

The Urgency of Enforcing Criminal Sanctions Against Perpetrators Waste Incineration

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ABSTRACT

The global issue of various adverse impacts and dangerous risks due to mistakes in waste management is intensively echoed as a shared responsibility to be resolved. As the holder of the G20 presidency in 2022, Indonesia even raised the issue of sustainable waste management in the G20 forum. Therefore, legal research is important to study and provide solutions to these problems from the legal aspect, so that it is useful, not only at the regional and national levels, but also for the sustainability of life in all parts of the world. The purpose of this study is to find out the urgency of enforcing criminal sanctions listed in local regulations against waste incinerators in Kubu Raya Regency, West Kalimantan Province, Indonesia, reviewed from the relative theory as a criminal purpose. This research is a normative legal research, with a legislative approach and a theoretical approach. Based on the results of the research, there are two reasons for the urgency of enforcing criminal sanctions against the large number of waste incinerators in Kubu Raya Regency. First, it is reviewed from a general precaution in relative theory, which is to prevent everyone from becoming a perpetrator of waste burning. Second, it is reviewed from a special provision in relative theory, which is to prevent the perpetrators of burning waste who have been convicted from repeating their actions. Through criminal law enforcement, if general and special prevention are carried out optimally, it is hoped that the purpose of the regional regulation can be realized, namely to reduce the danger posed by sarnpah, especially burned waste, protect and improve the quality of public health and the environment, and change community behavior in waste management.

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1. Introduction

Article 1 number (5) of Kubu Raya Regional Regulation Number 9 of 2013 concerning Waste Management (Perda 9/2013 Kubu Raya), states that:

"Waste is a daily human activity and/or natural process in solid form consisting of household waste and waste similar to household waste."

According to Law Number 18 of 2008 concerning Waste Management (Law 18/2008), waste is categorized into three types, namely household waste, household waste, and specific waste. The Ministry of Environment and Forestry recorded that the total waste in Indonesia in 2021 reached 68.5 million tons and 17 percent or around 11.6 million tons was plastic waste. The lifestyle and consumption patterns of the Indonesian people that are all practical, such as the use of single-use plastics, have triggered an increase in the amount of plastic waste since 2010 (CNN, 2022).

Waste has become a national, even international problem. The amount of waste that is so large and of various types has become a source of various problems for the community, especially if it is not managed properly. According to Law 18/2008, waste management needs to be carried out comprehensively and integrated so that it can provide economic benefits, do not interfere with public health, be safe for the environment, and can change people's behavior related to waste management.

The activity of burning garbage seems to have become a common habit carried out by Indonesian people to clean their environment. In fact, these activities pose various dangerous risks that threaten, such as health problems and environmental damage. Various adverse impacts that occur due to the wrong way of managing waste have even become a global issue that is continuously echoed through international forums to the world community to be resolved together. In 2022, Indonesia as the holder of the G20 presidency even raised the issue of sustainable waste management in the G20 forum (Sudoyono, 2022). Oleh karena itu, penelitian hukum ini penting dilakukan untuk memberikan manfaat, tidak hanya di tingkat daerah dan nasional, tetapi juga bagi keberlangsungan kehidupan di seluruh belahan dunia.

According to Law 18/2008, waste management aims to improve public health and environmental quality, as well as make waste a resource that can be utilized. Waste management that is carried out incorrectly can be categorized as environmental destruction. Law Number 32 of 2009 concerning Environmental Protection and Management (Law 32/2009) states that environmental destruction is a human action that results in direct or indirect changes in the physical, chemical, and/or biological properties of the environment, so as to exceed the standard criteria for environmental damage or the size of the limit of changes in the physical, chemical, and/or biological properties of the environment that can be tolerated by the environment, to be able to preserve its function.

The problem is that until now, the activity of burning waste is still often carried out by the Indonesian people as a daily habit that is considered natural, including by residents living in Kubu Raya Regency, West Kalimantan Province, even though this act is included as an inappropriate and wrong way of managing waste, especially if it is done carelessly. Therefore, burning garbage is determined to be an act prohibited by the state, based on Article 67 letter g and Article 71 of Regional Regulation 9/2013 Kubu Raya. Prohibition and sanctions in the form of imprisonment for a maximum of 6 months or a maximum fine of Rp. 50,000,000 for waste incinerators in Kubu Raya Regency are carried out to prevent and provide a deterrent effect.

Smoke from burning waste causes air pollution because it can release toxic substances into the air such as nitrogen oxides, carbon monoxide, and pollution particles that are bad for human health,

such as irritation, respiratory disorders, reproductive system disorders, and can even cause cancer and death (Faridawati & Sudarti, 2021). The ban on burning waste in Kubu Raya Regency is one of the efforts of the local government through legal norms or positive legal instruments to protect the health of the population.

Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as stated in Pancasila and the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia). Article 1 paragraph (1) of Law Number 36 of 2009 concerning Health (Law 36/2009), states that:

"Health is a state of health, both physically, mentally, spiritually and socially that allows everyone to live socially and economically productively."

Based on research, the residents of Kubu Raya still burn garbage as the most frequent and common way to clean the environment, especially from household waste. In fact, in one of the villages, namely Sungai Raya Village, there is a group of people who offer and provide paid services to dispose of garbage, by collecting garbage from residents' houses at night, then bringing it instead of being disposed of where it should be, such as to temporary shelters, integrated waste management sites, or final processing sites provided by the local government. But it is transported to private land and in the end is simply burned openly, in a way that does not comply with the technical requirements of waste management, resulting in smoke that is so billowing and polluting the surrounding air. Ironically, the location of the illegal waste burning is located in a residential area crowded with children.



Figure 1 Illegal Waste Incinerator in Sungai Raya Dalam Village

Source: Piramitha Angelina, November 2023 (Personal Documents)

Ignorance or neglect by the public about the dangers and criminal sanctions for waste incinerators, as well as the enforcement of criminal sanctions that have not been carried out

expressly, make it seem as if there is neglect and neglect of the local regulations. This study aims to find out the reasons for the urgency of enforcing criminal sanctions regulated in local regulations against waste incinerators in Kubu Raya Regency, West Kalimantan Province, Indonesia, reviewed from the relative theory as a criminal objective.

The problems in this study have never been exactly the same as in previous studies because the review used is a specific criminal law theory for an act that is also specific. The act is burning garbage, and the theory used is a relative theory for a criminal purpose. Therefore, this study is very different when compared to previous studies that focus only on the study of health and/or environmental aspects but not on the legal aspect, let alone the specific criminal law.

There are indeed many research results that discuss matters related to the topics raised in this study, but only limited to waste, such as problems caused by waste in several regions of Indonesia, waste management, types of waste, waste facilities and infrastructure, the harmful impact of waste burning on health and/or the environment, as well as several articles about crime, criminal purposes, and the development of criminal law theory used as an analytical knife in this study, although in some previous studies it was not aimed at a specific criminal act, as in this study.

Some of these studies are research by Detania Faridawati and Sudarti, in 2021, with the title "Community Knowledge about the Impact of Burning on the Environment of Jember Regency", which discusses the level of knowledge of the people of Tegalwangi Village, Jember Regency, East Java Province, Indonesia, regarding the impact of waste burning on environmental pollution. Research by Muchammad Zamzami Elamin, Kartika Nuril Ilmi, Tsimaratut Tahrirah, Yudhi Ahmad Zarnuzi, Yanuar Citra Suci, Dwi Ragil Rahmawati, Rizky Kusumawardhani, Dimas Mahendra Dwi P, Rizqi Azizir Rohmawati, Pandhu Aji Bhagaskoro, and Ismi Fuatjia Nasifa, with the title "Analysis of Waste Management in the Community of Disanah Village, Sreseh District, Sampang Regency", in 2018, which discussed the waste management system in the village.

Research by Nurhenu Karuniastuti, entitled "The Dangers of Plastic to Health and the Environment", in 2013, which discusses the main types of plastics, the dangers of toxins from the use of plastics, the dangers of plastic and plastic waste to health and the environment, how to use plastics, and the correct handling of plastic waste. Research by Jatmiko Wahyudi (2019), entitled "Greenhouse Gas Emissions from Open Combustion of Household Waste Using the IPCC Model", in 2019, which discusses the calculation and comparison of greenhouse gas emissions from the burning of residential waste in Pati Regency, Central Java Province, Indonesia, with a method developed by the *Intergovernmental Panel on Climate Change* (IPCC), which uses 2 (two) different levels of precision, namely Tier 1 and Tier 2. Research by Joflius Dobiki, entitled "Analysis of the Availability of Waste Infrastructure on Kumo Island and Kakara Island in North Halmahera Regency", in 2018, which discusses the analysis of the condition and availability of waste infrastructure on two islands in North Maluku Province, Indonesia.

Research by Marcus Priyo Gunarto, titled "Criminal Goal-Oriented Attitude of Criminalization", in 2009, which discusses the benefits of punishment for convicts from the perspective of criminal objectives in the Indonesian criminal justice system. Research by Noveria Devy Irmawati and Barda Nawawi Arief, with the title "The Urgency of Criminal Objectives and Guidelines in the Context of Reforming the Criminal Law Criminal System, in 2021, which discusses the urgency of formulating or

formulating criminal objectives and guidelines in the Criminal Code (KUHP), as well as its analysis based on the reform of the criminal system for the future.

Research by Usman, entitled "Analysis of the Development of Criminal Law Theory", in 2011, which discusses the theoretical function of criminal law theory in the current context and the theoretical basis of the most appropriate criminal law theory to justify the use of crime today. Research by Zaini, titled "A Conceptual Review of Crime and Punishment", in 2019, which essentially discusses criminal theories. Based on the titles, problems, and discussions raised in some of the previous studies, it can be concluded that this research is different so it is important and interesting to discuss.

2. Materials and Methods

This research is a normative research, with a legislative approach and a theoretical approach. The legislative approach is basically carried out by reviewing all relevant laws and regulations in line with the problem being studied. This approach mainly uses primary legal materials in the form of laws and regulations as a basic reference in conducting research. This legislative approach is used to research laws and regulations that still have shortcomings and weaknesses in normation or there are still irregularities in practices at the technical level of their implementation in the field. Therefore, the materials used in this study are primary legal materials in the form of the 1945 NRI Law, Law 32/2009, Law 36/2009, Law 18/2008, Regional Regulation 9/2013 Kubu Raya, and several other related laws and regulations.

In addition, in the layering of legal science, legal theory, which is a meta-theory of legal dogmatics, makes legal dogmatics as the object of study. Research on the validity of a legal norm or rule, in addition to examining the legal principles that underlie it, can also examine the legal theories that underlie it. Therefore, in addition to primary legal materials, the materials used in this study are also in the form of secondary legal materials, namely books and scientific journals related to the problems and theories used to study the problems raised in this study, namely relative theory as a criminal purpose.

3. Result and Discussion

Dangerous Impact of Waste Burning

There are various adverse effects or negative impacts of waste burning, such as the danger of burning plastic waste to the environment, which can result in air pollution and contaminate the earth's atmosphere due to the release of toxic chemicals. According to previous studies, the consequences of burning waste tend to have negative effects rather than positive sides, for example, most Indonesians still consider burning waste to be a natural act as the cheapest, easiest, and simplest effort to clean up the environment, especially if there are no adequate waste disposal facilities in the area. In addition to its impact on the environment, waste burning smoke also has an impact on health because the gas produced contains various types of harmful substances, such as carbon monoxide and carbon dioxide which can attack the lungs so that it can cause acute respiratory infections (ISPA) (Faridawati & Sudarti, 2021).

In general, the indiscriminate burning of garbage is carried out by many people in open spaces, so that the smoke is easily inhaled freely by anyone around it. The smoke can cause breathing difficulties for the inhaler, especially if done in densely populated areas, and does not have good air circulation. In addition, particles in the form of fine dust produced from the waste burning process can cause irritation to the eyes and shorten the field of vision. If you are exposed to or do these activities too often, the potential for cancer or heart disease will increase, due to the entry of small particles and other harmful substances into the lungs. If waste burning is carried out continuously, especially by mixing all kinds of waste, in an open and easily accessible place for many people, especially vulnerable people, such as the elderly and children, it can be imagined how bad the effects can be that can damage the health and the local environment (Bahraini, 2022).

According to the Environmental Protection Agency (EPA), smoke from burning waste can release toxic substances into the air such as nitrogen oxides, carbon monoxide, and pollution particles. These toxic substances can have adverse effects on health such as irritation, respiratory disorders, reproductive system disorders, cancer, and even death (Faridawati & Sudarti, 2021). In addition to causing air pollution and health problems, waste burning also causes the ozone layer to be closed so that it can trigger global warming.

According to the International Cryosphere Climate Initiative, burning waste in open land contributes greatly to climate change, both regionally and globally. This is due to the production of CO₂ gas, methane, as well as black carbon compounds. These tiny particles can increase heat (Bahraini, 2022). Waste burning causes greenhouse gas emissions and air pollution due to various types of harmful compounds produced from open burning of waste, such as CO, CO₂, CH₄, NO_x, SO₂, *Volatile Organic Compound* (VOC) compounds, *Particulate Matter*_{2.5} (PM_{2.5}), and PM₁₀. The greenhouse gases that cause global warming are CH₄, CO₂, and N₂₀ (Wahyudi, 2019).

In addition, garbage burning activities can also trigger fires if carried out in open areas close to dry bushes or residential areas. Pollution produced by waste burning also not only has an impact on poor air quality, but also pollutes water and soil. The impact of waste burning can cause water pollution caused by particles that enter the soil, resulting in a decrease in groundwater quality (Bahraini, 2022). In addition to residential environments, garbage burning activities by Indonesian people are also often carried out on the roadsides, so that they are not only disturbing, but very dangerous for traffic activities of road users and local residents, such as what happened in Tegalwangi Village, Jember Regency, East Java Province, according to previous research and which often occurs also in Sungai Raya Village, Kubu Raya Regency, West Kalimantan Province, in this research.



Figure 2. Burning of Waste on the Roadside of Sungai Raya Dalam Village

Source: Piramitha Angelina, November 2023 (Personal Documents)



Figure 3 Burning of Waste on the Roadside of Sungai Raya Dalam Village

Source: Piramitha Angelina, November 2023 (Personal Documents)

Criminal Sanctions for Waste Incinerators in Kubu Raya Regency

Laws and regulations, including Regional Regulations, are legal norms or positive laws that should not only be used as a display for mere legal formalities, but are actually enforced or enforced, so that they are obeyed by the community so that the purpose of their formation can be achieved and the benefits of their existence can be felt by the local community. Juridically, a Regional Regulation is made to meet the demands of the constitution and is mandated by several laws and regulations related to issues that are regulated and adjusted to the conditions of their respective regions, such as Regional Regulation 9/2013 Kubu Raya which is mandated by Article 18 paragraph (6) of the 1945

Constitution of the Republic of Indonesia, and several laws and regulations such as Law 18/2008, Law 32/2009, Law 36/2009, Government Regulation Number 81 of 2012 concerning the Management of Household Waste and Similar Waste Household Waste (PP 81/2012), Regulation of the Minister of Home Affairs Number 33 of 2010 (Permendagri 33/2010) concerning Waste Management Guidelines, and others.

According to Article 9 paragraph (1) of Law 18/2008, one of the authorities of the district or city government is to establish waste management policies and strategies based on national and provincial policies. On the basis of this law, the Kubu Raya Government made and enforced a Regional Regulation on Waste Management, even including sanctions in the form of criminal penalties for everyone who commits acts that are even specifically prohibited in terms of waste management. Although Law 18/2008 also includes sanctions in the form of criminal penalties, as regulated from Article 39 to Article 43, the criminal sanctions are specifically for waste managers and only for everyone, if they commit acts that unlawfully enter and/or import waste into Indonesian territory.

In the consideration section of Regional Regulation 9/2013 Kubu Raya, it was explained that the development of community needs and the growth of the population have an impact on the increasing diversity and increase in the amount, type, and characteristics of waste in Kubu Raya Regency. On the other hand, as according to Law 18/2008 and even today, waste management is still not in accordance with environmentally sound waste management methods and techniques. The increasing amount of waste must be managed by paying attention to the principles of environmentally friendly development, involving the participation of the community and the business world, carried out in a proportional, effective, efficient, comprehensive, and integrated manner, and starting from the upstream of the problem to the downstream, so that it does not have a negative impact on public health and the environment.

In the general part of the explanation of Regional Regulation 9/2013 Kubu Raya also states that the increase in the population of Kubu Raya Regency has an impact on increasing the amount of waste. People's consumption patterns also contribute to the increasing variety of types of waste, including packaging waste that is dangerous and difficult to decompose by natural processes. It takes a long period of time for the waste pile to decompose through natural processes, and it takes a lot of money to handle it professionally. So far, the majority of people still view waste as useless waste goods, not as a resource that can be used. Waste management by the community still relies on the final approach, namely waste is collected, transported, and disposed of at the final waste processing site.

Regional Regulation 9/2013 Kubu Raya has listed prohibited acts in terms of waste management, as stipulated in Article 67 which states that:

“Any person/entity is prohibited:

- a. Putting waste into the territory of the region;
- b. importing waste;
- c. mixing garbage with waste of hazardous and toxic materials;
- d. managing waste that causes pollution and/or environmental destruction;
- e. dispose of garbage not in the designated and prepared place;
- f. carry out waste handling with an open disposal system at the final processing site; and/or

g. burning waste that is not in accordance with the technical requirements of waste management.”

If these prohibited acts are committed, there are consequences in the form of criminal sanctions, including for the perpetrators of burning garbage, as regulated in Article 71, with the threat of punishment in the form of imprisonment for a maximum of 6 months or a maximum penalty of Rp. 50,000,000. This shows that the behavior of burning waste is a criminal act in the form of a violation. This act is considered serious so it is prohibited by law because it has a bad impact on society and the environment.

Juridically and sociologically, Regional Regulation 9/2013 was formed by the Regional People's Representative Council (DPRD) together with the Regent of Kubu Raya Regency, with consideration to discipline the community in terms of waste management, considering that according to the results of observations, the behavior of burning garbage has become a habit of the majority of Kubu Raya residents. Even though there have been criminal sanctions, there are still many residents who burn waste carelessly or do not comply with the technical requirements of waste management due to neglect or ignorance of dangers, ignorance of sanctions, and disregard of the law because criminal sanctions have never been enforced for violators.

Legal products in the form of Regional Regulations should be able to function as a tool for conflict resolution, for example, if there are people who feel aggrieved by the behavior of the waste burning perpetrators, they can report to law enforcement officials to be resolved legally. As a social control tool, the regional regulation can be used as a tool to control the behavior of the residents of Kubu Raya so that they do not burn garbage. As a social engineering tool, its function is to change people's bad habits so that they become more aware of how important it is to manage waste correctly, without burning, so that it does not pose a danger to health and the environment. The inclusion of criminal sanctions at the level of legal substance is not enough. Therefore, in order for the law to function as it should, according to the theory of relative as a criminal purpose, it is necessary to realize the enforcement of criminal law expressly in the form of imposing criminal sanctions for the perpetrators of waste burning in Kubu Raya Regency.

Relative Theory as a Criminalization of Waste Burning Crime

According to Pompe, criminal law is all legal regulations that determine what acts should be criminalized and what types of crimes are (Wahyuni, 2017). Suringa stated that criminal law is a number of legal regulations that contain prohibitions, orders, or imperatives that are threatened with criminal sanctions for those who do so (Hamzah, 1991). Eddy O.S. Hiariej (2016) Certifies that:

“Criminal law is the legal rule of a sovereign country, containing prohibited acts or ordered acts, accompanied by criminal sanctions for those who violate or do not comply, when and in what cases the criminal sanctions are imposed and how the state imposes the criminal punishment.”

Referring to several definitions of criminal law according to these experts, criminal law can be concluded as a law that regulates and stipulates acts as criminal acts, in addition to also regulating and stipulating procedures or procedures for enforcing criminal sanctions against perpetrators.

The Indonesian Criminal Code (KUHP) is a derivative of the Dutch *Wetboek van Strafrecht* (WvS). which uses the Dutch term *Het Strafbbaar Feit* (Lisi, 2020). Vos stated that *Het Strafbbaar Feit* is

a human behavior prohibited by law and is criminally threatened” (Amin, 1971). Het Strafbbaar Feit in English is called criminal act, in Latin it is called *actus reus*, while in Indonesian, by experts, Het Strafbbaar Feit is translated into various terms, namely criminal acts, delicacies, and even in Indonesian laws and regulations often use the term criminal act (Simamora, 2008). Satochid is one of the experts who advocates the use of the term criminal act because the term criminal act includes the meaning of the act of doing and/or the meaning of not doing, not doing, not doing an act (Lisi, 2020). This study uses the term criminal act and refers to this explanation, it can be concluded that a criminal act is a reprehensible act or act that is prohibited by criminal law and when violated there are consequences of sanctions in the form of criminals.

In order for criminal law to function as it should, it is necessary to impose criminal sanctions that can be *primum remidium*. As a firm tool, it is hoped that the inclusion and enforcement of criminal sanctions can prevent and make people aware of those who intend or have even committed these criminal acts. The term criminal is a more specific term, which indicates sanctions in criminal law. Criminal is a concept in the field of criminal law that still needs further explanation to be understood its meaning and essence. According to Roeslan Saleh, crime is a reaction to the offense and this is in the form of a crime that the state deliberately inflicts on the perpetrator of the offense (Usman, 2011). According to Muladi and Barda Nawawi, the penalty is essentially an imposition of suffering or sorrow or other unpleasant consequences, the penalty is given deliberately by a person or entity that has power and authority, and the penalty is imposed on a person who has committed a criminal act according to the law (Usman, 2011).

According to the provisions of Article 10 of the Criminal Code, there are two types of crimes, namely principal crimes and additional crimes. The main crimes include the death penalty, imprisonment, imprisonment, fine, and cover-up. Additional crimes include the revocation of certain rights, the confiscation of certain objects, and the announcement of the judge's decision. Based on Article 238 paragraph (2) of Law Number 23 of 2014 concerning Regional Government (Law 23/2014), criminal acts, as well as their criminal sanctions, in addition to being regulated by the criminal law in codification or the Criminal Code, can also be regulated outside the Criminal Code, such as in regional regulations, with certain limitations, such as only being allowed to include criminal sanctions in the form of imprisonment for a maximum of 6 months and a maximum fine of Rp. 50,000,000. In the context of the crime of violation (*wetsdelicten*) in the form of burning garbage, Article 71 of Regional Regulation 9/2013 Kubu Raya has imposed the threat of the most severe punishment according to Law 23/2014, in the form of imprisonment for a maximum of 6 months or a maximum penalty of Rp. 50,000,000 so that the residents of Kubu Raya do not intend and repeat the act.

Criminal law is one of the sub-systems of law that has two functions, namely general functions and special functions. The general function of criminal law is to maintain public order. The special function of criminal law is to protect the legal interests of individuals, society, and the state (Hiariej, 2016). Based on these two functions, the function of the criminal law enforced in Regional Regulation 9/2013 Kubu Raya is to order the community in terms of waste management and protect the residents of Kubu Raya from the harmful impact of improper and wrong waste management, especially such as waste burning activities. The inclusion of criminal provisions at the level of *the*

watershed alone is not enough to realize the function of criminal law. These criminal provisions should also be enforced at the level of *the watershed*, through the punishment of the perpetrators.

Punishment can be interpreted into two stages, namely the stage of determining sanctions and also the stage of granting sanctions in criminal law (Zaini, 2019). Criminalization at the stage of giving sanctions should also be carried out strictly by law enforcement officials against the perpetrators of waste burning in Kubu Raya Regency. Criminalization is a process or way to impose punishment or sanctions on people who have committed criminal acts, both crimes (*rechtsdelicten*) and violations (*wetsdelicten*) (Zaini, 2019). According to E. Utrecht, the party with authority in criminal punishment is the state through the tools of the state. The instruments of the state impose criminals because the state controls the law so that the state has the right to criminalize. The right to punish is the right of the state, only those who have the right to rule can impose and enforce their will (Zaini, 2019). The state apparatus in question includes all law enforcement institutions or apparatus that are authorized by the state in accordance with the criminal procedure law in Indonesia.

It should be emphasized again that the purpose of criminalization carries out the supporting function of the criminal law function in general, namely the realization of welfare and protection of the community (*social defence* and *social welfare*) as the ultimate goal, which is oriented towards the goal of community protection to achieve social welfare (Irmawanti & Arief, 2021). The Criminal Code as the main source of Indonesian criminal law and laws and regulations outside the Criminal Code do not have clear and complete written arrangements regarding the purpose and guidelines of the Criminal Code (Irmawanti & Arief, 2021). Therefore, in practice, the purpose of punishment still refers to various doctrines or teachings of experts on theories of the purpose of punishment.

According to Eddy O.S Hiariej, if the classical, modern, and neo-classical schools of criminal law are the basis for criminal purposes, then broadly speaking, criminal objectives are divided into three, namely absolute theory, relative theory, and combined theory, as well as several other contemporary theories (Hiariej, 2016). Meanwhile, according to Herbert L. Packer, there are 2 conceptual views related to the purpose of punishment which each has different moral implications from each other, namely absolute or retributive theory and relative theory or utilitarian (Irmawanti & Arief, 2021). This research chooses to use relative theory as the purpose of criminalization to study and discuss the problems raised because it emphasizes more on efforts to prevent, awareness, and change the behavioral habits of people who are still burning waste in Kubu Raya Regency.

Karl O. Christiansen explained several characteristics of relative theory, namely that the purpose of crime is prevention, prevention is not the ultimate goal but only as a means to achieve a higher goal, namely the welfare of the community, only violations of the law that can be blamed on the perpetrators are qualified (intentionality or forgetfulness) for the imposition of a penalty, the crime must be determined based on its purpose, namely as a tool for prevention crime, criminal forward-looking, criminal can contain elements of reproach, but both elements of reproach and retaliation are unacceptable if they do not help prevent crime for the benefit of the welfare of the community (Anugrah, 2019). The theory of relativity is also referred to as the theory of relations or the theory of ends that arise as a reaction to absolute or retributive theories that are solely for retribution.

Muladi and Barda Nawawi Arief explained that crime is not solely to take revenge or reward people who have committed a criminal act, but has certain useful purposes. Therefore, this theory is also often called the purpose theory or *utilitarian theory* because the basis for justifying the existence of crime according to this theory lies in its purpose, that is, the punishment is imposed not *quia peccatum est* or because people commit crimes, but *nepeccetur* or so that people do not commit crimes (Usman, 2011).

According to Jeremy Bentham, humans who have common sense will choose pleasure and avoid hardship. Therefore, the penalty must be fixed on each crime in such a way, so that the distress will be heavier than the pleasure caused by the crime (Usman, 2011). The purpose of the crime is to prevent all violations, prevent the most heinous offenses, suppress crime, and minimize losses or costs (Muladi & Arief, 1992). This theory divides criminal purposes into two, namely general prevention and special prevention. Regarding the general and special precautions, Utrecht explained that the general precaution aims to prevent people in general from violating, while the special precaution aims to prevent the perpetrator or *dader* from committing another offense (E. Utrecht, 1958).

General prevention or general prevention, namely to prevent the occurrence of crimes, Von Feuerbach called it the term *psychologischezwang* theory or psychological coercion, meaning that the punishment imposed on the person who commits the crime will give fear to others so that they do not do evil. Therefore, Von Feuerbach believed that the criminal sanctions threatened against prohibited acts should be written in the law, thus discouraging people from committing crimes (Hiariej, 2016). According to Th. W. Van Veen, there are 3 general preventive functions in relative theory, namely maintaining or enforcing the authority of the ruler, maintaining or enforcing legal norms, and underlining the view that certain acts are considered immoral so they are prohibited (Hiariej, 2016). Special prevention in relative theory is aimed at the perpetrators of crimes who have been criminalized so that they no longer repeat their actions. According to Van Hamel and Frank Von Liszt, crime aims to scare, correct, or eliminate, if not correct (Hiariej, 2016).

This research also uses relative theory because it is in line with the purpose of criminalization, as formulated in Law Number 1 of 2023 concerning the Criminal Code (KUHP) which is the embodiment of the ideals of reforming Indonesia's criminal law. The purpose of criminalization according to *the a quo* law is to prevent the occurrence of criminal acts, by enforcing legal norms for the protection and protection of the community, socializing convicts by providing coaching and guidance to become good and useful people, resolving conflicts caused by criminal acts, restoring balance, and bringing a sense of security and peace in society, and fostering a sense of settlement and liberation guilt in the convict.

Law Number 1/2023 even emphasizes that criminalization is not intended to harm and degrade human dignity. Based on the explanation of the relative theory, the inclusion of criminal provisions that contain criminal sanctions for waste incinerators should not only be used as a legal formality, but need to be socialized and strictly enforced by authorized law enforcement institutions and officials, so that general prevention can be carried out, namely preventing everyone from committing criminal violations (*wetsdelicten*) of the The enforcement of criminal sanctions for the perpetrators of waste burning will also have a deterrent effect, so that the perpetrators no longer repeat their actions, as according to special provisions in relative theory as a criminal purpose.

4. Conclusion

The results of this study explain that according to the relative theory of criminality, there are two reasons for the urgency of enforcing criminal sanctions against the perpetrators of waste burning, namely preventing every person or the general public from burning waste in Kubu Raya Regency and preventing everyone, especially those who have been convicted, from repeating their actions. Thus, Regional Regulation 9/2013 Kubu Raya will be able to be more optimally obeyed, so that the good intentions and objectives of the regional regulations can be realized and felt in real terms. *Salus populi suprema lex esto* means that the safety of the people is the highest law. Therefore, Regional Regulation 9/2013 Kubu Raya is expected to be an effective tool to save or protect public health, as well as maintain environmental sustainability.

This study recommends to the Kubu Raya Regency Government to socialize the Kubu Raya Regional Regulation 9/2013 optimally, including the background in the form of the danger of burning waste for health and the environment, as well as the criminal sanctions listed. Law enforcement agencies, especially the Pamong Praja Police Unit and the local police, are expected to take firm action against the perpetrators of waste burning in Kubu Raya Regency. The people of Kubu Raya are also expected to be a community that obeys the local regulations, so that they have good legal awareness and culture..

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