional point of view includes three stages, namely, the first stage of formulation policy, applicable policy and executive policy.

The formulation of criminal sanctions in upholding administrative violations is part of the formulation stage. For this reason, a study is needed that examines the formulation of criminal sanctions in administrative violations in the environmental sector, which is suspected to use criminal sanctions so that in the future it can produce a comprehensive understanding both by law enforcement in upholding administrative violations and by legislators in formulating administrative criminal sanctions in the environmental sector.

Based on this description, this study will discuss how the formulation of administrative criminal sanctions in the environmental sector in Law Number 11 of 2020 concerning Job Creation and the formulation of administrative criminal sanctions in the environmental sector in the future?

Methods

The type of research used is normative legal research using a statutory approach, a conceptual approach, a historical approach and a comparative approach. Primary legal materials are in the form of binding provisions, namely Law Number 1 of 1946 concerning Criminal Law Regulations, Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 11 of 2020 concerning Job Creation (environmental sector).), Law Number 12 Year 2011 concerning the Establishment of Legislation, secondary legal materials in the form of scientific books, scientific research results, papers, journals and other scientific works related to research, tertiary legal materials in the form of legal dictionaries and Indonesian dictionaries. The technique of collecting legal materials is done through document studies or literature studies. Analysis of legal materials is carried out using the method of legal interpretation (interpretation). Drawing conclusions using deductive thinking, namely drawing conclusions from general conditions to special circumstances.

Discussion

After apply for 11 years, Law Number 32 of 2009 About Environmental Protection and Management is experiencing a number ofin the form of being changed to Law Number 11 of 2020 concerning Job Creation. This law was compiled based on the omnibus law method which is also known

[2]Maroni, 2015, Introduction to Administrative Criminal Law, Bandar Lampung: CV Anugrah Utama Raharja (AURA), p.9
[3]Barda Nawawi Arief, 2003, Capita Selecta Criminal Law, Bandung: PT. Image of Aditya Bakti, p.13
[4]Maroni, Introduction to Administrative Criminal Law, Op.Cit, p.26

as a law (sweep universe) because it is able to replace several legal norms in one regulation, in this case it has changed 79 (seventy-nine) laws.[5]

The definition of Omnibus law itself in the Black Law Dictionary Ninth Edition, is relating to or dealing with numerous objects or items at once, including many things or having various purposes. If it is associated with the word Law thencould it is said that Omnibus Law is a law that regulates various objects, items and purposes in one legal instrument.[6]

As for the law, the word Omnibus is usually juxtaposed with the word law or bill which means a regulation made based on the compilation of several rules with different substances and levels.[7]

So it can be concluded that the formation of Law Number 11 of 2020 concerning Job Creation using the Omnibus Law method means the formation of a statutory regulation consisting of various rules with various fields formulated in one law.

One of the fields regulated in Law Number 11 of 2020 concerning Job Creation is the environmental sector, which is regulated in the chapter third, third paragraph. The environment is the unity of space with all objects, forces, conditions and living things, including humans and their behavior, which affect nature itself, the continuity of life and the welfare of humans and other living creatures.[8]

Meanwhile, the definition of the environment according to the work copyright law is the unity of space with all objects, power, circumstances, and living things, including humans and their behavior, which affect nature itself, the continuity of life, and the welfare of humans and other living creatures. One of the concrete instruments in environmental protection and management is a permit. The type of permit related to activities that have an important impact on the environment is known as an environmental license (environmental license or milieuvergunning).[9]

Arrangement fieldenvironment is regulated in Paragraph 3 (three) concerning environmental approval. This regulation in the environmental sector also has implications for several criminal provisions regulated in the previous law. The following are the articles that have undergone changes.

Environmental Criminal Provisions in Law Number 11 of 2020 concerning Job Creation

chapter	Criminal act	Threat	Qualification
109	Everyone who performs and/or activities without owning: a. business license or approval from the central government, or local government as referred to in Article 24 paragraph (5), Article 34 paragraph (3), Article 59 paragraph (1), or Article 59 paragraph (4); b. approval from the central	Imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of a minimum of Rp.1,000,000,000.00 (one billion rupiah) and a maximum of Rp.3,000,000,000.00 (three billion rupiah)	Crime

[5]Dwi Kusumo Wardhani, "Disharmony Between the Land Chapter Job Creation Bill and the Principles of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA)", Journal of Legal Communication, Vol.6 No.2, (2020:August),https://www.coursehero.com/file/97524758/28095-54259-1-SMpdf/

[6]BEM KEMA UNPAD, 2020, Critical Notes on Omnibus Law Dissecting the Job Creation Bill, Bandung: Padjadjaran University, p.3

[7] Veterans University, Study on Omnibus Law on Job Creation Bill, Study-Omnibus-Law-RUU-CIPTAKER-BEM-FH-UPNJ.Pdf, accessed on Thursday 25 March 2021 at 16:47 WITA

[8]Syahrin, et al in Fitri Yanni Dewi Siregar, "Legal Aspects of Simplifying Business Entity Licensing in the Environmental Sector in the Job Creation Act", Legal Enforcement Scientific Journal, (December: 2020), https://ojs.uma.ac.id/index.php/gakkum/issue/view/402,p.185

[9]Fitri Yanni Dewi Siregar, "Legal Aspects of Simplifying Business Entity Licensing in the Environmental Sector in the Job Creation Act", Loc.Cit.,

chapter	Criminal act	Threat	Qualification
	government or local government; c. approval from the central government; result in casualties/damage to health, safety, and/or the environment		
111	Environmental approval official who issues environmental approval without being equipped with Amdal or UKL-UPL as referred to in Article 37	Imprisonment for a maximum of 3 (three) years and a fine of a maximum of Rp. 3,000,000,000.00 (three billion rupiah)	Crime

The most basic implication as a result of this change is the abolition of the provisions on environmental permits which result in provisions forother termswhich previously required fulfilling environmental permits now no longer have to do so. Another implication is the abolition of the provisions of article 102 and article 110. Article 102 regulates the management of B3 waste that is carried out without a permit and article 110 regulates the preparation of an amdal without having a certificate of competence to prepare an amdal. Apart from having implications for Article 109, Article 102, and Article 110, this also has implications for Article 111 and Article 112.

Before being changed, the provisions of Article 111 consist of 2 (two) paragraphs. Paragraph 1 (one) stipulates that officials who issue environmental permits issue environmental permits without being equipped with Amdal or UKL-UPL. Meanwhile, after being amended, the environmental permit is replaced with an environmental approval and the provisions of paragraph (2) which regulates the official granting business and/or activity permits that issue business and/or activity permits without being accompanied by an environmental permit are abolished.

When compared with Law Number 32 of 2009 concerning Environmental Protection and Management, in general this law regulates 14 (fourteen) qualifications for prohibited acts. orknown as environmental crimes. These acts include:

1. Acts that result in exceeding ambient air quality standards, water quality standards, sea water quality standards, or environmental damage standard criteria.
2. The act violates the waste water quality standard, emission quality standard, or disturbance quality standard.
3. The act of releasing and/or distributing genetically engineered products to environmental media
4. Management of hazardous and toxic waste without a permit
5. Activities or businesses that produce hazardous and toxic (B3) waste
6. Unauthorized dumping of waste
7. The act of entering B3 waste into the Indonesian territory environment
8. Land clearing by burning
9. Conducting a business or activity that is not equipped with an environmental permit[10]
10. Issuing environmental permits without being equipped with an Amdal or UKL-UPL
11. Issuing business and/or activity permits without being equipped with environmental permits
12. Not supervising the compliance of the person in charge of the business and/or activity to the laws and regulations and environmental permits
13. Not carrying out government coercion
14. Prevent, hinder, or thwart the implementation of the duties of environmental supervisory officers and/or civil servant investigators

[10]Agra Pramusti, Criminal Sanctions Against Violations of Administrative Laws in Law Number 32 Year 2009 concerning Environmental Protection and Management, p.7

Whereas in this law, prohibited acts (environmental crimes) include:

1. actions that result in exceeding the ambient air quality standard, water quality standard, sea water quality standard, or standard criteria for environmental damage;
2. The act of violating the waste water quality standard, emission quality standard, or disturbance quality standard;
3. deed release and/or distribute genetically engineered products to environmental media that are in contravention of laws and regulations or environmental approvals;
4. Produce B3 waste and do not manage it;
5. Dumping waste and/or materials into environmental media without a permit;
6. Importing waste originating from outside the territory of the Unitary State of the Republic of Indonesia into the environmental media of the Unitary State of the Republic of Indonesia;
7. Importing B3 which is prohibited according to laws and regulations into the territory of the Unitary State of the Republic of Indonesia;
8. Clearing land by burning;
9. Conducting business and/or activities without having a business license or approval from the central government or the government which results in casualties/damage to health, safety, and/or the environment;
10. Environmental approval official who issues environmental approval without being equipped with Amdal or UKL-UPL;
11. The authorized official does not supervise the compliance of the person in charge of the business and/or activity with the laws and regulations and business licensing, or the approval of the central government or regional government;
12. Providing false information, misleading, omitting information, damaging information, or providing incorrect information needed in relation to supervision and law enforcement related to environmental protection and management;
13. Not carrying out government coercion;
14. To prevent, hinder, or thwart the implementation of the duties of the acting environmental supervisor and/or civil servant investigating officer;

Based on the description above, it is concluded that prohibited acts (environmental crimes) contained in Law Number 11 of 2020 concerning Job Creation have similarities with prohibited acts. inin Law Number 32 of 2009 concerning Environmental Protection and Management. However, Law Number 11 of 2020 concerning Job Creation removes the actions required by environmental permits and replaces them with environmental approval nomoclatures.

Removalprovisions regarding environmental permits as prohibited acts (environmental crimes) and are replaced with environmental approvals related to the decriminalization and criminalization process. Criminalization is the determination of an act that was not originally a crime to become a criminal act. The criminalization process ends with the establishment of a law that threatens the act and is accompanied by criminal sanctions.[11]Meanwhile, decriminalization is the determination of an act that was originally a criminal act to become a non-criminal act. This process ends with the formation of a law or the pronouncement of a court decision that removes the criminal threat from the act.[12] So the abolition of environmental permits is a decriminalization process, while the regulation of environmental approvals is a criminalization process.

Acts that qualify as environmental crimes are good before amended or after being amended by Law Number 11 of 2020 concerning Job Creation, most of them are violations inthe field of state

[11]Duwi Handoko, "Classification of Decriminalization in Law Enforcement in Indonesia", Journal of Human Rights, Vol.10 No.2. (2019:December), p.146
[12]Duwi Handoko, “Classification of Decriminalization in Law Enforcement in Indonesia”, Ibid., p.147

administrative law. This can be seen from the formulation of prohibited acts by requiring that the act must violate administrative law. As in articles 109, 111, and 112.

This phenomenon is referred to as the "dependence phenomenon of criminal law administration". Therefore, according to MGFaure in the regulation of environmental criminal law, there are various specificities in its regulation, including:[13]

1. The nature of the punishment for environmental pollution is limited in such a way that the sanction imposed as an environmental crime is a violation of administrative obligations;
2. From the dogmatic point of view of criminal law, we can see that the protection provided by criminal law to objects of environmental law (such as clean water, air and land) when compared to the protection provided by classical legal objects (such as life, body, property, honor) is not given. direct. Protection of the object of environmental law is given indirectly. The environment/nature enjoys the protection of criminal law only insofar as it is a violation of administrative obligations. Such an act of pollution is only declared as a criminal act if the act is at the same time a violation of an administrative law rule/requirement.
3. The way in which an act is declared as a criminal act as above results in the authorities (participating) in determining which actions or behaviors are classified as criminal acts and which are not. Furthermore, by saying that violating the requirements (granting) of permits/licenses as a crime, the authorities have the possibility to formulate behavior/deeds that can be punished.
4. Often what is punishable (especially for violating the rules in a particular environment) is understood only as a violation of administrative obligations.

The use of criminal law against violations in the field of administrative law is known as administrative criminal law.[14] Administrative criminal law is essentially an embodiment of from the policy of using criminal law as a means to enforce or implement administrative law, which according to Barda Nawawi Arief is stated as the functionalization or operationalization or instrumentalization of criminal law in the field of administrative law.[15]

Thus, administrative criminal law in the environmental field is part of the embodiment of criminal law policies. Criminal law policy is how to seek or make and formulate a good criminal law.[16] The policy of criminal law/politics of criminal law includes 3 (three) stages, namely the first formulation/legislative policy is the formulation stage or the preparation of criminal law, the second applicative/judicial policy is the stage of implementing criminal law, and the third executive policy is the stage of implementing criminal law.[17] Formulation of prohibited acts in the environmental field by require on violations of administrative law and the decriminalization process regarding environmental permits and criminalization of government approvals in the field of environmental approvals regulated in Law Number 11 of 2020 concerning Job Creation can be seen in terms of criminal law policies, especially at the formulation policy stage.

The method of formulating environmental offenses in this way is a technique whichcomplicated and complex. it will even cause difficulties for legal experts because they have to study various legal regulations in the field of environmental law that are created with or without going through this way. The content and criminal provisions associated with such provisions are difficult to ascertain. Almost all environmental offenses must be sought and formulated from various provisions scattered in various laws

[13]Saifullah, 2007, Environmental Law Criminal Policy Paradigm in the Field of Biodiversity Conservation, Malang: UIN Malang, pp.106-107
[14]Barda Nawawi Arief, Capita Selecta on Criminal Law, Op.Cit., p.14
[15]Barda Nawawi Arief, Capita Selecta on Criminal Law, Ibid., p.145
[16]Barda Nawawi Arief, 2016, Anthology of Criminal Law Policy Development of Drafting of the New Criminal Code Concept, Cet.V, Revised Edition, Jakarta:Kencana, pp.26-27
[17]Barda Nawawi Arief, 2005, Some Aspects of Policy Enforcement and Development of Criminal Law, Revised Edition, Bandung: PT. Image of Aditya Bakti, p.3

and regulations. The complexity and complexity of the formulation of such offenses is also exacerbated by the formulation of environmental law articles that use difficult grammar and juridical terms that are not simple.[18]

Formulation offense Such an environment violates the principle of nullum crime, nulla poena sine lege certa (lex certa) which requires that the offense be clearly formulated and not multi-interpreted so that it can jeopardize legal certainty.[19] This is also in line with the opinion expressed by Michael Faure, Morag Goodwin, and Franziska Weber that criminal law is based on the principle of nullem crimen, nulla poena sine praevia lege poenali, which demands that individuals can easily know the consequences of their actions.[20]

Formulation of Administrative Criminal Sanctions in the Environmental Sector in the Future

Law criminalis one of the fields of law that is often used in various laws and regulations. The use of criminal law in various laws and regulations is part of the policy or legal politics that is developing in Indonesia. Legal politics, according to Himahanto Juwana, argues that laws and regulations are made with goals and reasons that cannot appear suddenly. Legislation is made with a specific purpose and reason. The purposes and reasons for the establishment of legislation can vary. This sharing of objectives and reasons for the formation of a statutory regulation is what is known as legal politics (legal policy).[21]

Use lawCriminal law in various laws and regulations is considered a natural and normal thing. In fact, if criminal law is used carelessly without paying attention to the conditions for using criminal law, this can result in the loss of the existence of criminal law as the ultimum remidium and even other consequences, namely over-criminalization and the impact on ineffective law enforcement.

The law on the environment sector is one example of a law that utilizes various fields of law to prevent and prosecute violations in the environmental field. One of them is by using the facilities in the field of criminal law. This is then known as administrative criminal law. The environmental law is an example of administrative criminal law because environmental offenses are related to violations of administrative obligations such as permit violations. The indicator for determining an act to be an environmental offense depends on the fulfillment of the requirements stipulated by the provisions contained in the administrative regulations. According to MichaelFaure offenses in the environment are divided into two, namely administrative independent crimes and administrative dependent crimes. The basic difference between the two lies in the dependence of criminal law in determining criminal acts.[22]

*Administrative dependent crimes*relating to regulatory offenses or ordering strafrecht. BardaNawawi defines regulatory offenses, namely criminal law in the field of administrative law violations.[23] Formulation offenseenvironment in the environmental law both before and after being amended in Law Number 11 of 2020 concerning Job Creation in line with what was stated by Schaffmeister that the characteristics of criminal provisions in environmental laws are in the form of formulating offenses carried out abstractly relating to actions that pose a dangerous threat.

Such a formulation only touches the surface of legal interests that actually want to be protected, besides that environmental offenses in their formulation are often associated with administrative law fields such as permits/licenses. The competent authority through the granting of a permit or license will determine a concrete requirement or obligation that must be carried out or fulfilled by each applicant so

[18]D.Schaffmeis as quoted in Mahrus Ali, 2020, Environmental Criminal Law, Cet.I, Ed.I, Depok: Rajawali Press, p.22
[19]Eddy OSHiariej, 2009, Principles of Legality and Legal Inventions in Criminal Law, Jakarta: Erlangga, pp. 4-5
[20]Michael Faure, Morag Goodwin, and Franziska Weber, "The Regulator's Dilemma: Caught Between the Need for Flexibility & the Demands of Foreseeability, Reassessing The Lex Certa Principle, Albany Law Journal of Science and Technology. Vol.24.2, 2014,https://papers.ssrn.com/sol3/papers.cfm?abstract_id=248102,p.285
[21]Hikmahanto Juwana as quoted in Rocky Marbun, 2019, Politics of Criminal Law and the Criminal Law System in Indonesia (Building a Paradigm-Based Criminal Philosophy (Philosophy) of Pancasila Law), Cet. First, Malang: Equivalent Press, p.150
[22]Mahrus Ali, Environmental Criminal Law, Op.Cit., p.6
[23]Barda Nawawi Arief, Capita Selecta on Criminal Law, Op.Cit., p.10

that their actions do not fall into the category of criminal acts. In this way, the authorities apply norms that require certain actions to be carried out or not which if violated will be subject to criminal penalties. Therefore, the criminal provisions in the environmental law refer to a norm that still needs to be interpreted by a ruling organ (other administrative officials authorized in the environmental field).[24]

Meanwhile, when viewed in Law No. 12 of 2011 concerning Formation Laws and Regulations that the procedures or procedures for the formation of laws and regulations must pay attention to the principles, types or hierarchies and the content of laws and regulations.

Procedures formulation Criminal provisions in the law are further regulated in item 118 Attachment to Law Number 12 of 2011 concerning Procedures for the Establishment of Legislation which states that: The formulation of criminal provisions must clearly state the prohibition norms or command norms that are violated and mention the article or several articles that contain these norms. Besides provision Number 118, the procedure for formulating criminal provisions is regulated in Number 112 which states that:

In formulating criminal provisions, it is necessary to pay attention to the general principles of criminal provisions contained in Book One of the Criminal Code, because the provisions in the First Book also apply to acts that can be punished according to other laws and regulations, unless by law it is determined. others (Article 103 of the Criminal Code).

Indicators of determining environmental criminal acts depend on the field of administration, causing such a formulation to be related to the provisions of other laws and regulations to be able to determine whether the act is included in the category of environmental crime or environmental offense. If we relate it to the sound of number 118, this is contradictory because in the formulation of criminal provisions it must be clearly formulated in line with the sound of number 112 where one of the principles in criminal law laws that must be considered in the formulation of criminal provisions is the principle of legality. According to Jan Remmelink, the principle of legality has three meanings. First, it relates to the concept of legislation which is presupposed in the provisions of Article 1 of the Criminal Code.

According to him, not only legislationLegislation in a formal sense that can provide regulations in the field of punishment, but refers to all legislative products that include an understanding that the criminal will be legally determined. This includes regulations made by local governments both at the provincial and district and city levels. Second, that the laws that are formulated must be detailed and thorough (lex certa). This principle is also known as bestimmtheitsgebot. The formulation of criminal provisions that are not clear or too complicated will only create legal uncertainty and hinder the success of criminal prosecution efforts because citizens will always be able to defend themselves that these provisions are not useful as guidelines for behavior. Third,[25]

Thus, the use of criminal sanctions in enforcing administrative violations in the future must be given clear boundaries regarding the criteria for administrative violations that can use criminal sanctions in enforcing them, for example in administrative fields that cause severe or harmful impacts on both humans and the environment whose impacts are widespread, so that the use of criminal sanctions can be utilized effectively. In addition, it is also necessary to formulate clearly and in detail the indicators used in formulating criminal provisions both in the Criminal Code and in Law Number 12 of 2011 concerning Procedures for the Establishment of Legislation.

Apart from in formulate criminal acts (criminalization) must also pay attention to several things as follows:[26]

[24]Mahrus Ali, Environmental Criminal Law, Loc.Cit.,
[25]Jan Remmelink, 2003, Criminal Law: Commentary on the Most Important Articles in the Dutch Criminal Code and Their Equivalents in the Indonesian Criminal Code, Jakarta: Gramedia Pustaka Utama, p.390
[26]Sudarto as quoted in Teguh Prasetyo, 2010, Criminalization in Criminal Law, Cet.I, Bandung: Nusa Media, p.135

1. The use of criminal law must take into account the objectives of national development, namely realizing a just and prosperous society that is materially and spiritually evenly distributed based on Pancasila; In connection with this, the (use) of criminal law aims to tackle crime, for the welfare and protection of society
2. Actions that are attempted to be prevented or overcome by criminal law must be undesirable actions, namely actions that bring harm (material and or spiritual) to members of the community;
3. The use of criminal law must also take into account the cost benefit principle;
4. The use of criminal law must also pay attention to the capacity or working power of legal agencies, that is, there should not be an overload of duties (overbelasting).

Furthermore, the Legal Reform Symposium Report provides recommendations about the criteria for determining an act as a crime must take into account the following general criteria:[27]

1. Whether the act is disliked or hated by the community because it is detrimental, or can cause harm, bring victims or can bring victims;
2. Is the cost of criminalizing balanced with the results to be achieved, meaning that the costs of legislators, supervision and enforcement of the law, as well as the burden borne by victims, perpetrators and perpetrators of the crime themselves must be balanced with the situation of law and order to be achieved;
3. Will it increase the burden on law enforcement officers which is not balanced or will it actually not be able to be carried out by its capabilities;
4. Does the act hinder or hinder the ideals of the Indonesian nation, so that it is a danger to the whole community.

Discussions on criminalization and decriminalization were also discussed in the report of the Symposium on the Reform of the National Criminal Law in August 1980 in Semarang which stated that: The problem of criminalizing and decriminalizing an act must be in accordance with the criminal politics adopted by the Indonesian people, namely the extent to which the act is contrary to or does not conflict with the fundamental values that apply in society and is considered appropriate or inappropriate by the community to be punished in the context of providing community welfare. .[28]

The politics of criminal law as a policy line used to determine how far the provisions of criminal law are enforced needchanged or updated; what can be done to prevent the occurrence of criminal acts; and how the investigation, prosecution, trial and execution of crimes must be carried out.[29]

Determination of the policy line or approach used in using law If it is related to the opinion expressed by Herbert L. Paaker in his book The Limits of The Criminal Sancition, namely:[30]

1. The criminal sanction is indispensable; who could not, now or in the foreseeable future get along without it. (Criminal sanctions are indispensable; we cannot live, now or in the future without punishment);
2. *The criminal sanction is the best available device we have for dealing with gross and immediate haarms and threats of harm.* (Criminal sanctions are the best tool or means available, which we have to deal with crimes or grave dangers and immediately and to deal with threats from great harm).
3. *The criminal sanction is at once prime guarantor and prime threatener of human freedom. Used providently and humanely, it is guarantor, used indiscriminately and coercively, it is a threatener.* (Criminal sanctions are at one time the main guarantor, and at one time the main threat to human freedom. It is a guarantor if used sparingly and humanely. It is a threat if used arbitrarily and coercively).

[27]Sudarto as quoted in Teguh Prasetyo, Criminalization in Criminal Law, Ibid., pp.135-136
[28]Sudarto as quoted in Teguh Prasetyo, Criminalization in Criminal Law, Ibid., p.135
[29]Yesmil Anwar Dan Adang,2008,Criminal Law Reform Criminal Law Reform,Jakarta:PT Gramedia Widiasarana Indonesia,p.59
[30]Yesmil Anwar Dan Adang, Criminal Law Reform, Criminal Law Reform, PT Gramedia Widiasarana Indonesia, Ibid.,

The formulation of criminal acts (criminalization) and decriminalization which is one part of the criminal law policy, the policies that are usedIn determining the criminalization and decriminalization processes, they must be used in a limited and humane manner by taking into account the objectives to be achieved in the use of criminal law means in suppressing them. Meanwhile, in the current Criminal Code there is no formulation of the purpose of the criminal law but this is contained in the Draft Criminal Code. In addition, as stated in the criminal law symposium report, it is necessary to pay attention to the fundamental values adopted by the community. Thus the process of criminalization and decriminalization must pay attention to the fundamental values in people's lives, which in this case is Pancasila, which contains the concepts of divinity, humanity, nationality, democracy, and social justice.

Conclusion

The formulation of administrative criminal sanctions in the environmental sector in law number 11 of 2020 concerning Job Creation, namely a decriminalization process for provisions requiring environmental permits and criminalization toenvironmental approval with the formulation of a criminal act that must first be linked to various laws and regulations, this is contrary to the principle of legality and also the procedure for formulating criminal sanctions as regulated in Law Number 12 of 2011 concerning Procedures for the Establishment of Legislation Invitation. The formulation of administrative criminal sanctions in the environmental field in the future must be limited by taking into account the purpose of imposing the punishment and taking into account the fundamental values in people's lives (Pancasila) as well as being oriented towards environmental conservation.

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