Administrative Sanctions For Abuse Of Authority In The Field Of Environmental Licensing

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ABSTRAK

Setiap tindakan Pemerintah dalam melaksanakan penyelenggaraan pemerintahan wajib berdasarkan peraturan perundang-undangan yang berlaku. Salah satunya dalam membuat suatu keputusan tata usaha negara, yaitu Izin. Namun, kerap kali dalam penerbitan izin yang dikeluarkan oleh badan atau pejabat pemerintahan bertentangan dengan peraturan perundang-undangan, seperti izin lingkungan. Hal tersebut merupakan salah satu bentuk dari tindak penyalahgunaan wewenang berupa melampaui wewenang berdasarkan Pasal 18 ayat (1) Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan. Penelitian ini bertujuan untuk mengetahu pemberian sanksi administrasi terhadap tindak penyalahgunaan wewenang di bidang perizinan lingkungan hidup berdasarkan hukum positif di Indonesia. Penelitian ini menggunakan metode pendekatan yuridis normatif dengan metode analisis normatif kualitatif. Hasil penelitian menyimpulkan bahwa pemberian sanksi administrasi terhadap badan atau pejabat pemerintahan dalam melakukan tindak penyalahgunaan wewenang di bidang perizinan lingkungan tidak diatur dalam Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup melainkan diatur dalam undang-undang administrasi Pemerintahn, yaitu mendapatkan sanksi administrasi berat.

Kata Kunci: Sanksi Administrasi, Penyalahgunaan Wewenang, Izin Lingkungan.

ABSTRACT

Every government action in implementing government administration must be based on the applicable laws and regulations. One of them is in making a state administrative decision, namely Permit. However, often the issuance permits issued by government agencies or officials are contrary to laws and regulations, such as environmental permits. This is a form of abuse of authority in the form of exceeding the authority based on Article 18 paragraph (1) of Law Number 30 of 2014 concerning Government Administration. This study aims to determine the administration of administrative sanctions against acts of abuse of authority in the field of environmental licensing based on positive law in Indonesia. This research uses a normative juridical approach with a qualitative normative analysis method.

The results of the study conclude that administrative sanctions against government agencies or officials in committing acts of abuse of authority in the field of environmental licensing are not regulated in Law Number 32 of 2009 concerning Environmental Protection and Management but are regulated in the Government Administration Act, namely receiving administrative sanctions heavy.

Keywords: Administrative Sanctions, Abuse of Authority, Environmental Permits.

A. INTRODUCTION

Within the government's administration, one of the duties of the government is to carry out regulatory functions to regulate and control the behavior of the community to achieve the objectives of the Republic of Indonesia as stated in the Fourth Paragraph of the Preamble to the 1945 Constitution, namely protecting the entire Indonesian nation and all Indonesian bloodshed and to promote the general welfare, educate the nation's life, and participate in implementing world order. In addition to carrying out regulatory functions, all forms of Government activities and actions in government administration must also be carried out in accordance with applicable laws and regulations.

In carrying out the government's administration, a legitimacy that underlies such implementation is needed, namely the authority given by laws and regulations. Authority is what is called formal power, derived from or granted by law, namely legislative power and executive or administrative power, while authority concerns only a certain part of the authority. Authority which is a limitation of the actions and power of public officials to do something or not is often injured by the officials or government bodies themselves, one of which is by committing acts of abuse of authority. Improper use of authority can be interpreted as an abuse of authority, in which case the official uses his authority for other purposes that deviate from the purpose that has been given to that authority. Abuse of authority occurs as it is carried out by government officials consciously not because of negligence that deviates from the objectives that have been given.[1]

Acts of abuse of authority are widely found in government administration, namely in the administration of permits because permits are one of the most widely used instruments in the scope of administrative law. One form of abuse of authority in

[1] Bibianus Hengky Widhi Antoro, "Pengujian Penyalahgunaan Wewenang Di PTUN: Kajian Putusan PTUN Medan Nomor 25/G/2015/PTUN-MDN dan Putusan PTUN Jambi Nomor 2/P/PW/2017/PTUN.JBI" *Jurnal Yudisial* Vol. 13, 2020, hlm 213.

the field of licensing is the granting of permits contrary to laws and regulations carried out by authorized officials or government bodies. Based on Article 17 paragraph (2) of Law Number 30 of 2014 concerning Government Administration (hereinafter written AP Law) states that the prohibition of abuse of authority includes: a. prohibition of exceeding authority; b. prohibition of mixing authorities; and c. prohibition of arbitrary acts.

Furthermore, Government Agencies and/or Officials are categorized as exceeding authority if the decisions and/or actions taken exceed the term of office or the time limit for the validity of authority, exceed the limits of the area of enactment of authority, and/or contradict the provisions of laws and regulations. A state administrative decision is considered contrary to applicable laws and regulations if the decision conflicts with procedural, substantial, or issued laws and regulations by an unauthorized state administrative agency or official.[2]

Permission can be defined as a dispensation, release, or exemption from a prohibition. According to Bagir Manan, permission is an agreement from the authority based on laws and regulations to allow certain actions or actions that are generally prohibited.[3] A permit is an approval from the authority based on a law or government regulation to under certain circumstances deviate from the provisions of the prohibition of legislation (permit in the narrow sense).[4] The legal meaning that can be found in the permission according to the above opinion is the permission to do something that should be prohibited.[5]

Environmental permits are one of the various types of permits and integral legal instrument that enables to start a business activity. The environment from a theoretical perspective is seen as an absolute part of human life, inseparable from

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2 Penjelasan Pasal 53 ayat (2) Undang-Undang Nomor 9 Tahun 2004 Tentang Perubahan Atas Undang-Undang Nomor 5 Tahun 1986 Tentang Peradilan Tata Usaha Negara.

3 Bagir Manan, dikutip dalam I Nyoman Gede Remaja, *Hukum Administrasi Negara*, Singaraja: Fakultas Hukum Universitas Panji Sakti, 2017, hlm 59.

4 Philipus M. Hadjon, "Pengantar Hukum Perizinan", dikutip dalam Helmi, *Hukum Perizinan Lingkungan Hidup*. Jakarta: Sinar Grafika, 2012, hlm 77.

5 *Ibid.*

human life itself.[6] Environmental Permits are regulated in Law Number 32 of 2009 concerning Environmental Protection and Management (hereinafter written with the PPLH Law) and Government Regulation Number 27 of 2012 concerning Environmental Permits (hereinafter written with PP Environmental Permits). However, after the birth of Law Number 11 of 2020 concerning Job Creation (hereinafter written with the CK Law) environmental permits were changed to environmental approvals. The CK Law changes or simplifies the licensing system in various fields (not only the environmental sector) and integrates the licensing system into business licensing. One of the purposes of the CK Law is to facilitate business matters through licensing. The CK Law simplifies the licensing process by integrating environmental permits into Business Permits.

In the PPLH Law, environmental permits are a requirement to obtain business and/or activity permits, although in the CK Law environmental permits are abolished and to obtain business permits, one of them must have environmental approval. With the change in the field of licensing, there is a fundamental difference related to the previously existing permits, where the phrase "permission" is changed to "approval". Based on Article 1 number 35 of the PPLH Law, an environmental permit is a permit granted to every person who carries out a business and/or activity that is required by environmental impact analysis (hereinafter EIA or AMDAL), environmental management effort, and environmental monitoring effort (hereinafter UKL-UPL) in the context of environmental protection and management as a prerequisite for obtaining a business and/or activity license. Furthermore, the amendment to Article 1 number 35 of the PPLH Law in the CK Law states that Environmental Approval is an environmental feasibility decision or a statement of environmental management capability that has received approval from the Central Government or Regional Government.

6 N.H.T Siahaan, "Hukum Lingkungan", dikutip dalam Helmi, "Kedudukan Izin Lingkungan Dalam Sistem Perizinan Di Indonesia", *Jurnal Ilmu Hukum*, Volume 2 NO. 2, 2011, hlm 1.

There are several phenomena of granting environmental permits contrary to laws and regulations based on state administrative court decisions such as decision number: 124/G/LH/2016/PTUN-BDG; 580 K/TUN/2018; and 448 K/TUN/2018. Based on some of these phenomena, the author found was a phenomenon that occurred before the enactment of the CK Law. The author has not yet obtained a new phenomenon based on court rulings related to environmental approvals. In addition, based on the decision of constitutional court number 91/PUU-XVIII/2020, among others, states that the establishment of the CK Law is contrary to the 1945 Constitution and has no conditionally binding legal force as long as it is not interpreted as "no improvement has been made within 2 (two) years since the decision is pronounced" and suspends all actions/policies that are strategic and have a broad impact, and it is also not justified to issue new implementing regulations related to the CK Law.

Issuance of permits contrary to laws and regulations such as the above phenomenon will have legal consequences. Any action taken by a government agency or official to implement laws and regulations will not be effective if it is not accompanied by law enforcement. Law enforcement can take various forms, one of which is outlined in the provisions of sanctions which can be in the form of criminal sanctions, civil sanctions, or administrative sanctions. Sanctions, either criminal, civil, or administrative are optional, so they do not have to be applied all three but can be chosen what is the most effective and the most appropriate related to the scope of the substance of the regulation. If the substance of laws and regulations is within the scope of administrative law, it is not appropriate to apply criminal sanctions. It is incorrect to argue that in order for laws and regulations to apply effectively, it is always accompanied by criminal sanctions. For substances related to administrative issues, administrative sanctions are the most appropriate sanctions.[7]

[7] Wicipto Setiadi, "Sanksi Administratif Sebagai Salah Satu Instrumen Penegakan Hukum Dalam Peraturan Perundang-Undangan", *Jurnal Legalisasi Indonesia*, Vol. 6 No. 4, 2009, hlm 604-606.

Administrative Sanctions are sanctions imposed on government officials who commit administrative violations.[8] Administrative sanctions are a type of sanctions that are different from other types of sanctions such as criminal and civil sanctions because administrative sanctions do not require a judicial process first and are carried out directly by the official authorized to provide these sanctions so that it does not take a long time for the implementation of administrative sanctions.[9] In practice, it is rare to apply administrative sanctions to state administrative agencies or officials who have committed an act that is contrary to laws and regulations and general principles of good governance (AUPB) and commit acts of abuse of authority, especially in the field of licensing. Often criminal sanctions are always given, while the law clearly regulates the imposition of administrative sanctions on government agencies or officials who commit administrative violations. Based on Article 17 of the AP Law, the prohibition of abuse of authority may be subject to severe administrative sanctions. Furthermore, Article 81 paragraph (3) of the AP Law mentions severe administrative sanctions in the form of:[10] (a) permanent termination by obtaining financial rights and other facilities (b) permanent termination without obtaining financial rights and other facilities; (c) permanent termination by obtaining financial rights and other facilities and published in the mass media; or (d) permanent termination without obtaining financial rights and other facilities and published in the mass media.

Based on the background above, the problem in this study is how administrative sanctions against government agencies or officials who abuse authority, in this case,

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8 Pasal 1 angka 5 Peraturan Pemerintah Nomor 48 Tahun 2016 Tentang Tata Cara Pengenaan Sanksi Administratif Kepada Pejabat Pemerintahan.

9 Wicipto Setiadi, *Op cit*, hlm 613.

10 Pasal 81 ayat (3) Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan.

commit acts that exceed authority by giving decisions contrary to the laws and regulations in the field of environmental licensing based on applicable positive law?

B. METHOD RESEARCH

The approach method used in this study is normative juridical, namely legal research carried out by examining library materials which are secondary data and also called literature law research.[11] This type of approach uses descriptive analysis that describes legal phenomena then analyzed them. The data analysis method used in this study is a qualitative normative analysis method. Normative because this research points to existing regulations as positive legal norms, such as the CK Law and the AP Law, while qualitative data analysis is intended to start at efforts to find principles and related information so that it does not use formulas.

C. DISCUSSION

One form of state administrative decision that is most often found within the scope of State Administration Law is Permits. It is not easy to define what permission is, as van der Pot points out.[12] Difficult does not mean there are no definitions of permits, in fact, there are many definitions of permits. This is because among experts there is no conformity. Basically, the definition of permission includes a very complex understanding, which is in the form of things that allow a person or legal entity to do something that according to laws and regulations must have permission first, it will be known the legal basis of the permit.[13] According to Sjahran Basah, a permit is a one-sided state administrative law act that applies regulations in concrete terms based on requirements and procedures as stipulated by the provisions of laws and regulations.[14] Therefore, Licensing is a series of processes for the issuance of state administrative decisions in the form of permit

[11] Ronny Hanitijo Soemitro, *Metodologi Penelitian Hukum Dan Jurimetri*, Cetakan keempat, Jakarta: Ghalia Indonesia, 1990, hlm 11

[12] E. Utrecht, *Pengantar Hukum Administrasi Negara*, Surabaya: Pustaka Tinta Mas, 1988, hlm 187.

[13] Sri Pudiyatmo, *Perizinan Problem dan Upaya Pembenahan*, Bandung: Rezki Press, 2007, hlm 8.

[14] Vera Rimbawani Sushanty, *Hukum Perijinan*, Surabaya: Ubhara Press, 2020, hlm 7-8.

approval or permit rejection starting from the application, examination, and issuance to supervision of the implementation of the permit in question.[15]

A decision issued by a state administrative agency or officer called a state administrative decree (KTUN) has a legal basis or element of legitimacy in issuing permits better known as the principle of validity covering 3 (three) things, namely authority, substance and procedure. [16] Legitimate authority is obtained by attribution, delegation and mandate, and is limited by content (*materiae*), region (*locus*) and time (*temporis*).[17] Every act of the government is signaled to rest on legitimate authority. Without the existence of legitimate authority, an official or state administrative agency cannot perform a government act. Therefore, legitimate authority is an attribute for every official or for everybody.[18] The substance is the content or material of a decision submitted by an interested party.[19] Procedures are forms, procedures, and stages specified in laws and regulations in making a state administrative decision.[20]

The function of licensing is a control function consisting of regulation and order. As a function of order, every issuance of permits from activities carried out by the community does not conflict between the activities of one community and another, so as to create order in people's lives. The regulatory function is that the

15 Abi M. Rajab, *Buku Ajar Hukum Perizinan*, Bandung: Kalam Media, 2015, hlm 4.
16 Vera Rimbawani Sushanty, *Op cit*, hlm 14.
17 Nandang Alamsah Deliarnoor, Soni Akhmad Nulhaqim, dkk, *Op cit*, hlm 35.
18 Lutfi Effendi, *Pokok-Pokok Hukum Administrasi*, Malang: Bayumedia Publishing, 2004, hlm. 77
19 Vera Rimbawani Sushanty, *Op cit*, hlm 19.
20 Bewa Ragawino, *Hukum Administrasi Negara*, Bandung: Fakultas Ilmu Sosial Dan Ilmu Politik Universitas Padjadjaran, 2006, hlm 70.

issued permits can be carried out in accordance with their designation, so that there is no misuse of the permits that have been granted or in other words this regulatory function can also be referred to as a function owned by the government.[21] The purpose of licensing is as follows:[22] (a) Desire to direct (control) certain activities; (b) Preventing harm from the environment; (c) The desire to protect certain objects; (d) Want to divide objects and resources that are few or limited in number; and (e) Briefing by selecting certain people and activities (permit applicants must meet certain conditions).

Based on the function and purpose of the permit above, permission is actually used to regulate and regulate activities carried out by humans for order and protect limited objects. One area that really needs attention to the implementation of community activities, namely the environment. Environmental permits are the basis for permits that must be fulfilled in carrying out an activity or business because the environment is a major factor in the process of life. Therefore, the need for environmental permits so that resources and ecosystems are maintained for the future.

Environmental licensing is a permit related to environmental protection and management efforts.[23] Based on the principle of environmental protection and management, especially the precautionary principle, the government established Government Regulation Number 27 of 2012 concerning Environmental Permits with the objectives, namely:[24] (1) Providing protection for a sustainable and sustainable environment; (2) Increase efforts to control businesses and/or activities that have a negative impact on the environment.

As explained in the background above, the regulation regarding environmental permits is regulated in the PPLH Law and the Environmental Permit but, has

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21 Adrian Sutedi. *Hukum Perizinan Dalam Sektor Pelayanan Publik*. Jakarta: Sinar Grafika, 2010, hlm 193.

22 Siti Kotijah, *Op cit*, hlm 6.

23 Laode M. Syarif dan Andri G. Wibisana, *Hukum Llingkungan: Teori, Legislasi, Dan Studi Kasus*, Jakarta: PT. Raja Grafindo Persada, 2010, hlm 153.

24 *Ibid*.

undergone changes since the birth of the CK Law. The occurrence of permit changes in the CK Law means that environmental permits have also changed not only changes in phrases and definitions but also changes in terms of authority, substance, and procedures (the principle of permit validity).

In terms of authority, based on Article 36 of the PPLH Law states that environmental permits are issued by the minister, governor, or regent/mayor in accordance with their authority, while in the CK Law amendments to Article 24 paragraph (4) and Article 34 paragraph (4) of the PPLH Law state that environmental feasibility decisions and statements of environmental management capabilities are carried out by the Central Government[25] or Local Government[26]. A wider scope of authority does not only belong to the Minister but also the President and Vice President can grant environmental approvals regulated in the CK Law.

In terms of substance, based on Article 36 paragraph (2) of the PPLH Law, environmental permits are issued based on environmental feasibility decisions or UKL-UPL recommendations. Environmental feasibility decisions are based on AMDAL documents[27] and UKL-UPL recommendations are based on the type of business and/or activity that must be completed with UKL-UPL.[28] However, in the CK Law regarding the definition of environmental approval that environmental

[25] Berdasarkan Perubahan Pasal 1 angka 36 UU PPLH dalam UU CK yang dimaksud dengan Pemerintah Pusat adalah Presiden Republik Indonesia yang memegang kekuasaan pemerintahan negara Republik Indonesia yang dibantu oleh Wakil presiden dan menteri sebagaimana dimaksud dalam UndangUndang Dasar Negara Republik Indonesia Tahun t945.

[26] Berdasarkan Perubahan Pasal 1 angka 37 UU PPLH dalam UU CK yang dimaksud dengan Pemerintah Daerah adalah kepala daerah sebagai unsur penyelenggara Pemerintahan Daerah yang memimpin pelaksanaan urusan pemerintahan yang menjadi kewenangan daerah otonom.

[27] Pasal 24 Undang-Undang Nomor 32 Tahun 2009 Tentang Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup

[28] *Ibid*, Pasal 34 ayat (2).

approval is issued based on an environmental feasibility decision or a statement of environmental management capability. Environmental feasibility decisions are based on AMDAL documents and statements of environmental management capabilities based on compliance with UKL-UPL standards.

Based on the description above, the difference between environmental permits and environmental approvals is that in AMDAL environmental permits as the basis for determining the issuance of environmental feasibility decisions, while in AMDAL environmental approvals as the basis for environmental feasibility tests. Furthermore, in environmental permits, activities that are not mandatory for AMDAL must have UK-UPL by looking at the list of activities or businesses that must have UKL-UPL, while in environmental approvals the statement of environmental management capability is seen from specific standards according to the type of activity or business.

In terms of procedures, based on Article 2 paragraph (2) of the Environmental Permit PP states that Environmental Permits are obtained through stages of activities which include: (a) preparation of AMDAL and UKL-UPL; (b) AMDAL assessment and UKL-UPL examination; and (c) application and issuance of Environmental Permits.

In the preparation of AMDAL documents, one requirement is that it must contain suggestions, inputs, and community responses to business plans and/or activities to be carried out. [29] The development of the community in question includes:[30] (a) the affected; (b) environmentalists; and/or (c) affected by any decision made in the AMDAL process.

Furthermore, the AMDAL assessment is carried out by the AMDAL assessment commission consisting of representatives from the elements:[31] (a) environmental agencies; (b) relevant technical agencies; (c) experts in the field of knowledge

[29] *Ibid,* Article 25 letter c.
[30] *Ibid*, Pasal 26 ayat (3).
[31] *Ibid*, Pasal 30 ayat (1).

related to the type of business and/or activity under study; (c) experts in the field of knowledge related to the impact arising from a business and/or activity under review; (d) representatives of potentially affected communities; and (e) environmental organizations.

Based on Article 3 paragraph (4) of Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and control, Environmental Approval is carried out through (a) AMDAL preparation and AMDAL due diligence; or (b) preparation of UKL-UPL Form and examination of UKL-UPL Form.

There are differences regarding the preparation of AMDAL documents in the CK Law on changes to the PPLH Law, which contains suggestions, inputs and responses from directly affected communities that are relevant to business plans and/or activities.[32] The preparation of AMDAL documents is carried out by involving communities directly affected by business plans and/or activities.[33] Furthermore, AMDAL feasibility tests are carried out by an environmental feasibility test team involving the community including environmental stakeholders and/or other interested communities.[34]

Every granting of environmental permits as one of the KTUN must meet the requirements of the principle of legality that is upheld in the life of a legal state where all government actions and affairs must have a legal basis in law and regulation. Both authority, substance, and procedure must be regulated in laws and regulations. A decree issued by the government or state administration is considered

[32] Perubahan Pasal 25 huruf c Undang-Undang Nomor 32 Tahun 2009 Tentang Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup dalam Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja.

[33] *Ibid,* Pasal 26 ayat (2).

[34] Pasal 35 ayat (3) Peraturan Pemerintah Nomor 22 Tahun 2021 Tentang Penyelenggaraan Perlindungan dan Pengelolaan Lingkungan Hidup.

valid according to the law (rechtmatig) until there is a cancellation known as the principle of *rechtmatig* presumption. The consequence of the principle of presumption of *rechtmatig* is that basically a decision that has been issued by the Government cannot be delayed in its implementation despite objections, appeals, resistance, or lawsuits against a decision by the party subject to the decision.[35]

If there is a KTUN that conflicts with the laws and regulations as the principle of *rechtmatic* presumption, the KTUN is still considered valid and cannot be delayed in its implementation. However, the KTUN can be filed a lawsuit with the State Administrative Court until it can be proven otherwise. Based on Article 53 paragraph 2 of the PTUN Law, it regulates the basics for testing the KTUN being sued, namely (a) the challenged State Administrative Decision is contrary to applicable laws and regulations; (b) the challenged Administrative Decision is contrary to the general principles of good governance.

A state administrative decision is considered contrary to applicable laws and regulations if the decision conflicts with procedural, substantial, or issued laws and regulations by an unauthorized state administrative agency or official.[36]

In the practice of implementing permits, it is not uncommon to find permits that are contrary to laws and regulations. There are several phenomena of granting environmental permits that have been declared contrary to laws and regulations by the State Administrative Court, including:

1. Decision Number: 124/G/LH/2016/PTUN-BDG declared void a Decree of the Investment and Licensing Board of West Java Province Number 660/10/19/19.1.02.0/BPMPT/2016 concerning Environmental Permits for Construction and Operational Activities of PLTU with a capacity of 1x1000MW Cirebon, Astana Japura District and Mundu District, Cirebon Regency by PT Cirebon Energi Prasarana. The permit has contradicted the laws

[35] Ridwan HR, *Hukum Administrasi Negara*, Edisi Revisi, Jakarta: PT RajaGrafindo Persada, 2019, hlm 167.

[36] Penjelasan Pasal 53 ayat (2) Undang-Undang Nomor 9 Tahun 2004 Tentang Perubahan Atas Undang-Undang Nomor 5 Tahun 1986 Tentang Peradilan Tata Usaha Negara.

and regulations regarding Spatial Planning because it is not in accordance with the regional spatial plan of Cirebon Regency (contrary to material/substantial laws and regulations).

2. Decision Number 580 K / TUN / 2018 declared void Decree Number: 306 / KLH / VII / 2016 concerning the Environmental Feasibility of the Cement Industry Development Activity Plan in Mengempang Village, Sefee Village and Siawung Village, Barru District, Barru Regency, South Sulawesi Province by PT. Conch Barru Cement Indo. The environmental feasibility decision is legally flawed because it does not meet the required AMDAL Assessment commission membership (mandatory in nature) involving potentially affected citizens and environmental organizations as stipulated in the provisions of Article 30 paragraph (1) letter e and f of the PPLH Law (contrary to procedural/formal laws and regulations)
3. Decision Number 448 K/TUN/2018 declared void the Decree of the Mayor of South Tangerang Number 658.31/4659-Pengkajian &; Binhuk/2015 concerning Environmental Permits for the Construction of Ichsan Medical Center Hospital. In discussing AMDAL documents, it only involves representatives from communities, namely local RTs and RWs, directly affected communities should be prioritized in the involvement of development and assessment of AMDAL documents (contrary to procedural/formal laws and regulations).

Based on some of the above phenomena found by the author before the birth of the CK Law. If the phenomenon is studied based on changes that occur in the CK Law, decision Number: 124/G/LH/2016/PTUN-BDG and Decision Number 448 K/TUN/2018 are included in permits that are not in accordance with regulations in the field of environment. This is because before the analysis of all activities and businesses must be in accordance with the regional spatial plan and detailed spatial plan, and based on changes to Article 26 paragraph (2) of the PPLH Law in the CK Law The preparation of AMDAL documents is carried out by involving communities directly affected by business plans and/or activities. Furthermore, in Decision Number 580 K/TUN /2018 the involvement of the community in the

AMDAL assessment team (environmental feasibility test team) based on the CK Law is not the affected community but other interested communities.

Permits or decisions that are contrary to laws and regulations based on article 18 paragraph (1) point c of the AP Law constitute abuse of authority in the form of exceeding authority. A'an Efendi and Freddy Poernomo stated that in the case of abuse of authority, the government agency and/or official has the authority to carry out an action, but the purpose deviates from the purpose desired by the law that gives authority.[37] The parameter of the purpose or purpose of granting authority in determining the occurrence of abuse of authority is known as the principle of specialty (*specialiteitsbeginsel*), which is the principle that determines that authority is given to government organs with a certain purpose or in other words the principle of specialization means that each authority has a certain purpose.[38] The transfer of purpose is based on interest or personal interest, both for his own interests and for the benefit of others.[39]

According to Jean Rivero and Waline, Abuse of Authority consists of 3 types, namely:[40] (a) Misuse of authority to commit acts contrary to the public interest or to benefit personal, group or class interests; (b) The actions of such officials are rightly in the public interest but deviate from the purpose for which such authority is granted by laws or other regulations; (c) Misuse of procedures that should have

[37] A'an Efendi dan Freddy Poernomo, *Op cit*, hlm 127.

[38] Henny Juliani, "Pertanggungjawaban Pejabat Pemerintahan Sebagai Akibat Penyalahgunaan Wewenang Yang Menimbulkan Kerugian Negara", *Administrative Law & Governance Journal*. Volume 2 Issue 1, 2020, hlm 60.

[39] Nandang Alamsah Deliarnoor, Soni Akhmad Nulhaqim, dkk, *Op cit*, hlm 53.

[40] Firna Novi Anggoro, "Pengujian Unsur Penyalahgunaan Wewenang Terhadap Keputusan Dan/Atau Tindakan Pejabat Pemerintahan Oleh PTUN", *Fiat Justisia Jurnal Ilmu Hukum*, Volume 10 Number 4, October-December 2016, hlm, 651.

been used to achieve a specific goal, but have used other procedures to achieve them.

If it is related to the phenomenon of environmental permits that are contrary to the above laws and regulations, these permits are indeed the authority of the relevant government agency or official. However, the actions taken by these government bodies or officials have carried out procedures that are not as they should be. This can cause losses to the surrounding community and there will be parties who benefit from the decision (business entities that want to carry out business activities). In addition, not only the community is harmed but threatens the sustainability of the surrounding environment (not in accordance with the objectives of environmental regulation). Therefore, in this case the authorized body or official has deviated from the purpose and purpose of granting the authority to grant the environmental permit/approval.

The actions of government bodies or officials who have deviated from the purpose of the laws and regulations must have consequences by means of sanctions. In line with the principle of legality which means that all actions must be based on laws and regulations. Similarly, imposing and implementing sanctions must be based on strict provisions in laws and regulations that give that authority (the principle of legality). Philipus M. Hadjon, et al stated that:

> "Sanctions are an important concluding part of the law, as well as in administrative law. In general, there is no point in including obligations or restrictions for citizens in the state administrative legislation, when the rules of conduct cannot be imposed by the state administration (if necessary)."[41]

According to Utrecht, what is meant by sanctions is the result of an action or a reaction from another party, be it humans or social organizations to a human action.[42] Sanctions have several functions, one of which is a repressive function,

[41] Philipus M. Hadjon, R. Sri Soemantri Martosoewignjo, dkk, *Op cit*, hlm 237.
[42] E. Utrecht dan Moh Saleh Djindang, *Pengantar Dalam Hukum Indonesia*, Cetakan Kesembilan, Jakarta: Ichtiar Baru, 1989, hlm. 8-9.

which is a function that has the aim of causing a suffering effect in return for deviant behavior.[43] Because the deviation of granting permits is the domain of State administrative law, it would be more appropriate if the sanctions given are in accordance with the field of substance that regulates them, namely administrative sanctions. The purpose of applying administrative sanctions to a violation that occurs is intended as an effort by the administrative body to maintain the norms of administrative law that have been established in the form of laws and regulations. Maintaining administrative law norms is basically a logical consequence of the authority given by laws and regulations to government bodies to ensure the enforcement of administrative law norms and as an exercise of government authority derived from the rules of administrative law itself.[44]

The characteristic of administrative sanctions is the granting of independent free authority (*vrijebevoegdheid*), independent of other organs or in other words government bodies and/or officials are authorized exclusively to enforce administrative law norms without relying on other institutions such as courts.[45] In the event that administrative sanctions for agencies or officials who deviate from the granting of a permit are not regulated in the relevant regulations (changes to the PPLH Law in the CK Law). However, this has been regulated in the AP Law. Based on Article 17 of the AP Law, the prohibition of abuse of authority may be subject to severe administrative sanctions. Furthermore, Article 81 paragraph (3) of the AP Law mentions severe administrative sanctions in the form of:[46] (a) permanent termination by obtaining financial rights and other facilities; (b) permanent termination without obtaining financial rights and other facilities; (c) permanent termination by obtaining financial rights and other facilities and published in the

[43] Sri Nur Hari Susanto, "Karakter Yuridis Sanksi Hukum Administrasi: Suatu Pendekatan Komparasi", *Adminitrative Law & Governance Journal*. Volume 2 Issue 1, March 2019, hlm 136-137.

[44] *Ibid*, hlm 134.

[45] *Ibid*.

[46] Pasal 81 ayat (3) Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan.

mass media; or (d) permanent termination without obtaining financial rights and other facilities and being published in the mass media.

Based on Article 19 of the AP Law, it states that the test of whether or not there is abuse of authority is carried out by the State Administrative Court. Furthermore, Article 2 paragraph (2) of Supreme Court Regulation Number 4 of 2015 concerning Procedural Guidelines in the Assessment of Elements of Abuse of Authority states that the court is only authorized to receive, examine, and decide applications for assessment of whether or not there is an abuse of authority after the results of supervision of the government's internal supervisory apparatus (APIP). The results of APIP's supervision of acts of abuse of authority, namely there were no errors, administrative errors, or administrative errors that caused state financial losses.[47]

Abuse of authority in Government Administration is a form of prevention. In addition, abuse of authority stipulated in Article 20 of the Government Administration Law is interpreted as an administrative error committed by government agencies and/or officials.[48] APIP consists of BPKP, inspectorate general, provincial inspectorate, and district/city inspectorate as stated in Article 49 paragraph (1) of Government Regulation Number 60 of 2008 concerning Government's Internal Control System. The imposition of moderate administrative

[47] Pasal 20 ayat (2) Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan.

[48] Mirza Sahputra, Rati Sumanti, dkk, "Implementasi Undang-Undang Nomor 30 Tahun 2014 Tentang Administrasi Pemerintahan Terkait Pemberantasan Korupsi", Aceh Besar: Pusat Pelatihan Dan Pengembangan Dan Kajian Hukum Administrasi Negara Lembaga Administrasi Negara, 2019, hlm 47.

sanctions or severe administrative sanctions can only be imposed after going through an internal examination process.[49]

Administrative sanctions for acts of abuse of authority are assessed in advance by APIP. If there is an administrative violation as referred to in Article 20 paragraph (2) of the AP Law, administrative sanctions may be imposed. The granting of administrative sanctions is carried out by superior officials of officials who have committed administrative offenses. Office Supervisor is a direct official superior who has a position in an organization or higher strata of government.[50]

D. CONCLUSION

1. Granting environmental permits or environmental approvals contrary to laws and regulations is one form of abuse of authority, which exceeds authority. It is contrary to laws and regulations if they conflict with the authority, substance, or procedure of the rules governing related provisions. Abuse of authority means that it has deviated from the purpose of granting the authority which can be seen from the principle of specialty (the rules that give the authority). In the PPLH Law and its amendments in the CK Law, relevant government bodies or officials are given the authority to grant environmental permits or environmental approvals with the aim and purpose of protecting environmental sustainability and regulating community activities or businesses so that no party is harmed. If an environmental permit or environmental approval is in conflict with laws and regulations, it automatically deviates from the aims and objectives of the PPLH Law and causes harm not only to the community but to the environment. Therefore, the actions of such bodies or officials must be subject to administrative sanctions that can be carried out by the

[49] Pasal 11 ayat (2) PP 48 Tahun 2016 Tentang Tata Cara Pengenaan Sanksi Administratif Kepada Pejabat Pemerintahan.
[50] *Ibid*, Pasal 1 angka 6.

superior officials who commit administrative violations. Administrative sanctions against government agencies or officials for violations of granting environmental permits or environmental approvals are not regulated in the PPLH Law or its amendments in the CK Law. However, this is regulated in the AP Law. Government agencies or officials who have committed an abuse of authority may be subject to severe administrative sanctions. The imposition of severe administrative sanctions can be carried out if an assessment has been carried out by APIP in advance.

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