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RESEARCH ARTICLE

PROTECTING ENVIRONMENT THROUGH CRIMINAL SANCTION AGGRAVATION

Mahrus Ali¹✉, Rofi Wahanisa², Jaco Barkhuizen³, Papontee
Teeraphan⁴

¹Faculty of Law, Universitas Islam Indonesia, Indonesia

²Faculty of Law, Universitas Negeri Semarang, Indonesia

³Department of Criminology and Criminal Justice, University of Limpopo,
South Africa

⁴Faculty of Law, Thaksin University, Songkhla, Thailand

✉ mahrus_ali@uii.ac.id

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ABSTRACT

This paper aims to explore the provision of aggravating criminal sanction that protects environment in environmental legislation. By focusing on the four laws as its primary data source, this study employed doctrinal legal research. The results showed that the weight accorded to criminal sanctions in environmental legislation has varied. The PPLH Law provides for the amplification of criminal threats directed at corporations by adding 1/3 (one-third) of the criminal sentence. Only corporation is subject to the penalty aggravation provisions of the Mining Law, and they are only imposed with one-third of the maximum criminal provision of fines. In the PPPH Law, the imposition of criminal threats weight is simply related to the quantity component. If the culprit is a corporation or state official, the criminal sanction aggravation is increased by one-third. In Plantation Law, if the offender is a corporate or a government official, then the criminal punishment is intensified. The environment is protected through acts prohibited by environmental legislation, but the criminal threat weight is not directed toward environmental preservation. Existing penalty aggravations are confined to only two types of cumulative criminal penalties: jail and fines, both of which have no direct connection to environmental protection. As a result, weighting criminal sanctions refers to the changing quality and quantity issues in order to safeguard the environment. The transition from criminal sanction to treatment, or from one type of treatment to another, was the focus of quality considerations, while the twofold criminal fine system was the focus of quantity element. **Keywords:** Criminal sanction aggravation; Fine doubled system; Environmental protection; Environmental legislation

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INTRODUCTION

THE IMPOSITION of criminal threats aggravation in environmental legislations is the subject of this study. This topic is significant for a number of reasons. Indonesia is currently facing an issue of significant environmental destruction and/or pollution that is affecting all parts of life ¹, including

¹ Mehran Idris Khan and Qianxun Xu, "An Assessment of Environmental Policy Implications under the China-Pakistan Economic Corridor: A Perspective of Environmental Laws and Sustainable Development," *Sustainability (Switzerland)* 13, no. 20 (2021): 1-2, <https://doi.org/10.3390/su132011223>; Jan G Laitos, "Standing and Environmental Harm: The Double Paradox," *Virginia Environmental Law*

future generations². As a result, a multifaceted approach is required to combat it, including through the use of substantive criminal law³. In addition, the features of criminal activities must be considered when tightening criminal threats. The nature and threat of crime must consider the legal object to be protected when it comes to the substance of criminal acts related to the legal protection of human souls and honour. Certain illegal acts that cause loss or harm to the public's health must be accompanied by a plan for the sort and threat of criminal sanctions that can be used to recoup victim damages, including its criminal sanction aggravation⁴.

The environmental legislations have such a broad scope. To avoid a lengthy repetition of explanations, this study focuses on four laws: Law No. 32 of 2009 on Environmental Protection and Management, Law No. 4 of 2009 on Mineral and Coal Mining, Law No. 18 of 2013 on Forest Destruction Prevention and Enforcement, and Law No. 39 of 2014 on Plantations. The four were opted because the philosophy of the enactment of the Law is oriented to protect environment. The consideration of Environmental Protection and Management Act explicitly recognizes and values the importance of human rights in the form of the right to a good and healthy environment for citizens. The Mineral and Coal Mining Act's consideration letter c states that in order to achieve sustained national development, the management and business of potential minerals and coal is carried out independently, reliably, transparently, competitively, efficiently, and environmentally sound. According to the legal consideration for the Prevention and Eradication of Forest Destruction Act, forest areas must be utilized and used responsibly and sustainably, taking into account ecological, social, and economic functions, in order to ensure sustainability for current and future generations. The plantation law states that the earth, water, and natural wealth contained within the territory of the Republic of

Journal 31 (2013): 67–71; Neal Shover and Aaron S. Routhe, “Environmental Crime,” *Crime and Justice*, 2005, 323–24, <https://doi.org/10.1086/655356>.

² Ben Boer, “Institutionalising Ecologically Sustainable Development: The Roles of National, State, and Local Governments In Translating Grand Strategy Into Action,” *Willamette Law Review* 31 (1995).

³ I Rosyadi, M R Habibi, and N Syam, “Implementation of Criminal Law Enforcement Concept of Environmental Sustainability (Illegal Logging in Indonesia), International Conference on Environmental and Sustainability Context,” *IOP Conf. Series: Earth and Environmental Science* 894 (2021): 894, <https://doi.org/https://doi.org/10.1088/1755-1315/894/1/012002>; Sekhroni Sekhroni et al., “The Implementation of Environmental Criminal Law Enforcement to Prevent the Ground Water Pollution (The Case Study of Used Battery Smelting in Tegal District, Indonesia),” *International Journal of Civil Engineering and Technology* 10, no. 3 (2019): 302–8, <https://ssrn.com/abstract=3453754>.

⁴ Antonio Vercher, “The Use of Criminal Law for the Protection of the Environment in Europe: Council of Europe Resolution,” *Northwestern Journal of International Law & Business* 10, no. 3 (1990): 442–44.

Indonesia is a gift of God Almighty to be utilized and used for the greatest prosperity and welfare of the Indonesian people as mandated in the Constitution of the Republic of Indonesia, 1945.

A variety of environmental crimes is also directly related to environmental conservation⁵. The majority of offenses is designed as a formal offense, which prioritizes aspects of damage prevention and/or environmental pollution⁶. There are a number of violations that completely eliminate the need for permits. Even if a person or corporation has a permission to do activities related to environment, causing damage and/or contamination to the environment is still a criminal violation⁷. This fact must be followed by the types and length of criminal sanction, as well as their aggravation, which must also be focused at environmental protection. Previous research on the criminal sanction weight has been conducted, even though the central focus was on the specific criminal legislation⁸. In this context, this study has a significant.

The purpose of this study is to examine three aspects: the provisions of criminal sanction aggravation in environmental legislations, the orientation of criminal sanction aggravation in that legislation, and the methods of protecting the environment through aggravating criminal sanction. This paper employed doctrinal legal research that mainly relied on environmental legislations as its primary data source. There were only four laws aimed at protecting environment namely Environmental Management and Protection Act, Mineral and Mining Act, Plantation Act, as well as Prevention and Suppression of Illegal Logging Act being analyzed. These were implemented on the basis that most of the offenses were primarily to protect environment. The main focus to analyze a list of laws depended on the types and length of criminal sanction as well as its aggravation in relation to the protected legal interest.

⁵ Michael Parker, "Categorizing Environmental Crimes *Malum in Se* or *Malum Prohibitum*," *Texas Environmental Law Journal* 40 (2010).

⁶ Zachary Hoskins, "Criminalization and the Collateral Consequences of Conviction," *Criminal Law and Philosophy* 12, no. 4 (2018): 634, <https://doi.org/10.1007/s11572-017-9449-2>; Byung-Sun Cho, "Emergence of an International Environmental Criminal Law," *UCLA Journal of Environmental Law and Policy* 19 (2001): 22–23, <https://doi.org/https://doi.org/10.5070/L5191019216>.

⁷ Susan F. Mandiberg and Michael G Faure, "A Graduated Punishment Approach to Environmental Crimes: Beyond Vindication of Administrative Authority in the United States and Europe," *Columbia Journal of Environmental Law* 34 (2009): 431–434.

⁸ Chairul Huda, "Pola Pemberatan Pidana Dalam Hukum Pidana Khusus," *Jurnal Hukum IUS QUUA IUSTUM* 18, no. 4 (2011): 508, <https://doi.org/10.20885/iustum.vol18.iss4.art3>.

PROTECTING ENVIRONMENT THROUGH CRIMINAL SANCTION AGGRAVATION

I. PRINCIPLE OF CRIMINAL SANCTION AGGRAVATION

Several legal professionals have weighed in on the subject of criminal sanction. Sudarto defines criminal sanction as “a deliberately inflicted misery on persons who do activities that match certain criteria”⁹. Punishment is defined by Fitzgerald as “suffering as a result of a legally sanctioned offense”¹⁰. Roeslan Saleh describes a criminal sanction as “a reaction to an offense, which indicates a censure that purposefully inflicted the state on the offender”¹¹. Criminals sanction, according to Nicola Lacey, are “state-sanctioned punishments for what are commonly regarded as unfavorable repercussions for an unlawful individual or group”¹². As part of law enforcement, it was a response to the violation. This is one of the responses used to compensate victims for losses made by the perpetrator.

According to Ted Honderich, there has three essential natures of the criminal sanction. First, punishment must be subjected to some type of deprivation or misery, which is frequently stated as the purpose of the prosecution. This first element is simply a loss or crime experienced by the victim as a result of another subject's conscious acts. In reality, other people's activities are regarded bad not just because they cause others pain, but also due to violation of legally binding laws. Second, every criminal sanction must be a product of a legally recognized institution. As a result, the prosecution is not a natural effect of an action, but rather the result of judgments made by a powerful institution. The prosecution is not a victim's act of vengeance against lawbreakers who cause harm. Third, the responsible authority reserves the right to bring criminal charges against those individuals who have been determined to have deliberately broken any applicable rules in their community. This third element raises concerns

⁹ Sudarto Sudarto, *Kapita Selektu Hukum Pidana* (Bandung: Alumni, 1986), 109–10.

¹⁰ Muladi Muladi and Barda Nawawi Arief, *Teori-Teori Dan Kebijakan Pidana* (Bandung: Alumni, 2009), 51.

¹¹ Roeslan Saleh, *Stelsel Pidana Indonesia* (Jakarta: Aksara Baru, 1983), 51.

¹² Donald Nicolson and Lois Bibbing, *Feminist Perspective on Criminal Law* (London: Cavendish Publishing Limited, 2000).

about "collective punishment" such as economic sanctions that disproportionately affect innocent people. Criminals sanction, on the other hand, can be defined openly as "punishments meted out by authorized agencies to those who break rules or regulations"¹³.

Herbert L. Packer argued that a sentence must meet the following six criteria in order to be classified as criminal sanction: a) the criminal sanction must be a censure or other unpleasant consequences; b) the criminal sanction must be given to a person who has broken the rules; c) the criminal sanction is imposed for an act or directed at the perpetrator of the violation for his actions; d) the criminal sanction must be deliberately imposed by the public on the perpetrator; e) the criminal sanction is imposed and carried out by the competent powers of the law; dan f) the main purpose of a criminal conviction is to prevent violations of the rule of law or retaliate against the actions of the perpetrator, or both¹⁴.

The imposition of criminal threats aggravation has two effects: quality and quantity. Aspect of quality is defined as "the enactment that occurs as a result of a transition from one sort of light criminal sanction to a more severe criminal sanction"¹⁵. The primary forms of criminal sanctions listed in Article 10 of the Criminal Code must be considered as a benchmark to evaluate whether one type of criminal sanction ranks higher or lower than another. A person who is convicted of intentional murder faces a maximum sentence of 15 years in jail. If the murder is not just intentional but also planned ahead of time, the perpetrator may face the death penalty. Because of the shift from one form of lesser criminal to a more severe type of criminal, the transition from imprisonment to death punishment is related to the quality element of tightening criminal sanction.

From a quantity standpoint, aggravating criminal sanction is linked to an increase in the number of offenders compared to the number of criminals threatened previously.¹⁶ In the formulation of other articles, this concept is still linked to the same type of criminal, but the criminal threat is aggravated. If a person performs a criminal act of ordinary persecution, the maximum penalty is two years in jail. However, if the persecution causes serious injury, the maximum penalty is five years in prison. The transition from two to five years in prison is still in one type of quantity of weighting criminal sanction, namely prison.

¹³ Ted Honderich, *Punishment: The Supposed Justification*, Dikutip Oleh M. Sholehuddin, *Sistem Sanksi Dalam Hukum Pidana Ide Dasar Double Track System Dan Implementasinya*, (Jakarta: Rajawali Pers, 2003), 70–71.

¹⁴ Herbert L. Packer, *The Limits of the Criminal Sanction* (California: Stanford University Press, 1968).

¹⁵ Huda, "Pola Pemberatan Pidana Dalam Hukum Pidana Khusus," 513.

¹⁶ *Ibid.*, hlm. 514

The pattern of increasing criminal sanctions in the Criminal Code must refer to first and second books as well as third book of the Code. The pattern in the first book has been classified as a general pattern of this aggravation, whereas the pattern at the second and last book is classified as a particular pattern of the tightening. The notion of simultaneous offenses (*concursum realis*) contains in first book of the Criminal Code, where the criminal threat to the perpetrator is plus one-third of the criminal threat in the violated item. There are three types of systems in theory; the absorbance has been sharpened, the cumulation has been limited, and the cumulation has been pure. The only pattern controlled in the first of the Criminal Code is the pattern of tightening criminal sanction in the simultaneousness of deeds¹⁷.

In the second and third book of the Criminal Code, the trend of increasing criminal penalties is different. There are two types of criminal penalties that have been tightened: uniform and non-uniform. This uniform category is found in reoffending criminals' offenses, when one-third of the main criminal threat is added to the tightening criminal threat. Threats from criminals are also highlighted because of the perpetrator's unique characteristics, such as his or her status as a civil official. Furthermore, criminal threats are emphasized due to the special qualifications of the object of the offense, such as persecution carried out against the perpetrator's mother, father, wife, or child, whose criminal plus a third of the maximum in prison sentence is imposed.¹⁸

In the improvement of the quality and quantity of criminal threats, non-uniform categories are found. The imposition occurs as a result of a shift in the kind of criminal sanction, such as a prisoner being sentenced to death for premeditated murder. The pattern of tightening criminal threat in the Criminal Code is to utilize a scheme in which the threatened criminal sanction becomes a more severe if the special maximum in a criminal offense is equivalent to the general maximum for a prison term (death penalty).

II. THE NATURE OF ENVIRONMENTAL OFFENSE

Aspects of civil law, state administrative law, and environmental law are all included in the material prescribed in environmental law. This reality has ramifications for the salient characteristics of environmental offenses, which result in a tangled web of administrative and criminal legislation¹⁹.

¹⁷ Andi Zaenal Abidin and Andi Hamzah, *Bentuk-Bentuk Khusus Perwujudan Delik Dan Hukum Penitensier* (Jakarta: RajaGrafindo Persada, 2006), 238.

¹⁸ Chairul Huda, *op.cit.*, hlm. 514-515

¹⁹ Michael G Faure, Ingeborg M Koopmans, and Johannes C Oudijk, "Imposing Criminal Liability on Government Officials under Environmental Law: A Legal and Economic Analysis," *Loyola*

Environmental offense is usually associated with administrative requirements, such as permit violations. The lack of environmental degradation is contingent on the fulfilment of administrative regulations' requirements or provisions²⁰. In this context, Michael Faure distinguishes between administrative offenses that are independent of environmental criminal law and administrative offenses that are dependent on environmental criminal law (administrative dependent crimes)²¹.

Administrative independent crimes are defined as acts that can be classified as crimes without first determining whether or not administrative violations have occurred. In this case, administrative offenses have no relevance on criminal law. It is possible to apply criminal sanctions without having to rely solely on administrative infractions. Administrative punishments have no bearing on criminal sanctions²². Administrative dependent crimes are defined as criminal offenses that are based on administrative violations such as permit violations or environmental quality regulations. Administrative rules are entirely responsible for the creation of criminal punishments. The lack of a license paper or certificate can be used to claim that the conduct is a simple offense. These criminal sanctions are based on the formation of formal offenses.²³ According to Andi Hamzah, the application of criminal law to environmental law crimes is heavily influenced by administrative law, particularly in the area of licensing. There are other permits-related phrases in environmental legislation that are comparable. Because of the nature of the offense, the application of environmental criminal law is mainly reliant on administrative law²⁴.

Regulatory offenses, often known as *ordeningstrafrecht*, are administratively dependent offences. According to Barda Nawawi Arief, regulatory offenses are defined as "criminal law in the realm of administrative

of Los Angeles International and Comparative Law Journal 18 (1996): 558, <https://digitalcommons.lmu.edu/ilr/voll8/iss3/3>.

²⁰ D. Schaffmeister, *Perlindungan Hukum Pidana Atas Obyek-Obyek Lingkungan Hidup* Dalam D. Schaffmeister Dkk, *Kekhawatiran Masa Kini Pemikiran Mengenai Hukum Pidana Lingkungan Dalam Teori & Praktik, Diterjemahkan Oleh Tristan P. Moeliono* (Bandung: PT. Citra Aditya Bakti, 1994), 159.

²¹ Michael Faure, *Towards a New Model of Criminalization of Environmental Pollution. The Case of Indonesia*, Dalam Michael Faure & Nicole Niessen (Editor), *Environmental Law in Development Lesson from the Indonesian Experience* (United Kingdom: Edward Elgar Publishing Limited, 2006), 190–96; Mas Ahmad Santosa, *Good Governance & Penegakan Hukum* (Jakarta: ICEI, n.d.), 241–42.

²² Grahat Nagara, "Perkembangan Sanksi Administratif Dalam Penguatan Perlindungan Lingkungan Terkait Eksploitasi Sumber Daya Alam (Studi Kasus: Sektor Perkebunan, Pertambangan, Dan Kehutanan)," *Jurnal Hukum Lingkungan Indonesia* 3, no. 2 (2017): 37, <https://doi.org/10.38011/jhli.v3i2.41>.

²³ *Ibid*, hlm. 36

²⁴ Andi Hamzah, *Penegakan Hukum Lingkungan* (Bandung: Alumni, 2016), 132–33.

law violations"²⁵, while Roeslan Saleh defines them as "the cover of a compelling arrangement since their orientation carries out wide discretion."²⁶ Regulatory offenses, according to Andi Hamzah, are infractions of regulations.²⁷ This word refers to an act that is illegal and subject to criminal penalties only because it is illegal. It can be done if the law does not prohibit it. Regulatory offenses, according to Stephen S. Schwartz, are offenses created by legislators to maintain public order. Acts are prohibited not because they are morally bad (violating societal norms), but because they are illegal²⁸. Regulatory offenses are related to legally regulated public activities and services²⁹. In order to conduct some actions, a person must meet specific prerequisites. Violations of regulatory regulations that are subject to criminal penalties are referred to as regulatory offenses³⁰.

Regulatory *offenses* are commonly characterized by several natures: a) it plays a role in regulating certain social activities with the rise of the regulatory state; b) it is mostly resolved by regulatory agencies; c) it is an 'artificial' crime or *malum prohibitum* (a morally neutral offence), which is different from a 'real' crime or *malum in se* in traditional criminal law, and therefore; and d) it incurs strict liability and reverse onus of proof³¹.

Regulatory offenses are sometimes known as public welfare offenses. One of the most notable characteristics of public regulatory offenses is that an offense does not necessarily necessitate culpability. For established public regulatory offenses, negligence is considered sufficient. The reason for this is because enforcement has shifted from protecting private interests to protecting social or public interests. Regulatory violations in the public sector constitute a clash of values. On the one hand, it is critical for the public to maintain high standards of effective public health and safety enforcement

²⁵ Barda Nawawi Arief, *Kapita Selekta Hukum Pidana*, 3rd ed. (Bandung: PT. Citra Aditya Bakti, 2013), 10.

²⁶ Roeslan Saleh, *Beberapa Asas Hukum Pidana Dalam Perspektif* (Jakarta: Aksara Baru, 1983), 10.

²⁷ Hamzah, Andi, *Penegakan...op.cit*, hlm 113

²⁸ Stephen S. Schwartz, "Is There a Common Law Necessity Defense in Federal Criminal Law?," *University of Chicago Law Review* 75 (2008): 1281.

²⁹ Mireille Hildebrandt, "Justice and Police: Regulatory Offenses and the Criminal Law," *New Criminal Law Review* 12, no. 1 (2009): 54, <https://doi.org/10.1525/nclr.2009.12.1.43>.

³⁰ Federico Picinali, "The Denial of Procedural Safeguards in Trials for Regulatory Offences: A Justification," *Criminal Law and Philosophy* 11, no. 4 (2017): 685, <https://doi.org/10.1007/s11572-016-9400-y>.

³¹ Dat T Bui, "Procedural Proportionality: The Remedy for an Uncertain Jurisprudence of Minor Offence Justice," *Criminal Law and Philosophy* 12 (2018): 88, <https://doi.org/https://doi.org/10.1007/s11572-017-9413-1>.

so that potential victims have recourse. On the other side, there has been a shift in the way morally innocent people are treated³².

Regulatory offenses are often known as *malum prohibitum* offenses which means "legally wrong" in English". *Malum prohibitum* crimes are defined as acts that are classified as crimes because they are prohibited by law. If the law does not forbid anything, it is not a crime. Each country has its own set of laws when it comes to conduct that fall under the category of *malum prohibitum* offenses. Prohibited activities that are subject to criminal penalties are classified as *malum prohibitum* offenses in Indonesia. Barda Nawawi Arief noted that between 1985 and 1995, there were 29 legislative products in the form of statutes comprising chapters on criminal provisions. The majority of the legislation was found to be administrative in nature³³. According to Supriadi, there were 84 legislation with criminal provisions in the last nine years, specifically from 2005 to 2014³⁴. Criminal activities under the Taxation Act, Traffic and Road Transportation Act, Narcotics Act, Mineral and Coal Mining Act, Plantation Act, and Fishery Act are all examples of *malum prohibitum* offenses.

Malum prohibitum crimes differ from *malum in se* (inherently wrong) crimes, in which the latter refers to an act that is, by definition, a criminal. Even if the law does not expressly ban it, it is nonetheless a crime, similar to robbery, rape, murder, blasphemy, humiliation, and corruption. The distinction between *crimina* and contraventions can be traced back to medieval natural law doctrine, which distinguished between *crimina* and contraventions. *Mala in se* is referred to as *crimina*, and *mala prohibita* is referred to as contraventions³⁵. This concept is based on Roman law, which distinguishes between *leges* (written law) and *ius civile* (unwritten law) applied by judges. The dichotomy between the *ius naturale*, the unwritten rule of nature coming from man's thinking or God's revelation, and *leges*, the positive (written) law produced by the government, is embodied in this judge's opinion. This distinction is on an ontological domain. In and of itself, *crimina/mala* is a crime with a reference to its bad nature. It is bad despite the fact that there is no law (law) against it, whereas contraventions are only

³² Rick Libman, "Regulatory Offences and Principles of Sentencing: Is the 'Patchwork Quilt' in Need of Reshaping and Reform?" (York University, 2011), 16–17.

³³ Arief, *Kapita Selektta Hukum Pidana*.

³⁴ S Supriyadi, "Penetapan Tindak Pidana Sebagai Kejahatan Dan Pelanggaran Dalam Undang-Undang Pidana Khusus," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 27, no. 3 (2016): 394, <https://doi.org/10.22146/jmh.15878>.

³⁵ William L. Barnes Jr, "Revenge on Utilitarianism: Renouncing A Comprehensive Economics Theory of Crime and Punishment," *Indiana Law Journal* 74, no. 627 (1999): 9–12.

considered illegal when the government has decided to make particular acts illegal. It is only because the law prohibits it that it becomes bad or banned.³⁶

III. REGULATORY FRAMEWORK OF CRIMINAL SANCTION AGGRAVATION IN ENVIRONMENTAL LEGISLATIONS

The imposition of tightening criminal threats is covered under Law No. 32 of 2009 on Environmental Protection and Management (PPH Law). Criminal threats are made because some conduct, whether committed intentionally or not, result in prohibited legal repercussions. Article 98 paragraph (1) promulgates that “any person who intentionally commits an act that results in the exceeding of ambient air quality standards, water quality standards, sea water quality standards, or standard criteria for environmental damage is punished with a prison sentence of at least 3 (three) years and a fine of at least 3 billion (at most 10 billion)”. If the act causes injury and/or human health hazards, the criminal sanction is enhanced to a minimum of 4 (four) years in jail and a maximum of 12 (twelve) years in prison, as well as a fine of at least 4 billion (at most 12 billion).” (Verse 2 of Article 98). If the conduct causes serious harm or death, the criminal threat is aggravated by a jail sentence of at least 5 (five) years and up to 15 (fifteen) years, as well as a fine of at least 5,000,000,000.00 (five billion rupiah) and up to 15 billion.

Article 99 paragraph (3) stated that “any person who, due to his negligence, results in the exceeding of ambient air quality standards, water quality standards, sea water quality standards, or standard criteria for environmental damage is punishable by imprisonment of at least 1 (one) year and a maximum of 3 (three) years and a fine of at least 1 billion (at most 3 billion) (Article 99 paragraph 2)”. The criminal threat is aggravated to be punishable by imprisonment of at least 2 (two) years and a maximum of 6 (six) years and a fine of at least 2 billion (at most 6 billion) if the act results in injuries and/or human health hazards. If the act results in serious injury or death, the criminal threat is further aggravated into a prison sentence of at least 3 (three) years and a maximum of 9 (nine) years and a fine of at least 3 billion (at most 9 billion) (Article 99 paragraph 3).

In the Mineral and Coal Mining Act, tightening criminal threats are only imposed against corporations that commit criminal acts in Article 158, Article 159, Article 160, and Article 161. The pattern used is uniform, which

³⁶ Hildebrandt, Mireille, *Justice and Police...op.cit*, hlm 51

adds one-third of the maximum criminal penalty imposed. Article 163 paragraph (1) reads as follows:

In the case of criminal acts as referred to in this chapter carried out by a legal entity, in addition to imprisonment and fine against its administrators, the criminal sanction that can be imposed against the legal entity is in the form of a criminal fine with a penalty plus 1/3 (one-third) of the maximum criminal penalty imposed.

The rule specifies that criminal threats in the form of fines equal to plus one-third of the maximum criminal provisions apply exclusively to corporations, not to corporate leaders. Even though the corporation is utilized as a criminal offender, if the criminally accountable and criminally sentenced individuals are restricted to the administrator, tightening criminal threats cannot be enforced. Individuals who execute criminal acts of mineral and coal mining on their own, rather than acting for and/or on behalf of businesses, are not subject to the criminal threats stated in Article 163 paragraph (2) above.

This restriction, which is solely applicable to corporations, may be predicated on mineral and coal mining companies, which are typically organized as corporations. More specifically, there are three types of mining companies. To begin, there are business actors in the shape of corporations, cooperatives, and individuals. Mining Business License (IUP),³⁷ Production Business Mining Business License,³⁸ Non-Metal Mineral Mining Business License Area,³⁹ Rock Mining Business License Area,⁴⁰ Coal Mining Business License Area,⁴¹ and Implementing Mining Business License⁴² all fall under this business actor's initial theory. An individual, firm company, or commodity company is what is meant by a person as a mining business actor in IUP.⁴³

In addition, local citizens, including individuals and community groups and cooperatives, own mining firms. The theory of these two business players only applies to people's mining licenses, which are permits to conduct mining operations in people's mining areas with restricted land and investment.⁴⁴ Mining business players in the form of Indonesian legal entities, such as state-owned enterprises, regionally owned businesses, or private businesses. Only special mining permits, i.e. licences to conduct

³⁷ Article 38 of Mineral and Mining Law.

³⁸ Article 46 section (2) of Mineral and Mining Law.

³⁹ Article 54 of Mineral and Mining Law

⁴⁰ Article 57 of Mineral and Mining Law

⁴¹ Article 60 of Mineral and Mining Law.

⁴² Article 125 section (2) of Mineral and Mining Law.

⁴³ Article 6 section (3) of Government Regulation Number 24 of 2012 on the Implementation Mineral and Mining Business Activities

⁴⁴ Pasal 67 ayat (1) of Mineral and Mining Law.

mining businesses in the field of special mining business licenses, are covered by the theory of these three business players.⁴⁵

In the Law on Prevention and Suppression of Illegal Logging (PPPH Law), the imposition of criminal threats aggravation is only related to the quantity aspect in which the culprit is a corporation. The threat of criminal sanctions is aggravated for corporation, which forms as follows:

1. Individuals who perform unlawful acts under Article 82 face the prospect of criminal punishment including imprisonment for at least one year and a maximum of five years, as well as a fine of at least 500 million dollars (at most 2.5 billion). If the offense is committed by a corporation, the penalty is aggravated to a minimum of 5 years and a maximum of 15 years in jail, as well as a minimum fine of 5 billion dollars and a maximum fine of 15 billion.
2. In the case of criminal acts in Article 83 committed by individuals due to negligence, the threat of criminal sanctions is in the form of imprisonment of at least 8 months and a maximum of 3 years, with a minimum fine of 10 million and a maximum of 10 billion. If it is done by the corporation, then the criminal threat is tightened to a minimum of 5 years imprisonment and a maximum of 15 years, as well as a minimum fine of 5 billion and a maximum of 15 billion.
3. In the case of criminal acts in Article 84 committed by individuals due to irregularity, the criminal threat is in the form of imprisonment of at least 8 months and a maximum of 2 years, with a minimum fine of 10 million and a maximum of 2 billion. If the criminal act is committed by a corporation, then the criminal threat is increased to a minimum prison term of 2 years and a maximum of 15 years, as well as a minimum fine of 2 billion and a maximum of 15 billion.
4. In the event that the criminal acts in Article 85 are committed by individuals intentionally, the criminal threat is in the form of imprisonment of at least 2 years and a maximum of 10 years, as well as a minimum fine of 2 billion and a maximum of 10 billion. But if the crime is committed by a corporation, then the criminal threat is increased to a minimum prison term of 5 years and a maximum of 15 years, as well as a minimum fine of 5 billion and a maximum of 15 billion years; and
5. In the case of criminal acts in Article 86 committed by individuals intentionally, the criminal threat is in the form of imprisonment of at least 1 year and a maximum of 5 years, with a minimum fine of 500 million and a maximum of 2.5 billion. But if the crime is committed by a corporation, then the criminal threat is increased to a minimum prison term of 5 years

⁴⁵ Pasal 75 ayat (2) of Mineral and Mining Law.

and a maximum of 15 years, as well as a minimum fine of 5 billion and a maximum of 15 billion years.

Criminal threat aggravation is also made in the event that the culprit is a public official. Article 107 of the PPPH Law states that any illegal logging activities and/or unauthorized use of forest areas involving officials, the criminal plus 1/3 (one-third) of the main criminal threat, as defined in Articles 12 to 17 and 20 to 26. A prevalence that occurs in numerous criminal laws is the addition of one-third of the primary criminal threat in the case of officials committing PPPH offences. This one-third increase solely applies to officials; it does not apply to knowingly committed criminal acts by people or corporate criminal conduct. As a result, the addition of criminal weight to the PPPH Law is exclusively relevant to one category of crime. The law forbids the imposition of criminal threats by converting them from a less serious to a more serious type of criminality. Criminal threats ranging from imprisonment to the death sentence, as well as criminal penalties leading to incarceration, are prohibited under the PPPH Law.

In law No. 18 of 2004 on Plantations, the imposition of criminal threats is related to two forms. First, the imposition of criminal threats because certain acts are committed by corporations. This first form contains in the formulation of Article 113 paragraph (1). It is stated that In the event that the acts referred to in Article 103, Article 104, Article 105, Article 106, Article 107, Article 108, and Article 109 are committed by the corporation, in addition to its management is punished under Article 103, Article 104, Article 105, Article 106, Article 107, Article 108, and Article 109, the corporation is punishable with a maximum fine in addition to 1/3 (one-third) of the fine of each of these. Thus, the threat of criminal sanction is aggravated to 1/3 (one-third) for a corporation committing a prohibited offense. Second, the imposition of criminal threats due to certain acts committed by state officials as promulgated in Article 113 paragraph (2). It is stated that “in the case of acts referred to in Article 103, Article 104, Article 105, Article 106, Article 107, Article 108, and Article 109 carried out by officials as ordered persons or persons who, because of their position, have authority in the field of plantations, the official is punishable with a criminal sanction plus 1/3 (one-third)”.

Based on the above explanation, it is argued that the imposition for criminal threats in the Plantation Law is only related to the qualification of the subject of an offense. If the criminal act in the law is committed by a corporation, then the threat of criminal fines is aggravated by one-third of the maximum criminal threat of fines in the article violated. In addition, in a case where criminal acts in the law committed by officials, the criminal threat is aggravated by one-third of the maximum criminal threat in the article violated.

IV. ORIENTATION OF CRIMINAL SANCTION AGGRAVATION IN ENVIRONMENTAL LEGISLATIONS

Prohibited acts whose threat of criminal sanctions is aggravated in the Mineral and Coal Mining Law, PPLH Law, PPPH Law, and Plantation Law lead more to environmental protection. This can be seen from the forms of prohibited acts, such as; 1) carrying out activities that cause forest destruction; 2) taking actions that result in damage to gardens and/or other assets; unauthorized use of plantation land and/or other actions that result in disruption of plantation business; 3) opening and/or cultivating land by means of burning that results in pollution and damage to environmental functions; 4) performing actions that result in the exceeding of ambient air quality standards, water quality standards, sea water quality standards, or standard criteria for environmental damage; (5) illegally felling trees in forest areas; (6) logging trees in forest areas that are not in accordance with forest utilization permits; and (7) conducting mining activities in forest areas without the permission of the Minister. However, given the dominance of prohibited acts, it can be concluded that the orientation of criminal threat aggravation in the three laws has led to environmental protection. To know, it is necessary to look carefully at the types and duration of criminal threats in each of these acts.

The forms of criminal sanctions in the four laws are imprisonment and criminal fines formulated cumulatively (imprisonment and fines)⁴⁶. There are two legal implications when criminal sanctions are formulated cumulatively. First, the judge has nothing but to impose two types of criminal sanctions on perpetrators who are proven to have committed criminal acts in the environmental field, although according to the judge, the perpetrator is more likely to be sentenced to prison only or even a fine. Second, in the context of environmental legislation, the system of criminal formulation cumulatively shows that the perpetrator who commits a criminal act is human and does not include corporations. Because a corporation has distinctive characteristics, it is impossible for a corporation to be sentenced to prison⁴⁷.

⁴⁶ Barda Nawawi Arief, *Kebijakan Legislatif Dalam Penanggulangan Kejahatan Dengan Pidana Penjara*, 3rd ed. (Semarang: Badan Penerbit Universitas Diponegoro, 2000), 152.

⁴⁷ Gustavo A. Jimenez, "Corporate Criminal Liability: Toward a Compliance-Orientated Approach," *Indiana Journal of Global Legal Studies* 26, no. 1 (2019): III, <https://doi.org/10.2979/indjglolegstu.26.1.0353>.

The length of criminal threats in the law in the field of the environment is formulated variously. In Law No. 4 of 2009 on Mineral and Coal Mining, the threat of imprisonment ranges from a maximum of 1 year to a maximum of 10 years. While criminal fines range from at most 100 million to at most 10 billion. In Law No. 32 of 2009 on Environmental Management and Protection, the threat of imprisonment starts at a minimum of 1 year and a maximum of 3 years, as well as a minimum of 5 years and a maximum of 15 years. Criminal fines begin at 1 billion and can reach 3 billion, with fines of at least 5,000,000,000.00 (five billion rupiah) and no more than 15 billion. Thus, in addition to cumulatively formulated criminal threats (imprisonment and fines), environmental management and protection laws also regulate specific minimum criminal threats⁴⁸. Specifically for corporations, the threat of imprisonment or criminal fines is aggravated into such and criminal threats in each article are violated.

In the PPPH Law, criminal threats are cumulatively reported between imprisonment and fines. This law also regulates special minimum criminal threats whose criminal length varies, namely: a) imprisonment of a minimum of 1 year and a maximum of 5 years; b) imprisonment of at least 8 months and a maximum of 2 years; and c) imprisonment of a minimum of 8 years and a maximum of 15 years. The criminal penalties also vary, namely: a) a minimum of 100 million and a maximum of 1 billion; b) a minimum of 10 billion and a maximum of 100 billion; and c) a minimum of 20 billion and a maximum of 1 trillion.⁴⁹ The threat of imprisonment under the Plantation Law ranges from a maximum of three years to a maximum of ten years. The total amount of criminal fines ranges from a maximum of three billion to a maximum of ten billion.

According to the above statement, while there are a number of forbidden behaviours that lead to environmental protection, the three laws' criminal threat enforcement orientation has not resulted in environmental conservation. There are two justifications offered. To begin with, the categories of criminals threatened by existing criminal enforcement measures are limited to only two types: jail and fine. Offenders' imprisonment has nothing to do with environmental protection. Even if a person is found guilty of forestry, plantation, and environmental management and protection and condemned to prison, the consequences are unable to improve those three things. Criminal fines are the same way. The fact that the criminals pay fines to the state has nothing to do with environmental conservation efforts. So yet, there has been no evidence that the fines are being used to restore harmful living environment. It is also

⁴⁸ Harkristuti Harkrisnowo, *Rekonstruksi Konsep Pemidanaan: Suatu Gugatan Terhadap Proses Legislasi Dan Pemidanaan Di Indonesia* (Jakarta: Fakultas Hukum Universitas Indonesia, 2008).

⁴⁹ Article 94 of PPPH Law

argued that the threat of criminal fines is the most in mineral and coal mining laws and plantation laws, amounting to 10 billion. The criminal threat of fines in environmental management and protection laws amounted to 15 billion. In the PPPH Law, there is an arrangement regarding a maximum fine of 1 trillion, but that only applies to corporations that commit criminal acts as referred to in Article 94, Paragraph (2). Even with such a fine amount, if indeed the payment of fines by the perpetrators to the state is used directly for the benefit of environmental conservation, the amount will not be able to repair the damaged environment, especially if the damage is very severe⁵⁰.

V. CRIMINAL SANCTION AGGRAVATION THAT PROTECTS ENVIRONMENT

There needs to be a change in the patterns of criminal sanction aggravation both quantity and quality in environmental legislation. If the quality aspect is interpreted to refer to a transition from one type of lighter criminal sanction to a more serious type of penalty, this concept plainly presents a challenge when employed as a theoretical basis for application of criminal threats aggravation based on environmental protection. Except for criminal fines, all forms of criminal punishment, such as the death sentence, incarceration, and imprisonment, are not directly tied to environmental protection. These forms of criminal punishments can only be applied if the victim of the crime is a human, but they cannot be imposed if the victim is the environment⁵¹.

The imposition of criminal threats discussed in the previous section does not encompass the existence of the environment as a "victim" of criminal acts in terms of quantity. This is because, even if a prison sentence of 10 to 20 years is imposed, there is still no causal link between the perpetrator's conduct and the damage to the environment. As a result, except for the type of criminal fine, the idea of quality and quantity of criminal sanction aggravation in criminal legislation is difficult, if not impossible, to apply if the focus is on environmental protection.

⁵⁰ Michael G. Faure, "The Revolution in Environmental Criminal Law in Europe," *Virginia Environmental Law Journal* 35 (2017): 335–36; H. Qudah, *Towards International Criminalization of Trans Boundary Environmental Crimes, Dissertation* (New York: Pace Law School, 2014), 71.

⁵¹ James Gacek, Richard Jochelson, and Alicia Dueck-Read, "Critiquing the Conception of 'Crimes Against Nature': The Necessity for a New 'Natural' Law," *International Journal of Offender Therapy and Comparative Criminology* 66, no. 4 (2022): 345–468, <https://doi.org/10.1177/0306624X20967945>.

One of the reasons is that the legal protection provided to individuals and the environment as victims of crime differs. When utilizing criminal enforcement in terms of quality and quantity, it is vitally important to consider the victim's right and interest. The concept of quality and quantity cannot be used if the victim is the environment. The forms of sanctions threatened, including the imposition of criminal threats, varied due to variances in the orientation of legal protection. The sorts of sanctions that can be administered to perpetrators who are proven to perform illegal acts and cause injury or damage to the environment in this connection are more in the form of sanctions actions (treatment), such as confiscation of income acquired from criminal activity. Closure of all or part of the business and/or activity location, improvement as a result of criminal acts, revelation of doing what is done without permission, and/or placement of the firm under the company. Even if criminal sanctions (punishment) are used, they are confined to fines.

It is important to distinguish between punishment and treatment. Herbert L. Packer defines criminal sanctions as “any particular disposition, or the range of admissible dispositions, that the law authorizes (or appears to authorize) in circumstances when a person has been found guilty of a crime through the unique processes of criminal law”⁵². The death sentence, life imprisonment, incarceration, and criminal fines are all examples of punishments. Meanwhile, treatment is proactive rather than reactive, with the goal of restoring certain circumstances for perpetrators and victims, both individuals and civil legal entities. It is based on the philosophy of determinism in various forms of dynamic sanctions (open system) and specifications of non-suffering or deprivation of independence⁵³. Assets for corporations that perform criminal crimes, as well as the restitution of all losses caused by the perpetrator's actions.

The goal of criminal sanctions is to deter undesirable behaviour and retaliate for wrongdoings (retribution for perceived wrongdoing)⁵⁴. The main focus is on efforts to aid the perpetrator, not on the perpetrator's actions in the past or future⁵⁵. As a result, criminal sanctions place a premium on the element of retribution (appeal). It is the intentional infliction of pain on the wrongdoer. While the action system's consequences

⁵² Packer, *The Limits of the Criminal Sanction*, 35.

⁵³ M. Sholehuddin, *Sistem Sanksi Dalam Hukum Pidana* (Jakarta: Rajawali Pers, 2003), 210.

⁵⁴ Bidish Sarma, “Using Deterrence Theory to Promote Prosecutorial Accountability,” *Lewis & Clark Law Review* 21 (2017): 596–97.

⁵⁵ L. Waller and C.R Williams, *Criminal Law Texts and Cases* (Australia: Butter Worlds, n.d.), 16.

are based on the essential concepts of community protection and offender coaching or treatment⁵⁶.

In the sense that both criminal penalties and treatment have a suffering aspect, both sanctions suffer from their nature. The person who is convicted and sentenced to jail is "forced" to experience the pain of living in a communal facility for a period of time. Similarly, when a person is found guilty and sentenced to treatment in a hospital for drug addiction, the person is forced to experience the pain of being in the institution. In addition to pain, criminal sanctions also carry a stigma. This aspect of censure does not present in the treatment because its nature only suffers⁵⁷.

The essence of the distinction between criminal sanctions and treatment must be linked to the imposition of environmental-based criminal threats aggravation in order for the consequences to differ from those imposed on criminal threats aggravation with a human-protection orientation. In terms of quality, criminal threats aggravation should be transitioned from criminal sanctions to treatment, or from one type of treatment to another. If a person is found guilty of an environmental crime that results in environmental damage, the criminal threat is a fine; however, if the damage is severe, the criminal threat aggravation is the confiscation of all profits derived from criminal acts, with all profits going toward repairing the damaged environment. If the harm is significant, the criminal threat aggravation includes the seizure of all proceeds made from criminal conduct, as well as the need to repair any damage caused by the perpetrator's actions. A criminal investigation is required in order for the punishments to be effective. The types of sanctions imposed on violators are indeed intimately tied to efforts to enhance the environment with the enforcement of such criminal threat aggravation.

The change in the concept of criminal sanction aggravation of quality aspects oriented to environmental conservation has ramifications for improperly including "deprivation of profits derived from criminal acts," "closure of all or part of business premises and/or activities," "improvement due to criminal acts," "the sacrifice of doing what is improperly neglected," and/or "placement of companies under the establishment" in the Environmental Protection and Management Act. These types of sanctions are more severe than prison terms, incarceration, and criminal fines, based on their quality. The expenditures that must be expended when a person is sanctioned in the form of an obligation to repair the complete consequences of a criminal conduct because it is demonstrated to create substantial

⁵⁶ Michele Cotton, "Back with a Vengeance: The Resilience of Retribution as an Articulated Purpose of Criminal Punishment," *American Criminal Law Review* 37, no. 4 (2000).

⁵⁷ Dan Markel, "Executing Retributivism: Panetti and the Future of the Eighth Amendment," *Northwestern University Law Review* 103, no. 3 (2009): 1191.

environmental harm are far larger than the criminal penalty of 5 billion. As a result, these types of penalties should not be imposed on new perpetrators. Even if it is kept as an additional criminal sanction, it must be possible to administer the sanction without having to combine it with the primary criminal sanction⁵⁸.

The imposition of environmental conservation-related criminal threats is only possible in terms of quantity when the criminal form is a criminal fine. However, the tendency is to employ a doubled/threefold system to impose criminal threats aggravation by not creating the nominal amounts of fines in the formulation of each article for which a criminal threat exists⁵⁹. Because it was previously promulgated in Article 15 paragraph (1) of Law No. 21 of 2007 on Combating Criminal Acts of Trafficking in Persons and Article 130 paragraph (1) of Law No. 35 of 2009 on Narcotics, the system is not new in the Indonesian application system. As with the idea of preventive, the amounts of fines that must be paid by the culprit must be more than the seriousness of the offense committed (deterrence)⁶⁰. The state is directly involved in environmental protection measures. If no agreement is reached, the application of criminal threats of fines under the doubled system will have no bearing on environmental protection.

CONCLUSION

The promulgation of criminal sanction aggravation in various environmental legislation has been varied. Criminal threats aggravation addressed to corporations with the addition of 1/3 (one-third) of the criminal sanction is found in PPLH Law. The penalty aggravation is only enforced against corporations under the Mining Law, and they only imposed with one-third of the maximum criminal provision of fines imposed. The imposition of criminal threats weight is only related to the quantity component in the PPPH Law, meaning the imposition of criminal sanction aggravation if the perpetrator is a corporate or official, plus one-third of the main criminal threat. The aggravated penalty is exclusively relevant to the qualification of the topic of offenses in the Plantation Law. If the offender is a company or a government official, then the criminal sanctions is aggravated. Acts forbidden by environmental legislation safeguard the environment, but the

⁵⁸ Suhariyono Suhariyono, *Pembaruan Pidana Denda* (Jakarta, 2012), 41.

⁵⁹ Daniel N. Robinson, "Punishment, Forgiveness, and the Proxy Problem," *Notre Dame Journal of Law, Ethics and Public Policy*, 2004, 374–275.

⁶⁰ Steven Shavell, "A Simple Model of Optimal Deterrence and Incapacitation," *International Review of Law and Economics* 42 (2015): 238, <https://doi.org/10.1016/j.irle.2014.11.005>.

criminal threat weight is not geared toward environmental preservation. Existing penalty aggravations are limited to only two sorts of criminal sanction, namely incarceration and fines, where have no direct relevance to environmental protection. Hence, to protect environment, weighting criminal sanction refers to the altering quality and quantity aspects. Quality considerations centered on the transition from criminal sanction to treatment or from one type of treatment to other, while quantity element centered on the doubled system of criminal fine.

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