

# Implementation of Law Enforcement in Environmental Aspects By Undang-undang Number 6 Year 2023

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## ABSTRACT

The abstract addresses the low awareness of environmental conservation in Indonesia, as showed by the Environmental Performance Index 2022 (EPI) report. Based on Undang-undang Number 6 Year 2023, this study seeks to investigate the use of law enforcement in environmental elements. The research method involves a literature study approach and a normative juridical approach. The results and discussion highlight the regulations and articles in Undang-undang Number 6 Year 2023 related to environmental law enforcement, including law enforcement authorities, administrative and criminal sanctions, and dispute resolution mechanisms. The implementation of good law enforcement can positively affect environmental protection and preservation. However, improper implementation may lead to negative consequences, such as the criminalization of people living near protected environmental areas. The study emphasizes the role of law enforcement agencies in the implementation of Undang-undang Number 6 Year 2023 and the control and prevention of environmental damage through licensing mechanisms. It also stresses the importance of protecting people's rights in a healthy and sustainable environment. The conclusion emphasizes the need for increased awareness, commitment, and effective environmental law enforcement mechanisms to address environmental problems and prioritize sustainable development in Indonesia.

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## 1. INTRODUCTION

The environment is essential to the continuation of human existence. Therefore, it is our responsibility to maintain, safeguard, and preserve the environment. However, awareness of environmental conservation in Indonesia is still exceptionally low. We can

see this from the *Environmental Performance Index 2022* (EPI) report which says that Indonesia's environmental conservation is classified as poor globally, even on an Asia Pacific regional scale. *Environmental Performance Index 2022* (EPI) is a research method for measuring the environmental sustainability of countries through dozens of

indicators summarized in three major pillars, namely:

1. Environmental Health.
2. Climate.
3. Ecosystem Vitality.

EPI then processes the data related to the indicators above into a scale score of 0-100. The greater the number, the more environmentally sustainable the environment, and vice versa. As a result, Indonesia got a score of 28.2 out of 100. This score places Indonesia in 164th place out of 180 countries studied. Based on these data, legal instruments related to environmental enforcement are important to solve problems related to environmental destruction.<sup>1</sup>

Law enforcement can be interpreted as the process of using legal instruments in responding to actions that violate legal provisions. Environmental law enforcement can be divided into 3 forms. Environmental law enforcement in the context of environmental pollution control is the use of legal means ("legal means") available in the field of administrative, criminal, and civil environmental law enforcement (environmental dispute resolution) to carry out legal protection to ensure a clean and healthy sustainable environment.<sup>2</sup> This journal aims to provide an analysis of the conception in the order of law enforcement implementation in environmental aspects based on Undang-undang Number 6 Year 2023.

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<sup>1</sup> Adi Ahdiat, "Pelestarian Lingkungan Indonesia Tergolong Buruk Di Asia Pasifik", Databoks.Com, Diakses Pada: <https://databoks.katadata.co.id/datapublish/2022/07/25/pelestarian-lingkungan-indonesia-tergolong-buruk-di-asia-pasifik>, Pada Tanggal 15 Mei 2023 Pukul 13:21 WIB.

<sup>2</sup> Muhammad Fahrudin, Penegakan Hukum Lingkungan Di Indonesia Dalam Perspektif Undang-Undang Number 32 Year 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup, Dalam Veritas: Jurnal Program Pascasarjana Ilmu Hukum Universitas Islam As-Syafi'iyah, Vol. 5 No. 2, 2019, Hlm. 83.

The premise of Undang-undang Number 6 of 2023 Adjustments to regulatory aspects related to the convenience, protection, and empowerment of cooperatives and micro, small, and medium-sized businesses, the improvement of the investment ecosystem, and the acceleration of national strategic projects, including improvements to worker protection and welfare, are required to support job creation.

## 2. LITERATURE REVIEW

Each quote from the book is cited in the text, and cite the source in the bibliography. In-text citations are written like this: (Author's last name, year: page) or (Author's last name, year) for the source of the book. While citations for online sources are written like this: (Last name of author/ editor/ institution, year of posting).

### 2.1 First Literature

There are numerous Several criminal law policies have been implemented as part of current environmental law enforcement initiatives. First, Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH 2009) recognizes that perpetrators of environmental offenses are not limited to human beings but can include legal entities, associations, foundations, and other organizations. This is different from the Criminal Code which only recognizes humans as perpetrators of criminal acts. Second, the UUPLH also uses basic and additional criminal sanctions, like the Criminal Code, but also introduces disciplinary measures to maintain environmental norms. Thus, UUPLH presents a more comprehensive approach in environmental law enforcement. Several criminal law policies must be considered for the future in environmental law enforcement efforts. First, the law enforcement approach that is often used is deterrence or prevention approach. This approach prioritizes law enforcement efforts that

prevent environmental violations before they happen. Second, a formal delict approach can be used to prove environmental crimes, with evidence only focusing on actions that can be observed through the five senses, such as contamination or environmental devastation. This facilitates the process of proving environmental crimes. Third, punishment can be directed at cumulative sanctions, which allow judges to impose all existing sentencing provisions in environmental law. The judge may choose to impose comprehensive sanctions, combine multiple sanctions, or select several sanctions deemed appropriate for the pending case. With these policies, it is anticipated that environmental law enforcement will be more effective and provide suitable punishments to protect and preserve the environment.<sup>3</sup>

## 2.2 Second Literature

According to Satjipto Rahardjo, the implementation of environmental law enforcement in Kuningan Regency is comprised of three primary components. These elements are lawmaking by the legislature, law enforcement by police, prosecutors, and judges, as well as environmental elements that include private citizens and social aspects. First, the law-making element involves the legislature in drafting laws and regulations related to environmental conservation. This indicates that Kuningan Regency has policies and regulations in place to protect and preserve the environment. Second, the law enforcement element involves law enforcement officials such as police, prosecutors, and judges. In this case, local government officials, such as the Regional Environmental Management Agency (BPLHD) of Kuningan Regency,

cooperate with law enforcement to conduct law enforcement against environment-related violations. Third, environmental elements involve the personal role of citizens and social aspects in the people of Kuningan Regency. Seflute (students caring for the environment), Appel (equipment for caring for the environment), and Pepeling (bride caring for the environment) are models of community participation and roles. Through community initiatives and participation, environmental protection awareness can be raised. Thus, environmental law enforcement in Kuningan Regency includes elements of lawmaking and law enforcement by law enforcement officials, as well as community participation and responsibility for preserving and maintaining the environment.<sup>4</sup>

## 2.3 Third Literature

In the future, environmental problems will be at an increasingly complicated level. Limited natural resources challenge law enforcement instruments to play a better role in preventing pollution from environmental damage. The law enforcement instruments specified in Article 14 must be optimized at the implementation level. At the very least, the 12 preventive instruments contained in Article 14 of the UUPPLH must be the main tool in environmental law enforcement, and therefore, making implementing regulations from the 12 prevention instruments is an important task for the government (including local governments) to carry out environmental

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<sup>3</sup>Hakim, E. R. (2020). Penegakan Hukum Lingkungan Indonesia Dalam Aspek Kepidanaan. *Media Keadilan: Jurnal Ilmu Hukum*, 11(1), 43-54.Hlm.52.

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<sup>4</sup> Akhmaddhian, S., & Adhyaksa, G. (2016). Implementasi Penegakan Hukum Lingkungan di Daerah (Studi Di Kabupaten Kuningan). *UNIFIKASI: Jurnal Ilmu Hukum*, 3(1). Hlm.82.

law enforcement based on law compliance.<sup>5</sup>

### 3. METHODS

This research was conducted using a literature review methodology by accumulating data from various relevant literature sources. In addition, the research includes references to applicable environmental law enforcement laws and regulations.

This study's approach method is the doctrinal method, which is a normative legal approach. The normative juridical approach, according to Soerjono Soekanto, is legal research conducted by analyzing library materials or secondary data as a premise for research by conducting inquiries on regulations and literature related to the problem under study.<sup>6</sup>

### 4. RESULTS AND DISCUSSION

#### 4.1 Review of Undang-undang Number 6 Year 2023 Related Environment

Undang-undang Number 6 Year 2023 Adjustments to regulatory aspects related to the convenience, protection, and empowerment of cooperatives and micro, small, and medium-sized businesses, the improvement of the investment ecosystem, and the acceleration of national strategic projects, including improvements to worker protection and welfare, are required to support job creation.

Publication considerations Undang-undang Number 6 Year 2023 on the Establishment of a Substitute Government Undang-undang Number 2 Year 2022 on Job Creation Becomes Law, namely that efforts to change regulations pertaining to the

convenience, protection, and empowerment of cooperatives and micro, small, and medium enterprises, improvement of the investment ecosystem, and the provision of national strategic projects, including the improvement of worker protection and welfare, are authorized. Consequently, a breakthrough and legal certainty are required for the omnibus method to be able to comprehensively address various problems in multiple laws by combining them into one law.

Implementation of law enforcement in environmental aspects based on Undang-undang Number 6 Year 2023 set in Article 70 up to Article 77. These articles regulate law enforcement authorities, administrative and criminal sanctions, and dispute resolution mechanisms in the environmental sector.

Law enforcement authority in enforcing environmental law includes investigation, prosecution, and implementation of court decisions. Law enforcement referred to in Undang-undang Number 6 Year 2023 includes the police, prosecutors, and courts. In its implementation, law enforcement must be conducted professionally and objectively.

Administrative and criminal sanctions are also regulated in Undang-undang Number 6 Year 2023. Administrative sanctions consist of warnings, reprimands, administrative fines, and license revocations. While criminal sanctions can include imprisonment, fines, and additional crimes, they can also take the form of monetary penalties. Other punishments include the revocation of business licenses, the cessation of operations, and the seizure of evidence.

The implementation of good law enforcement can have a positive impact on environmental protection and preservation. With strict law enforcement, business actors will pay attention to environmental aspects in their business activities. This can prevent environmental damage and improve the quality of the environment.

<sup>5</sup> Nurlinda, I. (2016). Kebijakan Pengelolaan Sumber Daya Alam dan Dampaknya Terhadap Penegakan Hukum Lingkungan Indonesia. *Bina Hukum Lingkungan*, 1(1), 1-9. Hlm.8.

<sup>6</sup> Soerjono Soekanto, Sri Mamudja, *Penelitian Hukum Normatif (Suatu Tinjauan Singkat)*, (Jakarta: Rajawali Pers, 2001) Hlm. 13.

However, there are also negative impacts of improper implementation of law enforcement. One of the negative impacts is the criminalization of people living around protected environmental areas. People who do not know the detailed environmental regulations can be entangled in criminal sanctions

#### 4.2 The role of law enforcement agencies in the implementation of Undang-undang Number 6 Year 2023

Article 1 point 2 of Undang-undang Number 6 Year 2023 governs environmental law enforcement in the administration. In addition, the government's responsibilities and authorities are detailed in paragraph 1 of Article 63. Environmental law enforcement is the application of values to safeguard ecosystem capabilities and environmental functions. The regulation of the application of environmental law through administrative sanctions derives from the provision that the application of administrative law serves as a tool to control, prevent, and restore acts prohibited under environmental laws and regulations that are preventive in nature and impose punitive measures. revocation or revocation in the event of violation of the provisions. environmental protection and management requirements Environmental law enforcement can be conducted preventively with maximum monitoring and licensing tools, whereas repressive enforcement is conducted through the application of regulatory frameworks, administrative sanctions, and effective, consistent law enforcement against environmental pollution and destruction that has already occurred.<sup>7</sup>

The administration of administrative sanctions has been modified to comply with Minister of Environment Regulation No. 02

of 2013. Article 76 Paragraphs (1) and (2) authorize ministers, governors, or second-level regional heads to apply administrative sanctions. The administrative sanctions consist of:

- a. Written censure
- b. coercion by the government
- c. halting environmental permit applications; or
- d. The withdrawal of environmental permits.

Articles 98 to 120 address the criminal enforcement of environmental laws. Environmental law that adheres to the principle of ultimate remedium includes criminal punishments as part of its sanctions. That is, the application of criminal sanctions is the last means if other legal means cannot overcome environmental problems. Therefore, criminal sanctions are aimed not at restoring the polluted environment but to ensnare criminal offenders to cause *an effective* deterrent factor.<sup>8</sup> According to Wahyu Nugroho, the PPLH Law contains at least three types of criminal acts: the first is a material crime, which is an unlawful act that damages or pollutes the environment, as specified in Articles 98 and 99; the second is a formal crime, which is a crime outlined in Article 100 Paragraph (1) and 101; and the third is corporate liability as an environmental crime committed by corporations, in the form of legal entities.<sup>9</sup>

Article 97 classifies as a crime every form of criminal conduct covered by this law. Article 98, paragraph 1, provides examples of material offenses for which perpetrators who intentionally exceed ambient air quality standards, water quality standards, marine water quality standards, or standard criteria for environmental harm may be subject to criminal sanctions. However, pay attention to

<sup>7</sup> Rusydi, Juliadi, Januri Januri, And Rika Santina. "Tanggungjawab Pemerintah Dalam Penegakan Hukum Lingkungan Hidup Di Tinjau Dari Persepektif Hukum Administrasi Negara." *Audi Et Ap: Jurnal Penelitian Hukum* 2.01 (2023): 54-63.

<sup>8</sup> Sukanda Husin, *Indonesian Environmental Law Enforcement*, ed. I., cet. I, Jakarta: Sinar Grafika, 2009, p. 121.

<sup>9</sup> Wahyu Nugroho, *Textbook Of Environmental Law And Natural Resource Management*, Cet. I, Yogyakarta: Genta Publishing, 2022, P. 67.

Paragraph (2), and Paragraph (3) which support imposing sanctions if the perpetrator of a criminal function as Paragraph (1) causes harm to others. Article 99 also includes an element of negligence in the formulation of the delict. Article 116 Paragraph 1 regulates corporate environmental criminal liability in relation to corporate crime. In accordance with Article 112, criminal sanctions are also specified for officials who are authorized to supervise the compliance of the person in charge of the business or activity with environmental permits but do not supervise compliance with laws and regulations and environmental permits. The formal environmental crime is outlined in Article 100 (1) and (2), which states that violators of wastewater quality standards, emission quality standards, or nuisance quality standards may be criminally charged if administrative sanctions have been imposed or if the violation has been committed multiple times. Article 101 states that it is a crime to distribute genetically modified products to environmental media in violation of applicable laws, regulations, or environmental approvals, as prohibited in Article 69 Paragraph (1) point g.

#### **4.3 Control and prevention of environmental damage**

Environmental Protection and Management Law No. 32 of 2009 (PPLH Law) defines licensing as a tool for preventing environmental pollution and environmental devastation. Every individual or legal entity that wants to establish a business or activity must have an Amdal in the context of environmental protection and management to obtain a business or activity license, which is an example of granting legal permits for activities related to the environment.

AMDAL is a tool for assessing the environmental impact and significance of a business or intended activity. Simplifying environmental permits by eliminating AMDAL is contrary to sustainable development objectives because it places development in a short-term perspective and

does not integrate environmental considerations into economic growth. The urgency of regulating the management of the use of natural resources and the environment, as well as how to eradicate impacts, so that other and subsequent developments can continue to be carried out if the AMDAL preventive function fails, the most significant modification to the Job Creation Law regarding AMDAL is the licensing provision. The most significant modification to the Job Creation Law regarding AMDAL concerns licensing. Environmental permits have been transformed into environmental certifications; consequently, the evaluation of AMDAL documents will also be lost, as the AMDAL assessment commission has also been eliminated by the Job Creation Law. Then, in Article 23 of the Job Creation Law, it is proposed to amend the provisions regarding the function of Amdal and decision-making regarding the implementation of a business and/or activity that were originally enumerated in Law No. 32 of 2009 concerning Environmental Protection and Management. And the impact of the Job Creation Law is said not to be eliminated, but it will reduce the mandatory function of AMDAL for most activities or commercial activities without certainty and a solid foundation.<sup>10</sup>

Law enforcement in Indonesia's licensing field includes two things, namely, structuring and enforcement. While administrative and criminal sanctions may be utilized to enforce the law, criminal sanctions are the most common method. The number of cases of environmental destruction resulting from violations of laws related to permits demonstrates that the drafters of laws and state policymakers do not consider the multidisciplinary

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<sup>10</sup> Febriyanti, Dwi, et al. "The Function of Amdal in Controlling Environmental Damage and Pollution After the Promulgation of the Job Creation Law." *Widya Pranata Hukum: Journal of Legal Studies and Research* 3.2 (2021): 115-133.

significance of a permit about the environmental impact caused by the permit granted in the future.<sup>11</sup> In order to control and prevent environmental damage, it is important to continue to improve a multidisciplinary approach in drafting laws and regulations related to licensing. A higher awareness of the environmental impacts that may arise from permits granted is needed. In addition, enforcement of licensing laws also needs to be improved to prevent and control further environmental damage and supply a deterrent effect to violators.

#### 4.4 Protection of people's rights in a healthy and sustainable environment

The future of the nation and state, particularly Indonesia, will be primarily determined by the current administration's environmental policy choices. For this reason, the government must take the following steps: prioritizing sustainable development of the environment for the long-term interests of our children and grandchildren in the future. There is a change or dynamic of a paradigm in environmental management so that the decisions taken will use a long-term perspective and prioritize sustainable development by compiling sustainable development programs integrally by considering the technical and mechanism, administrative, political, legal, and cultural aspects so that they are easy to implement. Multiple environmental problems that arise in succession on the ecological side serve as a beacon for the insincerity of public authority holders to integrate environmental concerns into the state's policy agenda. Numerous administrative, criminal, and civil alternatives to environmental law enforcement have not been able to guarantee the elimination of environmental problems. Environmental protection has also been unable to have a significant impact in the

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<sup>11</sup> Suniaprily, Firstnandiar Glica Aini, And Khaidar Rohman. "Fungsi Kebijakan Hukum Perizinan Terhadap Upaya Pelestarian Lingkungan Hidup." *Jurnal Penelitian Serambi Hukum* 16.01 (2023): 1-9.

context of criminal law enforcement. Against this environmental offense, police officials, PPNS, prosecutors, and judges with environmental certifications take professional legal action.<sup>12</sup> To overcome this challenge, concrete steps are needed from the government, including increased awareness and commitment in prioritizing the environment in the country's policy agenda. In addition, improvement of environmental law enforcement mechanisms, both through administrative, criminal, and civil approaches, needs to be conducted to supply more effective protection of the environment.

Various environmental problems, both damage and pollution that occur on the one hand, are considered by some to be natural disasters (*act of God / force major*). Yet under realistic conditions it is an environmental and humanitarian disaster which in the policy context is noticeably clear the cause. Various environmental problems that occur successively in the ecological side become a bright spot for the insincerity of public authority holders to mainstream environmental interests in the state policy agenda. The many alternative mechanisms in environmental law enforcement, both administratively, criminally and civilly, have not been able to guarantee the reduction of environmental problems.<sup>13</sup> Although there are various mechanisms in environmental law enforcement, such as administrative, criminal, and civil mechanisms, there is still a gap between these mechanisms and efforts to reduce environmental problems. This shows that there is still room to improve the effectiveness and efficiency of environmental law enforcement mechanisms to be more

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<sup>12</sup> Kalma, Fadlan. "Perlindungan Hukum Dalam Pengelolaan Lingkungan Hidup Terhadap Pembangunan Berkelanjutan." *Qawwam: The Leader's Writing* 3.2 (2022): 124-137.

<sup>13</sup> Purwendah, Elly Kristiani, Agoes Djatmiko, And Elisabeth Pudyastiwi. "Problematika Penegakan Hukum Lingkungan Di Indonesia." *Jurnal Pacta Sunt Servanda* 4.1 (2023): 238-249.

effective in dealing with environmental problems.

The gap between feeling and reality related to environmental issues, lack of emphasis on the importance of the environment in the country's policy agenda, and the ineffectiveness of environmental law enforcement mechanisms. To overcome this problem, greater efforts are needed in raising awareness of the root causes of environmental problems, strengthening the government's commitment to protecting and managing the environment, and improving environmental law enforcement mechanisms to be more effective in preventing and dealing with growing environmental problems.

#### 4. CONCLUSION

Environmental protection and management are an overly complicated and important matter. However, using legal instruments is expected to be able to

overcome the problem of massive environmental damage. The involvement of the community and government collectively can play a more key role as a unity together to protect the nature where we live. Environmental law enforcement is challenged to contribute well to reducing the level of environmental damage in Indonesia.

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