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Analysis of the criminal construction of imprisoment in lieu of the fines for environmental criminals

Yusni Febriansyah Efendi[1], Mohd. Din[2], Adwani[2]
[1] Student, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia
[2] Lecturer, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

Abstract
Environmental crime violators face two types of punishment under Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH Law), namely imprisonment and fine. However, the practice of adding a criminal clause to imprisonment in lieu of a fine in various sentencing decisions against environmental criminals is prevalent, despite the fact that this form of crime is not recognized by the PPLH Law. The purpose of this research is to provide an explanation of the legal construction of the practice of adding the clause. This is a normative legal study that employs both a statutory and a conceptual approach. The study's findings indicate that the practice of adding a criminal clause to imprisonment in lieu of a fine in sentencing decisions against perpetrators of environmental crimes is built on a systematic interpretation of general criminal law provisions referred to in Article 30 of the Criminal Code. The period of the imprisonment in lieu of the fine, on the other hand, is relatively developed through the legal findings that are completely independent.

Keywords: imprisonment in lieu of the fine, PPLH law

Introduction

A decent and healthy environment is a human right and a constitutional right for every Indonesian individual, according to Article 28H paragraph (1) of the Republic of Indonesia's 1945 Constitution. The establishment of legislation in the sphere of environmental law is one of the efforts undertaken by the government to fulfill the mandate of Article 28H of the 1945 Constitution. Law Number 32 of 2009 concerning Environmental Protection and Management is now the legislation that serves as the umbrella act of environmental law in Indonesia (PPLH Law) [1].

The PPLH Law not only governs environmental protection and management in administrative elements such as planning, use, control, maintenance, and supervision, but it also contains law enforcement regulations by threatening violators of environmental law with punishments [2]. Chapter XII regulates sanctions against offenders of administrative provisions, Chapter XIII regulates civil sanctions, and Chapter XV regulates criminal punishments. Criminal law, as a subset of public law, is the bedrock of the state, nation, and society [3]. However, criminal legislation and criminal punishments are not the first line of defense in the fight against environmental contamination; they are the last line of defense [4].

The government has incorporated a mechanism of last resort into the PPLH Law by enacting specific criminal consequences for specific offenses. Criminal provisions are governed in Chapter XV of the PPLH Law, which begins with an affirmation that a criminal conduct in the PPLH Law is a crime in Article 97 and continues with the inclusion of various sorts of sanctions and criminal crimes in Articles 98 to 115 [5], and then Articles 116 to 120 contain penal provisions relating to business enterprises. Following the enactment of Law No. 11 of 2020 on Job Creation (UUCK), significant revisions to the PPLH Law's criminal provisions have been made. Article 23 UUCK regulates the amendments, which include the repeal of Articles 102 and 110 of the PPLH Law and major changes to Articles 109, 111, and 112 of the PPLH Law. The PPLH junto UUCK contains cumulative imprisonment and penalties, except for those who commit illegal activities under Article 112 of the PPLH Law, due to the article's organization of the many categories of offenses that are threatened alternately. However, it appears that it is frequent to encounter sentence rulings that are inconsistent with the PPLH Law's stipulations. The practice in question is the addition of a phrase in the judgement providing for imprisonment in lieu of a fine. This practice is exemplified by the following selection of rulings:

Table 1: Criminal Verdict Sample Based on PPLH Law

No	Court	Case Number	Criminal provisions	Prison	Fine	Confinement in Lieu of Fines
1	Tembilahan District Court	14/Pid.Sus/2020 /PN Tbh	Article 108 Jo. Article 69 paragraph (1) letter h of the PPLH Law	3 years	3 billion	3 months

2	Kolaka District Court	13/Pid.Sus/2020 /PN Kka	Article 108 Jo. Article 69 paragraph (1) letter h of the PPLH Law	10 months	3 billion	2 months
3	Batam District Court	485/Pid.Sus/202 0/PN Btm	Article 98 paragraph (1) Jo. Article 116 paragraph (1) letter b UU PPLH	5 years 6 months	1 Billion	3 months

Although the adoption of an imprisonment clause in lieu of a fine is typical in environmental crimes, the judgement makes no mention of how the provision is constructed in the decision against environmental crime perpetrators. Therefore, it is necessary to conduct research on this practice using legal finding theories in order to obtain an explanation of how the juridical construction of this practice in the context of positive law in Indonesia is constructed.

Research Method

This is a normative legal research that employs both a statutory and conceptual approach. Relevant research data are gathered from primary and secondary legal materials. The collected study data is next organized and sorted according to their appropriate classifications. Additionally, qualitative analysis is performed on the classified data using criminal law theories as a guide.

Results and Discussion

The principle of legality is the guiding premise in the implementation of criminal law in Indonesia. This principle contains at least four (four) components: the prohibition of retroactive application of criminal regulations (*lex praevia*), the requirement to apply criminal law only through written rules (*lex scripta*), the requirement to formulate rules in a clear and detailed manner (lex certa), and the requirement to apply the rules strictly (*lex stricta*). According to their definitions, lex scripta and lex certa are principles of law production (construction of *law in abstracto*), whereas lex stricta and lex praevia are principles of law application (construction of *law in concreto*) [6].

The article discusses the practice of adding a criminal clause to confinement in lieu of a fine against environmental crime perpetrators. As a result, the analysis is guided by the principle of legal application. Due to the fact that the PPLH Law and the UUCK do not recognize any sort of imprisonment in lieu of a fine, it can be concluded that this practice is carried out by legal interpretation. Ideally, all judicial interpretations of the law should adhere to the principle of *nullum crimen, nulla poena sine lege stricta* (lex stricta).

Due to the fact that criminal law jurists commonly consider the principle of lex stricta as barring the use of analogies, the criminal code's wording must be rigidly interpreted [7] According to Paul Scholten, *"Het recht is er, maar het moet worden gevonden*," even if the law already exists, it must be searched in order to be discovered. Machteld Boot also has a similar view, stating that "every legal standard requires interpretation." [8]

Legislation makes no reference to how it should be interpreted. The science of criminal law provides guidance on how to do this interpretation. There are methods that scholars agree on and ways that scholars disagree on. The following are the possible interpretations:

1. Authentic Interpretation, that is, interpretation based on the law's own explanation of the word [9].
2. Historical interpretation is an interpretation based on an understanding of the legislator's intent and purpose as revealed via the legislation's history and development [10].
3. Systematic Interpretation, which entails interpreting the legislative text by locating and/or establishing the text's correlation with all other laws and regulations in a legal system [11].
4. Grammatical interpretation, or the interpretation of words based on their use in common language, or in other words, the interpretation of particular terms based on habit [12].
5. Teleological interpretation, that is, interpreting the wording of legislation in light of current social conditions and circumstances [13].
6. Analogical interpretation, that is, interpreting a text of legislation by the use of a figure of speech (as) in order to make events that are not expressly regulated in a text of norms appear to be regulated in the text of the legislation [14].
7. Extensive Interpretation, that is, interpretation that goes beyond the results of grammatical interpretation in determining the definition of a text [15].
8. Restrictive Interpretation is a form of interpretation that involves reducing the scope of a term's definition [16].
9. *A Contrario* Interpretation, that is, a method of interpreting legislation that is based on the opposite/denial of the statute's wording [17].

According to the definitions of each type of interpretation provided above, there are various types of interpretation that cannot be used to establish the practice of adding a criminal clause of an imprisonment in lieu of a fine against environmental crime perpetrators. The interpretation under consideration is authentic, grammatical, teleological, analogical, extensive, restricted, and a *contrario*. The author believes that this is because, according to the benchmark definition, the six categories of interpretation are all directly tied to the existence of the text to be read.

Due to the absence of regulation governing imprisonment in place of a fine in the PPLH Law and the UUCK, it is impossible to provide another meaning in language (grammatical) as well as a description of the word's current usage (teleological). The absence of restriction in the PPLH Law and the UUCK addressing an imprisonment in lieu of a fine also precludes the use of figurative and reverse figurative language (analogy and interpretation of *a contrario*), word meaning expansion (extensive), and word meaning contraction (restrictive). At its most extreme, the absence of a criminal provision on an imprisonment in lieu of a fine in the PPLH *juncto* the UUCK renders an authentic interpretation impossible, as an authentic interpretation of a text is impossible without the text itself being present in the legislation.

There are two (two) types of interpretation that are independent of the text's existence, namely historical and systematic interpretation. The author begins by attempting a historical analysis based on the two viewpoints. It should be noted that while adding a clause authorizing the imposition of imprisonment in lieu of a fine against perpetrators of environmental crimes has been done in a number of court rulings, there is no explanation of the clause's juridical logic. If the judge uses historical interpretations to construct the clause, he or she must begin with the historical context of establishing the criminal fine as one of the types of crimes threatened against environmental crime perpetrators in the PPLH Law, as imprisonment in lieu of fines is not regulated in the PPLH Law.

The PPLH Law contains the term "fine" 25 (twenty-five) times. Each of these is referenced in the Act's body. The General Explanation and Article by Article provide no information on the objective and purpose of establishing the PPLH Law, which includes fines as one of the sorts of charges threatened against violators of environmental offenses. According to the author, when a statutory regulation does not discuss the "cause" for the rule's construction, it is hard for the court to conduct a historical investigation into a situation that may be relevant but is not covered by the regulation.

The PPLH Law makes no reference to the rationale for including a criminal fine as one of the sorts of charges threatened against perpetrators of environmental violations. As a result, there is no basis for historical interpretation of the fine's existence. When the penalty for fines is not even included in the starting point for historical interpretation in the PPLH Law, it is clear that judges cannot impose imprisonment in lieu of a fine based on historical interpretation, as the starting point cannot be traced because the practice is not even authorized by the Law. PPLH. In conclusion, the practice of substituting a criminal clause for a fine is not based on historical interpretation.

Additionally, the author attempts to expound on the likelihood of employing a systematic interpretation of the practice of substituting incarceration for a fine against perpetrators of environmental crimes. Imprisonment in lieu of a fine is a sort of offense in Indonesia's criminal law system, which is governed by a number of particular criminal law statutes and regulations as well as general criminal law legislation.

The legislation under the special criminal law that controls the existence of a penalty in place of a fine includes the following provisions

1. According to Article 148 of Law No. 35 of 2009 on Narcotics (Narcotics Law), "if the perpetrator of a Narcotics crime or Narcotics Precursor offense is unable to pay the fine, the perpetrator is punished to a maximum imprisonment of 2 (two) years in lieu of the unpaid fine."
2. According to Article 40 paragraph (1) of Law No. 7 of 2011 on Currency (Currency Law), "If an individual convict is unable to pay the fine referred to in Article 33, Article 34, Article 35, and Article 36 paragraph (1), paragraph (2), paragraph (3), and paragraph (4), criminal fines, fines are replaced by imprisonment with the provision that each criminal fine of Rp. 100,000,000.00 (one hundred million rupiah) shall be replaced by imprisonment for two (two) months."
3. Article 9 of Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering (UU TPPU) provides that "in the event that the Corporation is unable to pay the criminal fines referred to in Article 7 paragraph (1), the fines are replaced by the confiscation of Assets. belonging to the Corporation or Corporate Controlling Personnel with a value equal to the penalty imposed." If the proceeds from the sale of the confiscated Corporate Assets are insufficient, the Corporate Controlling Personnel is sentenced to imprisonment in place of a fine, taking into account previously paid fines".

By examining the text of numerous parts of the aforementioned laws and regulations, it is clear that each of these laws and regulations establishes distinct methods and/or patterns for the application of criminal penalties in lieu of fines. The Narcotics Law provides for imprisonment in lieu of fines. The Narcotics Law specifies just the s*trafmaxima* duration of the alternative punishment, which is two years in prison, but not the *strafmaxima*. Additionally, the Narcotics Law lacks a pattern that may be utilized to determine the duration of imprisonment in lieu of a fine, implying that there is no pattern indicating the duration of imprisonment in lieu of a certain fine in the event that a particular fine is imposed. Due to the absence of a lower limit and a pattern of signs, judges must interpret the legislation *in concreto*.

By examining the criminal mechanism used to replace fines in the Narcotics Law, the author concludes that it is hard for courts to conduct a systematic interpretation of the Narcotics Law in order to develop a criminal clause to replace penalties for environmental crime perpetrators. This opinion is founded on an examination of the many sorts of alternative penalties. The Narcotics Law provides for jail in lieu of fines, although in fact, some environmental crime judgements result in confinement.

The Currency Act authorizes imprisonment in lieu of a fine. The Currency Law establishes an intriguing pattern, according to the author. The Currency Act contains no *strafmaxima* or *strafminima* provisions. The time of imprisonment in lieu of payment of the fine is "obligatory" and is calculated using a formula, namely "2 (two) months / Rp. 100,000,000, - (one hundred million rupiah) [18]. The lowest penalty for fines is Rp. 200,000,000,- (two hundred million rupiah) as referred to in Article 33 of the Currency Law, while the highest penalty for fines is Rp. 50,000,000,000,- (fifty billion rupiah) as referred to in Article 36 paragraph (3) and paragraph (4) of the Currency Law.

Due to the fact that the Currency Law establishes only the *strafminima* amount of fines, the minimum period of imprisonment in lieu of a fine cannot be established. However, if the judge imposes a maximum fine of Rp. 50,000,000,000,- (fifty billion rupiahs), the duration of imprisonment in lieu of a fine is 1000 (one thousand) months or 41.6 (forty one point six) years, which is calculated by multiplying Rp. 50,000,000,000,- (fifty billion rupiahs) by Rp. 100,000,000,- (one hundred million rupiahs) multiplied by 2 (two) months.

By examining the criminal mechanism in place of fines in the Currency Law, the author concludes that judges will be unable to conduct a systematic interpretation of the Currency Law in order to add a criminal clause in lieu of jail in replace of penalties for environmental crime perpetrators. This, the author believes, is because the incarceration in lieu of a punishment that judges typically sentence for environmental violations is only a few months. If the judge applies a consistent reading of the Currency Law, the penalty for imprisonment in lieu of a fine imposed on offenders of environmental offences as stated to in decision 14/Pid.Sus/2020/PN Tbh is not three (three) months in jail, but sixty (six) months in prison. twenty) months of imprisonment, which is calculated by multiplying Rp. 3,000,000,000, - (three billion rupiah) by Rp. 100,000,000, - (one hundred million rupiah) multiplied by 2 (two) months of imprisonment.

Unlike the Narcotics and Currency Laws, which establish an alternative criminal system for convicted felons, the Money Laundering Law does not. If you pay attention, the Money Laundering Law's mechanism of imprisonment in lieu of a fine is not a substitute sentence inflicted on the convict because the subject condemned to a fine is a company (recht person), not an individual (naturlijk persoon). Individuals who are corporate controllers face imprisonment in lieu of fines if a cumulative two (two) requirements are met. First, the corporation is unable to pay the fine imposed by the judge, and second, the confiscation of the corporation's assets or those of an individual who is one of the corporation's controlling personnel is insufficient to pay the criminal fine.

By examining the criminal mechanism for substituting fines in the Money Laundering Law, the author concludes that judges will be unable to conduct a systematic interpretation of the Money Laundering Law in order to establish a criminal clause to substitute fines for environmental crime perpetrators. This opinion is based on disparities in the treatment of legal subjects sentenced to prison in place of a fine. According to the Anti-Money Laundering Law, legal subjects sentenced to incarceration in place of a fine are not considered to be prisoners, while substitute confinement is enforced in practice for legal subjects who are convicted of environmental crimes.

According to the explanation above, the practice of substituting a criminal clause for a fine in lieu of an environmental offense is not based on a systematic reading of the special criminal law legislation that regulates the presence of a punishment in place of a fine. Additionally, the author attempts to comment on the likelihood of employing a systematic interpretation of the general criminal code legislation that governs the existence of a penalty in lieu of a fine in this practice. The general criminal law legislation in question is *Wetboek van Strafrecht voor Netherlands Indie*, which has been in existence since 1918 and was ratified in 1946 by the Government of the Republic of Indonesia by Law Number 1 of 1946 on the Criminal Code (KUHP).

Article 30 of the Criminal Code regulates the method of imprisonment in lieu of a fine, which is as follows in full: "The minimum fine is Rp. 0.25 (twenty five cents) (Criminal Code Article 30 paragraph (1)). If a fine is levied and not paid, it will be substituted with imprisonment (Criminal Code, Article 30 paragraph (2)). The period of imprisonment in lieu of a fine must be between one and six months (Article 30 paragraph (3) of the Criminal Code). The pattern of the period of the incarceration in the judge's decision is determined as follows: If the fine is Rp. 0.5 (fifty cents) or less, instead of one day, and if more than that for each Rp. 0.5 (fifty cents) instead of not more than one day, as well as the rest which is not enough Rp. Another 0.5 (fifty cents) (Article 30 paragraph (4) of the Criminal Code). The detention term can be issued for a maximum of 8 (eight) months in the event that the maximum fine is added, because there is a combination of offenses, because of repeated offences or because of the provisions of Article 52 of the Criminal Code (Article 30 paragraph (5) of the Criminal Code). The duration of imprisonment may not exceed 8 (eight) months (Article 30 paragraph (6) of the Criminal Code)".

When the duration of imprisonment is compared to the duration of imprisonment in lieu of a fine imposed in the decision as referenced in Table 1, it is clear that the "shadow" of the imprisonment in lieu of a fine imposed in an environmental crime is constructed through a systematic interpretation of the provisions of the imprisonment in lieu of a fine in the Criminal Code. Additionally, it is backed up by Article 103 of the Criminal Code, which states that "the provisions of Chapter I to Chapter VIII of this Book (Book One of the Criminal Code) apply to conduct criminal under other legislative provisions, unless the law provides otherwise." When the duration of imprisonment is compared to the duration of imprisonment in lieu of a fine imposed in the decision as referenced in Table 1, it is clear that the "shadow" of the imprisonment in lieu of a fine imposed in an environmental crime is constructed through a systematic interpretation of the provisions of the imprisonment in lieu of a fine in the

Criminal Code. Additionally, it is backed up by Article 103 of the Criminal Code, which states that "the provisions of Chapter I to Chapter VIII of this Book (Book One of the Criminal Code) apply to conduct criminal under other legislative provisions, unless the law provides otherwise."

The PPLH Law was prepared in accordance with the procedure for enacting laws set forth in Law No. 10 of 2004 on the Establishment of Legislations (UU 10/2004). After the enactment of Law No. 12 Year 2011 concerning the Establishment of Legislation, Law 10/2004 was annulled and declared unlawful. There is an explanation in Number 86 Section C.3 Chapter I Attachment of Law 10/2004 that "when formulating criminal provisions, it is necessary to bear in mind the general principles of criminal provisions contained in the First Book of the Criminal Code, because the provisions contained in the First Book also apply to acts punishable under other laws and regulations, unless the law provides otherwise (Article 103 of the Criminal Code)."

Given that the PPLH Law was based on Law 10/2004, it is reasonable to assume that no criminal regulation in lieu of fines was included in the PPLH Law, as the PPLH Law's authors intended to enforce the provision of imprisonment referred to in Article 30 of the Criminal Code against environmental criminals who did not pay the fine. This analysis serves as a counter-argument to the view that imprisonment in place of a fine issued for an environmental violation is constructed through a methodical reading of Criminal Code Article 30.

However, when compared to the provisions of Article 30 paragraph (4) of the Criminal Code, the "shadow" created by the comparison of the term of substitution imprisonment and theoretical considerations based on Article 103 of the Criminal Code is rather weak. After the value of fines in the Criminal Code was adjusted in accordance with Government Regulation in Lieu of Law Number 18 of 1960, which doubled all fines contained in the Criminal Code by 15 (fifteen) times, and the Supreme Court of the Republic of Indonesia's Regulation No. 2 of 2012, which doubled the maximum number of fines threatened in the Criminal Code to 1,000 (one thousand) [19], the value and pattern of imprisonment in lieu of a fine in the Criminal Code should be read as follows:

1. The minimum fine is Rp. 3.750 (three thousand seven hundred and fifty rupiah), calculated as Rp. 0.25 (twenty-five cents) multiplied by 15 (fifteen) and 1000 (one thousand);
2. 1 (one) day of incarceration is equivalent to a fine of Rp. 7,500 (seven thousand five hundred rupiah), which is calculated as Rp. 0.5 (fifty cents) multiplied by 15 (fifteen) multiplied by 1000 (one thousand);

Because the duration of imprisonment in lieu of a fine is limited by Article 30 paragraph (3) of the Criminal Code, even if the judge imposes a fine greater than Rp. 1.350.000,- (one million three hundred fifty thousand rupiah), which is the result of 6 (six) months multiplied by 30 (thirty) days multiplied by Rp. 7,500,- (seven thousand five hundred rupiah), the punishment is still limited to 6 (months) imprisonment. For instance, a fine of Rp. 150,000,000, - (one hundred and fifty million rupiah) is an adjustment to the maximum fine under Articles 251 and 403 of the Criminal Code after Perpu 18/1960 in conjunction with Perma 2/2012 against perpetrators of criminal crimes under those articles. Similarly, if the judge imposes a fine in excess of Rp. 1.800.000,- (one million eight hundred thousand rupiah), which is the result of 8 (eight) months multiplied by 30 (thirty) days multiplied by Rp. 7,500,- (seven thousand five hundred rupiah), the penalty for the fine imposed is also limited to 8 (eight) months in prison, as provided for in Article 30 paragraph (5). For example, a fine of Rp. 12,000,000,- (twelve million rupiah) is an adjustment to the maximum fine value for recidivist criminal acts under Article 372 of the Criminal Code after Perpu 18/1960 in conjunction with Perma 2/2012.

The issue is whether the duration of imprisonment in lieu of a fine in Decisions 14/Pid.Sus/2020/PN.Tbh, 13/Pid.Sus/2020/PN.Kka, and 485/Pid.Sus/2020/PN.Btm is consistent with Article 30 paragraph (4) of the Criminal Code?? The answer is unambiguously no, as the three decisions levied fines totaling over Rp. 1.350.000,- (one million three hundred fifty thousand rupiah). This indicates that if a strict reading of Article 30 of the Criminal Code is used, the term of imprisonment in lieu of a fine should be 6 (six) months, which is the maximum duration of imprisonment in lieu of a fine in the absence of sentence weighing.

When the duration of imprisonment in lieu of a fine is analyzed in the three decisions in Table 1, there is no discernible pattern in deciding the duration of imprisonment in lieu of a sentence against environmental crime violators. It appears as though the duration of the criminal determination is formed subjectively, without regard for the argumentation arguments underlying the decision's deliberation. That is, the number of months that constitute the duration of the incarceration in place of the fine is determined solely by the judge's "feeling of justice" when examining and deciding the case.

Justice is an abstract concept; it can be thought about and felt but not seen. Each individual has a unique sense of justice, let alone those who function as judges [20] Montesquieu said that in an *Etat despotique* (lack of laws), judges can analyze and evaluate cases on their own initiative alone, resulting in more absolutely autonomous legal decisions. Indonesia does not follow this system, which means that judges do not have complete autonomy to make decisions on their own [21]. However, when a court makes an "at-will" decision on the term of imprisonment in lieu of a fine and no party objects to the duration, no one (including judges on appeal and cassation) can change the decision.

According to the explanation above, it is not incorrect to assert that the practice of imposition of imprisonment in lieu of a fine against perpetrators of environmental crimes is constructed using a legal discovery method known as Achmad Ali as a construction method, not an interpretation method, because in this practice, judges use logical reasoning to further develop a legal text by ignoring the text's sound, but without ignoring the law as a system [22].

Conclusion

The practice of adding a criminal clause to imprisonment in lieu of a fine existence in sentence judgments for environmental criminal actions is developed by a systematical interpretation of general criminal law requirements as referenced in Article 30 of the Criminal Code. The duration of the sentence, on the other hand, is mostly determined by the discovery of an absolute independent law. When its existence and longevity are considered in isolation, it is widely determined that the process of legal discovery used in practice is one of legal construction.

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