

Law Enforcement, Criminal Provisions, and Administrative Sanctions in the Indonesian Legal System

Adinda Apriliany¹, Diki Zukriadi²

^{1,2}Universitas Putera Batam
Email: pb220710022@upbatam.ac.id

Law enforcement is the process of realizing the values of justice, certainty, and benefit in the life of the nation and state. In the context of the Indonesian legal system, law enforcement is not solely oriented towards the imposition of criminal sanctions, but also involves administrative legal instruments that are preventive and corrective in nature. Criminal provisions are used to punish violations that have a serious level of wrongdoing and social impact, while administrative sanctions are used to enforce compliance without going through lengthy criminal court proceedings. This article analyzes the relationship, differences, and application of criminal and administrative sanctions in the Indonesian legal system, as well as examining how these two instruments play a role in achieving effective law enforcement. The research method used is normative juridical with a regulatory approach and legal doctrine analysis. The results show that the effectiveness of law enforcement in Indonesia is highly dependent on the balance between repressive (enforcement) and preventive (prevention) efforts, as well as coordination between legal institutions that apply the principles of substantive and procedural justice.

keywords: Law Enforcement, Criminal Provisions, Administrative Sanctions, Indonesian Legal System, Substantive Justice

This is an open access article under the [CC BY-NC](#) license



Corresponding Author:

Adinda Apriliany
Universitas Putera Batam
pb220710022@upbatam.ac.id

1. Introduction

Indonesia is a state based on the rule of law, as explained in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945). This means that all actions of the government and citizens must be based on applicable law, not just power alone. Therefore, the implementation of the law is crucial for maintaining public order, justice, and protecting citizens' rights. However, in practice, the implementation of the law in Indonesia faces various challenges, such as conflicting regulations, a lack of coordination between law enforcement agencies, and the suboptimal application of administrative and criminal sanctions. Previously, the approach to law enforcement usually focused solely on criminal sanctions, thus neglecting the important role of administrative sanctions, which are actually more effective in some cases of violations.

Administrative sanctions, as part of public law, are an important tool for the government to direct the behavior of citizens or legal entities to comply with regulations without having to go through criminal proceedings. Examples include the revocation of business permits, administrative fines, or the suspension of business activities, which are often more effective than more time-consuming and costly criminal proceedings. The implementation of laws and regulations will not be effective without law enforcement. Law enforcement of a regulation can take various forms, one of which is through sanctions, which can be criminal, civil, or administrative. However, law enforcement of a regulation does not always have to be accompanied by sanctions within the regulation itself. Sanctions may be stipulated in other regulations or even absent from the regulation itself. If a regulation stipulates that certain conditions must be met to obtain

something (a right), but these conditions are not met, then the sanction is that we will not obtain the rights that would have been obtained if those conditions were met.

Sanction provisions, whether in the form of penalties, criminal charges, or administrative measures, are options that can be applied. This means that not all types of sanctions must be used, but the most appropriate and effective type can be chosen to handle a particular case. Sometimes, the use of sanctions is not necessary at all in enforcing a legal regulation. Sanctions within legal regulations are only one option, including sanctions in the form of criminal penalties, if necessary. Therefore, the appendix to Law Number 10 of 2004 concerning the Formation of Legislation states that the addition of criminal provisions to a legal regulation is only carried out if necessary. The addition of sanctions must also be tailored to the content of the legal regulation. In some legal regulations, sanctions, especially criminal sanctions, are often imposed coercively. If sanctions do not align with their content, the legal regulation will be ineffective or provide no benefit.

This aligns with one of the principles that must be met in creating legal regulations, namely the principle of utility and effectiveness. This means that every legal regulation is created because it is truly needed and provides benefits in regulating the lives of society, the nation, and the state. Furthermore, if sanctions in legal regulations do not align with their content, they will be difficult to implement in practice. This article aims to fully explain the role, relationship, and effectiveness of criminal provisions and administrative sanctions in the Indonesian legal system, as well as provide a critical analysis of the application of both instruments in various legal fields.

2. Research Method

This research employs a normative juridical method with a statutory regulatory approach and legal doctrine analysis. The normative juridical method was chosen because the research aims to understand and analyze the legal framework governing criminal and administrative sanctions in the Indonesian legal system, as well as to evaluate the effectiveness of its implementation. This approach aligns with normative legal research, which positions law as a system of norms that is systematically analyzed through written legal sources and legal doctrine, thus explaining how the law should apply in the context of law enforcement. According to Marzuki (2020), the normative juridical method allows researchers to analyze the relationship between legal norms, legal principles, and legal practice logically and systematically.

The statutory regulatory approach is used to examine written legal norms, including the 1945 Constitution and its derivative regulations, relating to criminal and administrative sanctions. This approach helps researchers evaluate the appropriateness, consistency, and relevance of sanction provisions to national legal principles and the objectives of law enforcement, namely maintaining order, justice, and protecting citizens' rights (Sihombing, 2022).

Furthermore, this research employs a legal doctrine analysis, which involves reviewing expert opinions and current scientific literature. Doctrinal analysis helps interpret legal norms and assess the relationships between them in order to understand the basic principles of law enforcement, including the principles of efficacy and substantive justice (Rahman, 2021). This approach enables research to produce legal studies that are not only descriptive but also analytical and normative, thus providing more appropriate recommendations regarding the use of administrative and criminal sanctions.

Data collection was conducted through library research, which focused on primary legal materials such as laws and regulations, and secondary legal materials in the form of academic literature, scientific journals, and books discussing law enforcement, criminal sanctions, and administrative sanctions (Setiawan, 2023).

This technique aligns with normative juridical research practices, which rely on written sources as the basis for legal analysis.

Data analysis was conducted qualitatively and normatively, using a comparative method between applicable legal norms and expert opinions. This analysis aims to assess the effectiveness of legal provisions in law enforcement practices and to evaluate the strengths and weaknesses of the application of criminal and administrative sanctions in achieving national legal objectives. Thus, the normative juridical method applied not only focuses on identifying positive legal norms, but also provides an in-depth understanding of legal reasoning and legal conceptions underlying the use of sanctions, so that this research is able to produce a comprehensive legal study that is relevant to the current legal conditions in Indonesia.

3. Result and Discussion

In the Indonesian legal system, criminal sanctions and administrative sanctions have equal status but different functions, where both can be applied alternatively, cumulatively, or in stages depending on the type of violation; for example, in environmental violations the government can impose administrative sanctions first in the form of permit revocation or administrative fines and if the violation is repeated or has a major impact then it is continued with criminal sanctions through a multi-door approach that combines criminal, administrative, and civil channels to achieve justice and legal effectiveness, where criminal sanctions have advantages in the form of a deterrent effect, affirmation of moral values, and protection of society but have weaknesses such as a long process, dependence on the judiciary, and the potential for disparity in decisions, while administrative sanctions are superior because they are fast, efficient, and easy to apply to legal entities but are weak in terms of transparency, public control, and deterrent effects, so that the balance in the application of both is the key to the effectiveness of the national legal system as reflected in various practices such as environmental cases based on Law Number 32 of 2009 which allows administrative sanctions to be continued with criminal, corruption cases based on Law Number 31 of 1999 in conjunction with. Law Number 20 of 2001 combines criminal and administrative sanctions in the form of revocation of office, and the Job Creation Law applies administrative fines to business licensing cases before involving criminal law enforcement officers.

Definition of Law Enforcement

According to Soerjono Soekanto, law enforcement is the activity of harmonizing the relationships between values outlined in solid and embodied principles/value perspectives and attitudes as a series of final-stage value interpretations to create, maintain, and sustain peace in social life. Concrete law enforcement is the application of positive law in practice as it should be obeyed. Therefore, providing justice in a case means deciding the law in concrete, upholding and guaranteeing compliance with material law using procedural methods established by formal law. (Soerjono Soekanto, 1983)

According to Satjipto Raharjo, law enforcement is essentially the enforcement of ideas or concepts regarding justice, truth, social utility, and so on. So, law enforcement is an effort to translate these ideas and concepts into reality. In essence, law enforcement embodies values or principles that embody justice and truth. Law enforcement is not solely the duty of conventionally recognized law enforcers, but is the responsibility of every individual. However, in relation to public law, the government is responsible. (Satjipto Raharjo, 2009)

In a broad sense, law enforcement is the process of implementing efforts to uphold or effectively implement legal norms as guidelines for behavior in traffic or legal relations within society and the state. Viewed from the perspective of its subjects, law enforcement can be carried out by a broad range of subjects or can also be interpreted as law enforcement efforts by subjects in a limited or narrow sense. In a broad sense, the

law enforcement process involves all legal subjects in every legal relationship. Anyone who implements normative rules or does or does not do something based on applicable legal norms is implementing or enforcing the rule of law. In a narrow sense, from a subject perspective, law enforcement is simply defined as the efforts of certain law enforcement officials to guarantee and ensure that a legal rule is implemented as intended. To ensure the upholding of the law, law enforcement officials are permitted to use coercive force, if necessary.

Factors Influencing Law Enforcement: According to Soerjono Soekanto, the factors influencing law enforcement are:

1. **Legal Factors:** The practice of law enforcement in the field sometimes creates a conflict between legal certainty and justice. This is because the concept of justice is an abstract formulation, while legal certainty is a normatively determined procedure. Therefore, a policy or action that is not fully based on law is justified as long as it does not conflict with the law. Therefore, in essence, law enforcement encompasses not only law enforcement but also peacekeeping, as law enforcement is essentially a process of harmonizing values and actual behavior patterns aimed at achieving peace.
2. **Law Enforcement Factors:** The legal function, mentality, or personality of law enforcement officers play a crucial role. If regulations are good but the quality of officers is lacking, there is a problem. Therefore, one of the keys to success in law enforcement is the mentality or personality of law enforcers.
3. **Supporting Facilities or Facilities Factors:** Supporting facilities or facilities include software and hardware, one example of which is education. The education received by police today tends to be conventional, practical, and often hinders their objectives. This includes knowledge of computer crime, a specific crime that prosecutors have traditionally been given authority over. This is because the police are technically and legally inadequate. This is despite the recognition that the police's duties are extensive and numerous.
4. **Community Factors:** Law enforcement originates from the community and aims to achieve peace within the community. Every citizen or group has some degree of legal awareness. The issue that arises is the level of legal compliance, whether high, moderate, or low. The degree of public compliance with the law is one indicator of the functioning of the law in question.
5. **Cultural Factors:** Based on the everyday concept of culture, people often discuss culture. According to Soerjono Soekanto, culture has a crucial function for humans and society, namely regulating how people should act, behave, and determine their attitudes when interacting with others. Thus, culture is a basic guideline of behavior that establishes rules regarding what must be done and what is prohibited. (Soerjono Soekanto, 1983)

Criminal Provisions in the Legal System

Criminal provisions are part of public law that regulate what actions are prohibited by law and the threats of sanctions against violators. Barda Nawawi Arief (2010) explains that criminal law has two main functions:

- a. A preventive function, namely preventing violations of the law.
- b. A repressive function, namely prosecuting perpetrators of crimes to create a deterrent effect.

Criminal provisions in Indonesia are regulated in the Criminal Code (KUHP) and in various special laws (*lex specialis*), such as the ITE Law, the Environmental Law, and the Corruption Law. The application of criminal sanctions must be through a judicial process that guarantees the principle of due process of law, namely a fair, transparent, and non-arbitrary legal process. (Barda Nawawi Arief, 2010)

Examples of criminal provisions in the Indonesian legal system

1. The Indonesian criminal law system is based on the Criminal Code (KUHP), which has been updated

and is now regulated in Law Number 1 of 2023 (the New Criminal Code).

2. Criminal sanctions in the Indonesian system may only be regulated in laws (UU) and regional regulations (Perda).
3. The New Criminal Code establishes five principles of criminal law that form the basis of the criminal system: the principle of legality, the principle of territoriality, the principle of personality, the principle of protection, and the principle of equality.
4. The criminal sanctions regulated in the New Criminal Code consist of principal penalties, additional penalties, and special penalties.

Administrative Sanctions in the Legal System

Administrative sanctions are legal tools used by government agencies to ensure compliance with administrative regulations. According to Philipus M. Hadjon (2007), administrative sanctions are corrective in nature, aiming to restore the situation to its original condition and prevent recurrence of violations.

Administrative sanctions can range from the lightest to the most severe. The most severe administrative sanctions may be more effective than criminal sanctions. In accordance with the scope of its substance, a law or regulation does not necessarily require sanctions, as this may not be more efficient. As previously mentioned, the legal application of a law or regulation is sometimes not accompanied by sanctions. (Philipus M. Hadjon, 2007). Forms of administrative sanctions include:

1. Verbal warning

A warning or verbal warning is the lightest type of administrative sanction and is usually the first step before moving on to further administrative sanctions, as administrative sanctions are generally implemented in stages. In other words, to implement a sufficiently severe administrative sanction, it must be implemented in stages, starting with the lightest administrative sanction, usually with a warning and continuing through several times. This aims to facilitate proof, considering that verbal reprimands are very difficult to prove. If done in writing, it can be documented, making it easier to prove. Administrative sanctions in the form of verbal warnings or admonitions can be implemented multiple times, only after which administrative sanctions are imposed at the next stage.

2. Written Warning

A written warning or admonition also clearly states the legal provisions violated. The order conveyed in the written warning/admonition must not cover matters outside the provisions of the law violated. State administrative officials must be clearly aware of the norms/provisions that have been violated. The warning/admonition letter must state the time required to implement the order. This demonstrates that state administrative officials cannot take concrete action during the specified period.

3. Administrative Fines

Another administrative sanction is administrative fines. Administrative fines are often found in tax law. The imposition of these sanctions is almost identical to the imposition of criminal sanctions and must have a clear legal basis in statutory regulations. In recent developments, there is a tendency in some limited cases, based on various considerations, for state administrative officials to resort to imposing administrative fines.

4. Government coercive action (bestuursdwang/politie dwang)

Government coercive action (bestuursdwang/politie dwang) is a concrete action (feitelijke handelingen) by state administrative officials to stop a situation prohibited by statutory provisions or to do something that an individual should not do because it violates statutory provisions. This action is a direct action by state administrative officials. These concrete steps are taken by state administrative officials to adjust to the actual conditions stipulated in statutory regulations when citizens ignore them. The authority of state administrative officials to carry out these concrete actions is a result of the government's responsibility,

which requires state administrative officials to enforce statutory provisions.

5. Revocation of a Favorable Decision

Another type of administrative sanction is the revocation of a favorable decision. There are two reasons why a favorable decision can be revoked:

- 1) the interested party failed to comply with the restrictions, requirements, or provisions of the laws and regulations related to the permit, subsidy, or payment;
- 2) the interested party submitted incorrect or incomplete data or information when applying for a permit, subsidy, or payment. If the data or information had been submitted correctly or completely, the decision would likely have been different. Decisions are usually formalized in the form of a decree, so a revocation of a decision constitutes a new decree that includes a revocation and declares the previous decree null and void. As with any decision, the consequences arising from the decision can also be reflected in the decision to revoke the decision. If the decision to revoke results in losses, legal action can be taken in accordance with the provisions of the laws and regulations.

6. Imposition of a fine (dwangsom)

The imposition of a fine by a state administrative official/agency is a modern type of administrative sanction as an alternative to implementing government coercive measures (bestuursdwang). The imposition of this fine is similar to the imposition of an administrative fine, in that it must have a clear legal basis in statutory regulations. Because it acts as a substitute for government coercive measures (bestuursdwang), the authority to impose the fine lies with the state administrative official authorized to implement the government coercive measures (bestuursdwang). A fine will be imposed if government efforts (bestuursdwang) are practically difficult to implement or deemed too burdensome. The fine can be imposed each time a violation occurs or on a specific day/time, and will be waived if the violation is repeated or daily if the violation continues.

Administrative sanctions are imposed by administrative officials in accordance with the authority stipulated by law, such as Law Number 30 of 2014 concerning Government Administration and Law Number 32 of 2009 concerning Environmental Protection and Management.

The Purpose of Implementing Administrative Sanctions: In general, sanctions in laws and regulations, including administrative sanctions, are generally associated with or result from a norm formulated in the form of a prohibition, command (obligation), or obligation (must). A norm containing a prohibition, command (obligation), or obligation (must) will generally face challenges in its enforcement if it is not accompanied by a sanction.

There are several purposes for including and implementing sanctions provisions in laws and regulations, including administrative sanctions.

First, as an effort to enforce applicable legal provisions. As explained previously, norms containing prohibitions, commands (obligations), or obligations usually face obstacles in their enforcement if they are not accompanied by sanctions. The implementation of sanctions will facilitate the implementation of these norms and ultimately, we will witness the effectiveness of these laws and regulations. Furthermore, the imposition of sanctions also serves to ensure that individuals comply with applicable legal provisions.

Second, sanctions are imposed on anyone who violates a norm in a law and regulation. Individuals who violate a norm should receive a punishment commensurate with the severity of the violation. Punishment is appropriate if the individual intentionally violates a norm. A person who intentionally violates a norm can be assumed to have bad intentions and therefore deserves appropriate punishment or retribution.

Third, it creates a deterrent effect on someone so they don't repeat the violation. By imposing sanctions, it is hoped that the individual will not repeat the same violation. In criminal law, this concept is known as the theory of entrapment. Fourth, it deters others from violating the law. By threatening sanctions, it is hoped that individuals will not violate the law. These are signs or warnings to prevent someone from doing something prohibited.

4. Conclusion

Law enforcement in the Indonesian legal system requires collaboration between the implementation of criminal provisions and administrative sanctions to achieve effectiveness and certainty in resolving violations that have significant impacts. However, the procedure is quite lengthy and requires formal evidence in court. Conversely, administrative sanctions tend to be faster, more flexible, and more efficient in addressing violations, especially those related to administrative compliance and government oversight. These two sanctions are not interchangeable but can be used alternatively, cumulatively, or in stages, depending on the nature of the violation. The effectiveness of law enforcement is greatly influenced by factors such as the quality of regulations, the professionalism of law enforcement officers, the availability of supporting facilities, the community's legal culture, and inter-institutional cooperation. Therefore, a balance between preventive and repressive methods is key to ensuring the law functions effectively as a tool to maintain order, provide justice, and optimally protect the rights and interests of the community.

5. References

- Arief, B. N. (2010). *Bunga Rampai Kebijakan Hukum Pidana*. Jakarta: Kencana.
- Asshiddiqie, J. (2016). *Penegakan Hukum*. Jakarta: Konstitusi Press.
- Hadjon, P. M. (2007). *Hukum Administrasi dan Tindak Pemerintahan*. Yogyakarta: Gadjah Mada University Press.
- Marzuki, P. M. (2020). *Penelitian Hukum*. Jakarta: Kencana.
- Rahman, A. (2021). *Analisis Sanksi Administratif dalam Sistem Hukum Indonesia*. Bandung: Alfabeta.
- Satjipto Rahardjo. (2009). *Penegakan Hukum: Suatu Tinjauan Sosiologis*. Bandung: Citra Aditya Bakti.
- Setiawan, B. (2023). *Metode Penelitian Hukum: Pendekatan Normatif dan Empiris*. Yogyakarta: UII Press.
- Sihombing, D. (2022). *Penegakan Hukum dan Efektivitas Sanksi di Indonesia*. Jakarta: Rajawali Pers.
- Soerjono Soekanto. (1983). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Raja Grafindo Persada.
- Undang-Undang No. 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana.
- Undang-Undang No. 30 Tahun 2014 tentang Administrasi Pemerintahan.
- Undang-Undang No. 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup.