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The Urgence of Environmental Law Enforcement

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ABSTRACT

People are a component of the environment. Where human involvement with the environment has an effect on other forms of life. The environment evolves in tandem with societal transformations. Human survival is extremely dependent on the environment. In the social perspective, the environment (ecosystem) is a unit that cannot be separated. The influence of environmental pollution on human growth and survival is unfavorable. If the environment (ecology) is healthy, it will have a favorable effect on the development of human life's carrying capacity. On the other side, driven by limitless human wants, there is frequently excessive and unregulated exploitation of the environment, resulting in environmental harm and contamination. To counteract the negative effects of excessive environmental exploitation, it is essential to have a social engineering tool, namely the law, in order to establish an orderly society (law as a tool of social engineering). This study employs a normative legal approach as its methodology. This study will examine normatively applicable legal structures pertaining to the environment in Indonesia, with an emphasis on the necessity of law enforcement (law as a tool of social engineering). This study employs a normative legal approach as its methodology. This study will examine Indonesian environmental legal structures from a normative perspective, focusing on the urgency of law enforcement. Specifically, the law to establish an orderly society (law as a tool of social engineering). This study employs a normative legal approach as its methodology. This study will examine Indonesian environmental legal structures from a normative perspective, focusing on the urgency of law enforcement.

Keywords: Environment; Human; Law Enforcement

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INTRODUCTION

According to the World Wild Fund, the quality of the world's natural resources continues to degrade. Those who continue to rely on natural resources for survival will be significantly impacted. Where humans will use at least 50 percent more of the natural resources provided by the earth, there is even a tendency to continue very quickly until 2030, while the earth needs at least 1.5 years to be able to produce and replenish the resources that have been exhausted by 2030. one year time. Human demands (needs) that continue to increase for natural resources place tremendous

pressure on biodiversity which will certainly threaten the areas of security, health, equity and welfare. In 1972, the United Nations held its first environmental conference. The conference was held in Stockholm, Sweden, on June 5-16, 1972. The countries that proposed the first World Environment Day were Japan, which experienced the Minamata epidemic and Senegal.

The Stockholm Declaration resulted in 26 resolutions related to environmental issues. Of the 26 resolutions, one of them is an environmental policy that should not hinder development. This is based on the consideration that humans are very dependent on nature (the biological environment) which can only be obtained by managing the environment. In Indonesia, the implementation of the Stockholm conference is regulated in Law no. 26 of 2007 concerning Spatial Planning, where there must be a proportion of space use with the composition: Green Open Space in a city must meet a minimum area of 30% of the total land area with a composition of 20% public green open space and 10% private green open space. The dilemmatic problem faced by many regions in Indonesia, is that development often neglects the availability of Green Open Space (RTH) because it is almost certain that the progress of a development requires a lot of space that is allocated for the activities of the industrial sector, services and other economic sectors. Due to the urgency of economic growth, it has an impact on the quality of a healthy living environment which is a basic need for everyone (Leden, Marpaung, 1997).

The environment as regulated in Article 1 of Law number 23 of 2009 concerning Environmental Protection and Management is "the unity of space with all objects, power, circumstances, and living things, including humans and their behavior, which affect nature itself, the continuity of life, and the welfare of humans and other living creatures. If you depart from the reasoning of this rule, you will get a belief that the environment must be "managed" for the survival of humans and other living things in a healthy ecosystem. If we look at the 2 (two) laws above (Law No. 26 of 2007 concerning Spatial Planning and Law No. 32 of 2009 concerning Environmental Protection and Management, we will find that the environment must be regulated in such a way in order to create a healthy and balanced ecosystem order in order to realize sustainable development. Because of this purpose, the law functions to be used as an authority, to regulate, to encourage, to provide (funds), to punish, to give, to declare, and/or to limit something. Environmental damage can be interpreted as a process of environmental deterioration or decline in the quality (setback). This environmental deterioration is characterized by the loss of land, water, air resources, the extinction of wild flora and fauna, and the destruction of ecosystems.

Environmental damage has a direct impact on human life. In 2004, the United Nations High Level Threat Panel, Challenges and Change, listed environmental degradation as one of the top ten threats to humanity. The World Risk Report released by the German Alliance for Development Works (Alliance), United Nations University Institute for Environment and Human Security (UNU-EHS) and The Nature Conservancy (TNC) in 2012 also stated that environmental damage is one of the important factors that determine high low disaster risk in an area (Kilapong, 2019). Environmental management in Indonesia is managed in the form of tiered licensing (toestemming). This has consequences in the form of tiered supervision and control as well. In the operational context of environmental management, it is fully regulated in Government Regulation No. 22 of 2021 concerning the Implementation of

Environmental Protection and Management. Environmental management is related to many things, as a sub-order of Government Regulation No. 27 of 1999 concerning Environmental Impact Analysis, Government Regulation No. 27 of 2012 concerning Environmental Permits, Government Regulation No. 24 of 2018 concerning Electronically Integrated Business Licensing Services. As we all know, environmental damage occurs due to two things, the first is a natural event and the second is as a result of human activity. The second cause of environmental damage is the result of human activities.

The damage caused by humans is actually greater than the damage caused by natural disasters. This is because the damage done can occur continuously and tends to increase. This damage is generally caused by human activities that are not environmentally friendly such as forest destruction and forest function conversion, mining, air, water and soil pollution and so on. Because of this, it is necessary to enforce environmental laws that are comprehensive and can provide guarantees for the sustainability of the environment for humans, as well as the environment itself. The second cause of environmental damage is the result of human activities. The damage caused by humans is actually greater than the damage caused by natural disasters. This is because the damage done can occur continuously and tends to increase.

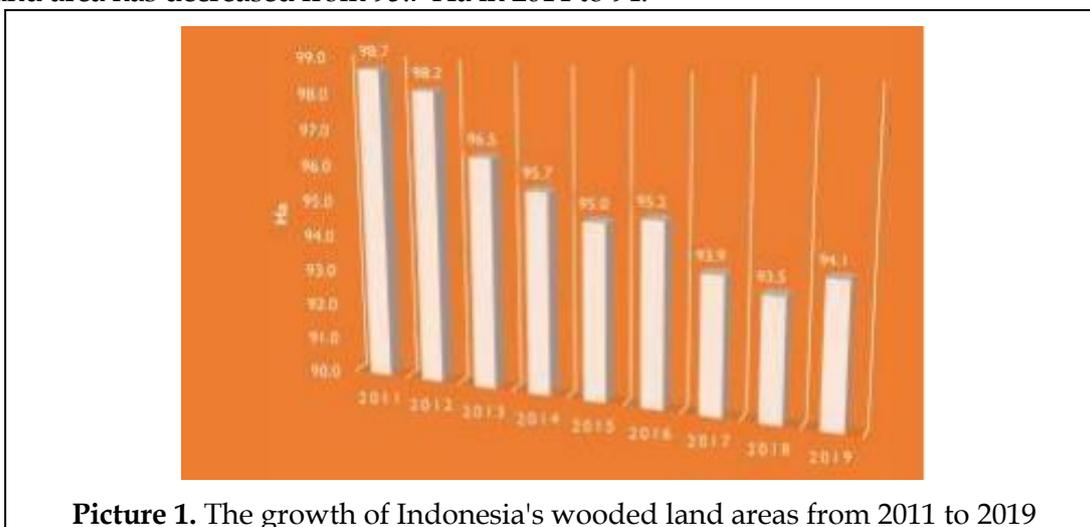
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DISCUSSION

Environmental Conditions in Indonesia

Indonesia has forests that are part of three forest areas that act as the lungs of the world and their existence is to maintain the balance of the global climate. In general, the land area of Indonesia is divided into Forest Areas which are defined as areas designated by the Government as permanent forests. Meanwhile, non-forest areas are known as Other Use Areas (APL). The total land area of Indonesia in 2019 was 187.8 million hectares spread over 6 (six) large island/archipelago groups (ecoregions) or 34 provinces. Mainland Indonesia is divided into forested land covering an area of 94.1 million hectares or 50.0% of the total land area; and non-forested land with an area of 93.6 million ha. During the last five years (period 2014 - 2019), Indonesia's forested land area has decreased from 95.7 Ha in 2014 to 94.



Picture 1. The growth of Indonesia's wooded land areas from 2011 to 2019

Source: KLHK 2020, Statistik Lingkungan Hidup Indonesia: Rekalkulasi Penutupan Lahan Indonesia 2019.

In 2019, the largest forested land cover was in the Papua ecoregion, which was 32.5 million Ha or 34.5% of the total forested land area in mainland Indonesia (94.1 million Ha), followed by the Kalimantan ecoregion with an area of 24.7 million. Ha (26.25%). The Kalimantan, Sulawesi-Maluku and Java ecoregions have less than 15% forested land, while the Bali-Nusa Tenggara ecoregion has the smallest forested land cover area of 1.7 million Ha (1.81%). Based on the percentage of forested land area to the total land area per ecoregion, the Papua ecoregion has the forest area with the most forested land, which is 79.8% or 32.5 million Ha. In contrast, the Java ecoregion has the smallest percentage of forested land at 16.6% or 2.2 million Ha.



Picture 2. Composition of Land Use Areas in 2019

Source: KLHK 2020, Environmental data for Indonesia: 2019 land cover recalculation.

Deforestation

Deforestation in Indonesia during the period 2014 – 2019 showed a downward trend, from 1.09 million Ha in 2014 to 0.46 million Ha in 2019. For the same year period, the largest land deforestation occurred in the Kalimantan ecoregion (0.1491 million Ha), followed by Sumatra (0.0897 million Ha), Papua (0.0774 Ha), and Sulawesi – Maluku (0.0764 million Ha). Meanwhile, the area of deforestation in the Bali-Nusra and Java ecoregions was 0.0282 million Ha and 0.0186 million Ha, respectively. normal in 2018 and 2019. Based on land cover functions, forest areas experienced the greatest deforestation, especially on permanent production forest lands,



Picture 3. Deforestation of Indonesia's forest areas in 2014-2019

Source: KLHK 2020, Environmental data for Indonesia: 2019 land cover recalculation.

Environmental Law Enforcement

Law enforcement is the process of making efforts to enforce or actually function legal norms as guidelines for behavior in legal relationships in social and state life. In terms of the subject matter, law enforcement can be carried out by a broad subject and can also be interpreted as law enforcement efforts that involve all legal subjects in every legal relationship. Anyone who carries out normative rules or does something or does not do something based on the norms of the applicable law means that he is carrying out or enforcing the rule of law. and ensure that the law is enforced, if necessary, law enforcement officers are allowed to use coercive power.

According to Hawkins, the term law enforcement can be seen from two systems or strategies called "compliance" with "conciliatory style" as its characteristic, and "sanctioning" with "penal style" as its main characteristic. Conciliatory style is remedial, a method of "social repair and maintenance, assistance of people in trouble" related to "what is necessary to ameliorate a bad situation". While the penal control "prohibits with punishment", its nature is "accusatory", the result is "binary", namely: "all or nothing punishment or nothing" and "sanctioning" with "penal style" as its main characteristic. Conciliatory style is remedial, a method of "social repair and maintenance, assistance of people in trouble" related to "what is necessary to ameliorate a bad situation". While the penal control "prohibits with punishment", its nature is "accusatory", the result is "binary", namely: "all or nothing punishment or nothing" and "sanctioning" with "penal style" as its main characteristic.

Furthermore, *notitie handhaving milieurecht*, defines law enforcement (*rechtshandhaving*) as: "Het door controle en het toepassen (of dreigen daarmee) van administratiefrechtelijke, strafrechtelijke of privaatrechtelijke middelen bereiken dat de algemeen en individueel geldende rechtsregels en voorschriften wordennageleefd". (Supervision and implementation of (or by threat of) the use of administrative, criminal or civil instruments so as to achieve compliance with the provisions of laws and regulations that are generally and individually applicable) (Koesnadi Hardjosoemantri, 1994). Thus, law enforcement can be carried out both preventively and repressively. In other words, in Law no. 32 of 2009 concerning

Environmental Protection and Management (UU PPLH), environmental law enforcement is an *ultimum remedium*. There are several related factors that influence the law enforcement process as expressed by Lawrence M Friedman, namely the substance, structure and cultural components (Friedman, 2009). These components include the scope of work of law as a system. All of these factors will greatly determine the process of law enforcement in society and cannot be denied one another. Failure in one component will have an impact on other factors. Preventive law enforcement means active supervision is carried out on compliance with regulations without direct events involving concrete events that give rise to allegations that legal regulations have been violated. This effort can be done by monitoring and using supervisory authority. (Article 71 paragraph (1), (2) and (3), Article 72, Article 73, Article 74 paragraph (1), (2) and (3), Article 75 of Law Number 32 of 2009 concerning Protection and Management Environment, where the provincial government and district/city governments are required to supervise the compliance of the person in charge of the business and/or activity with respect to the environmental permit owned by the business and/or activity.

Meanwhile, based on Article 75 of the law, environmental supervision by the government is carried out by the Environmental Supervisory Officer (PPLH). Repressive law enforcement is carried out in terms of violating the regulations and aims to directly end the prohibited act. And if there are certain violations, namely, for example, there are residents whose health is disturbed due to pollution and or environmental destruction, the Regional Head or interested parties can submit a proposal for revocation of business licenses to the authorized officials. Enforcement of environmental law through supervisory authority cannot work properly if there are no laws and regulations that support the law enforcement process.

Therefore, to ensure the implementation of environmental law enforcement through supervision, there are several key elements that must be regulated in laws and regulations in relation to supervision, namely: Enforcement of environmental law through supervisory authority cannot work properly if there are no laws and regulations that support the law enforcement process. Therefore, to ensure the implementation of environmental law enforcement through supervision, there are several key elements that must be regulated in laws and regulations in relation to supervision, namely: Enforcement of environmental law through supervisory authority cannot work properly if there are no laws and regulations that support the law enforcement process. Therefore, to ensure the implementation of environmental law enforcement through supervision, there are several key elements that must be regulated in laws and regulations in relation to supervision, namely (Ratnawati, 2009):

- 1) Number of supervisors (proportional to the total population, geographic scope and object being monitored;
- 2) Criteria for determining monitoring targets;
- 3) Frequency of supervision;
- 4) Standardization of supervision reports;
- 5) Supervision follow-up procedures

We can find repressive law enforcement in Article 76 paragraph (2) Administrative sanctions consist of:

- 1) Written warning.
- 2) Government coercion.
- 3) Freezing of environmental permits.
- 4) Revocation of environmental permit.

Article 80 paragraph (1) Government coercion as referred to in Article 76 paragraph (2) letter b in the form of:

- 1) Temporary suspension of production activities.
- 2) Transfer of production facilities.
- 3) Closure of sewerage or emissions.
- 4) Demolition.
- 5) Confiscation of goods or equipment that has the potential to cause violations.
- 6) Temporary suspension of all activities.

- 7) Other actions aimed at stopping violations and restoring environmental functions.

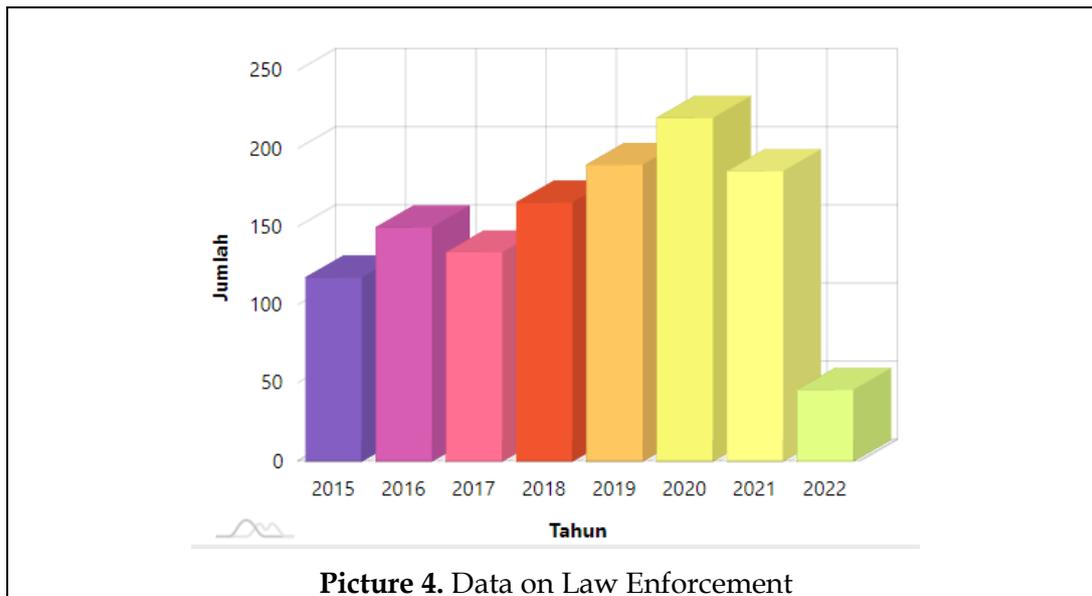
Environmental law enforcement is not only carried out in administrative law, but also in the civil law segment. Related to this we can find in the Settlement of environmental disputes outside the court. According to Article 85 and Article 86 of Law Number 32 of 2009 concerning Environmental Protection and Management, it is stated that the settlement of environmental disputes outside the court is held to reach an agreement on the form and amount of compensation and/regarding certain actions to ensure that negative impacts do not occur or recur. to the environment.

Environmental law enforcement according to Nottie Handhaving Milieurecht is supervision and application or threats, the use of administrative, criminal or civil instruments to achieve the arrangement of legal provisions and regulations that are generally and individually applicable. Supervision (controle) means government supervision to comply with the provision of regulations that are parallel to criminal law investigations (Leden, 1991). Settlement of environmental disputes through the courts is based on Article 87 to Article 93 which states that the settlement of environmental disputes through the courts is held to resolve compensation, environmental restoration, absolute responsibility, grace period for filing lawsuits, government and local government lawsuits, community rights , environmental organization lawsuits, administrative lawsuits. Enforcement of environmental law through criminal sanctions is a last resort (*ultimum remedium*) taken according to the criminal provisions contained in Article 97 to Article 120 of Law Number 32 of 2009 concerning Environmental Protection and Management. Where the criminal sanctions in the form of a minimum fine of Rp. 3,000,000,000 and a maximum of Rp. 15,000,000,000, imprisonment for a minimum of 5 years and a maximum of 15 years. In addition to the basic criminal sanctions, there are also additional criminal sanctions as stated in Article 199, namely:

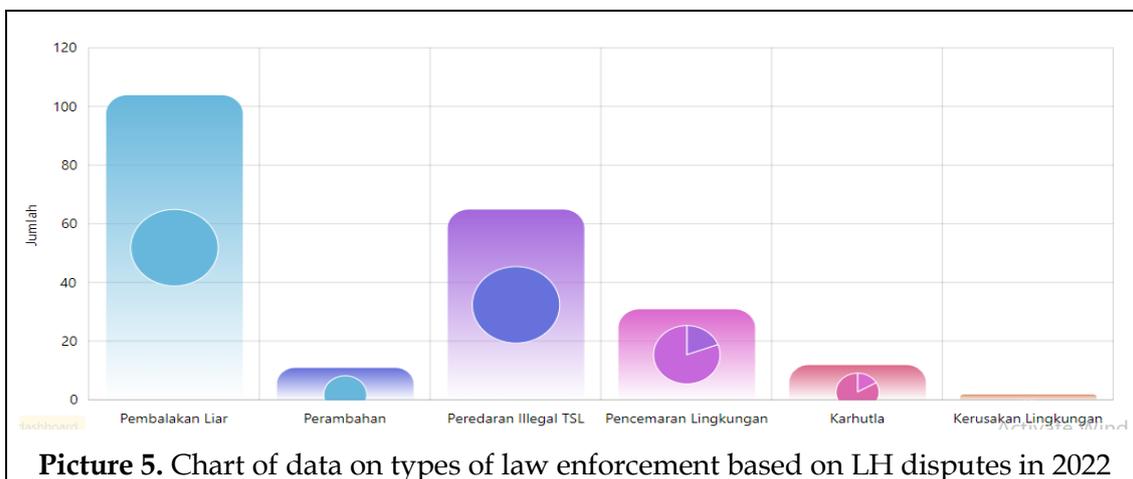
- a. Deprivation of profits derived from criminal acts.
- b. Closure of all or part of the place of business and / or activity.
- c. Repairs due to criminal acts.
- d. Obligation to do what is neglected without rights.
- e. Placement of the Company under supervision for a maximum of 3 (three) years.

Environmental crime is committed by a business entity or company in accordance with Article 116 paragraphs (1) and (2) of Law Number 32 of 2009, then criminal charges and criminal sanctions are imposed on the business entity or person who gave the order to commit the crime. the crime or the person acting as the leader of the activity in the crime. Criminal threats as stated in the articles are imprisonment and fines.

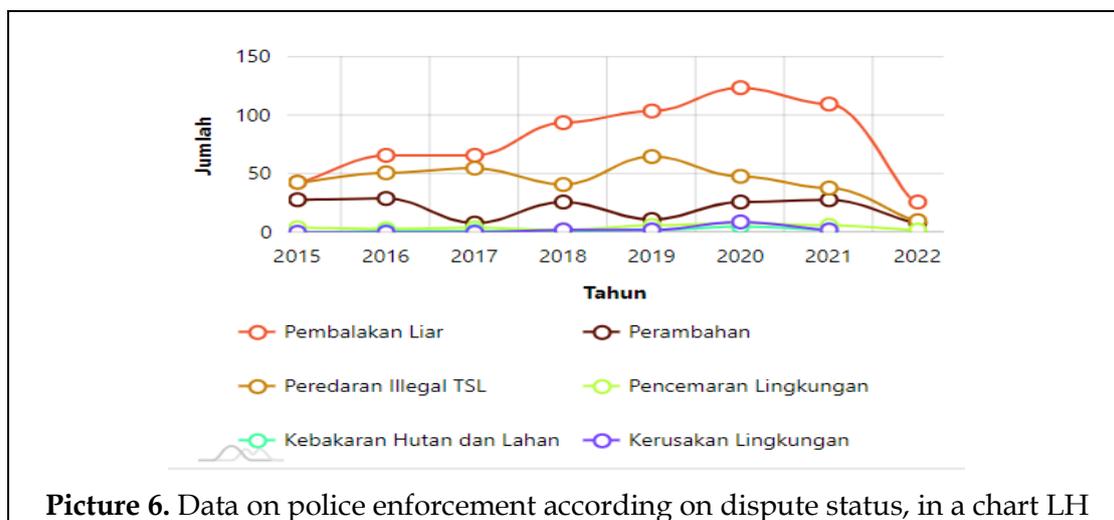
Data on criminal law enforcement in environmental law in Indonesia for the period 2015-2022 amounted to 1210, with details of P21 as many as 944 cases, and 46 cases that have permanent legal force..



Picture 4. Data on Law Enforcement



Picture 5. Chart of data on types of law enforcement based on LH disputes in 2022



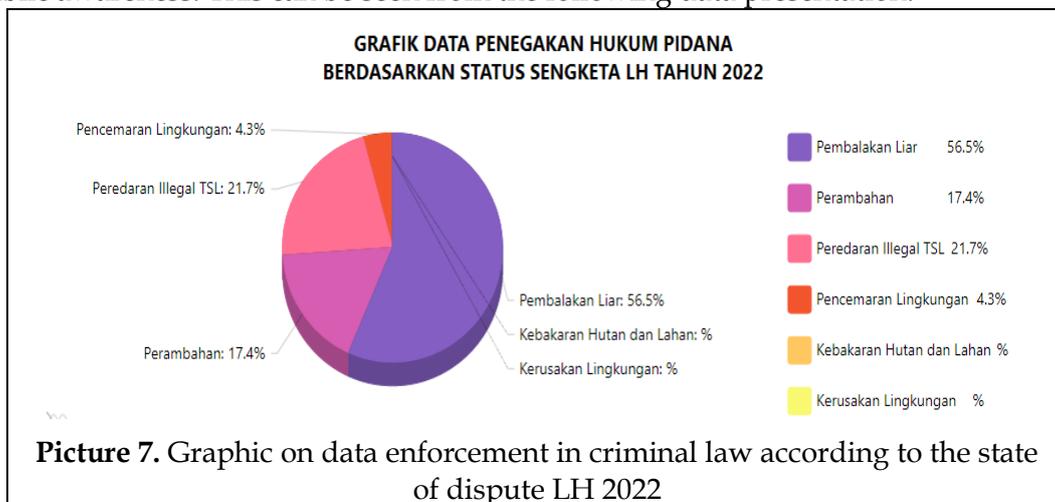
Picture 6. Data on police enforcement according on dispute status, in a chart LH

Obstacles in environmental law enforcement

Substantially, there are norms in Law 32 of 2009 with different interpretations relating to administrative law enforcement, such as Article 40 paragraph (2) of the 2009 UUPPLH which stipulates that: In the event that the environmental permit is revoked, the business and/or activity permit is cancelled. This provision departs from the emergence of various problems in the past related to the integration of permits as an interconnected chain. So far, the various types of permits that exist have not shown this integrated nature. In many cases, in the past if one type of permit (eg Hinder Ordonantie (HO) permit) was revoked due to a violation of the conditions specified in the permit, the permit holder would still insist on running his business/activities. Because only the HO permit is revoked, while the business license is not. So the license holder is still entitled to carry out his activities/businesses.

The provisions in Article 40 paragraph (2) are intended to address this matter. However, Article 40 paragraph (2) stipulates that if the environmental permit is revoked, the business or activity permit must be canceled. This provision has two important legal consequences that need to be studied for its technical consequences. First, that the revocation of the environmental permit does not automatically result in the person in charge of the business/activity having to stop the activity/business. In order for the activity/business to be terminated, it must be followed up with the cancellation of the business/activity license by the agency issuing the business/activity license.

Structural constraints in enforcing environmental law are more due to the limited number of professional human resources (apparatus) that are still limited. if we compare it with environmental law issues, which are very complex, both in terms of the problems themselves that must be addressed to the diversification of knowledge that must be mastered by every law enforcement personnel. The last obstacle is related to the issue of legal culture. We can find this in every issue related to environmental issues, often because of low public awareness. This can be seen from the following data presentation We can find this in every issue related to environmental issues, often because of low public awareness. This can be seen from the following data presentation We can find this in every issue related to environmental issues, often because of low public awareness. This can be seen from the following data presentation:



Illegal logging and forest encroachment contributed 56.5% and 17.4% of environmental damage, respectively. This is directly related to the efforts of some people who still practice shifting cultivation as well as economic factors where the demand for forest wood commodities is high.

CONCLUSION

Environmental law is a juridical basis for the implementation of protection and management as well as increasing environmental resilience. environmental law is the whole regulation that regulates the behavior of legal subjects about what should be done to the environment, the implementation of which can be enforced with a sanction by the competent authority in the form of administrative sanctions, and/or criminal sanctions.

The urgency of environmental law enforcement in Indonesia historically is the awareness of the Indonesian people as part of the world's environmental ecosystem. This embodiment of the nation's awareness is implemented in Law Number 32 of 2009 concerning Environmental Protection and Management. Enforcement of environmental law is ultimum remedium, where the focus of solving environmental law problems is resolved through an administrative law approach, while settlement through criminal sanctions is the last option.

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