

ANALYSIS OF CHANGES IN ENVIRONMENTAL LAW AFTER THE ENACTMENT OF THE JOB CREATION LAW

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Received 25 May 2023 • Revised 30 May 2023 • Accepted 30 May 2023

Abstract

Indonesia is a country full of natural resources, which are of extraordinary value in terms of ecology and social. Only, this is not accompanied by regulatory arrangements that are principled in sustainable development goals. The government is an institution that is obliged to ensure that the development is being carried out, although should be profitable in investment terms, must still ensure the preservation of nature. It is just that, because there are so many articles (over capacity) in the act that overlap (overlapping) each other, the government is stuck in a condition to simplify its regulations without paying attention to the preservation side of the environment. This is, evidenced by the use of omnibus law, which is a system of simplifying regulations by revising, changing or deleting articles that are considered inefficient. One of the impacts of this method implementation is the change in the Environmental Protection and Management Law, which is changed into the Job Creation Law, which then revoked by Government Regulation in Lieu of Law Number 2 Year 2022. This law is alleged to have an impact on preservation of the environment due to the loss of the essence of the Environmental Protection and Management Law document importance. Thus, this study focuses on looking at changes in these articles and their impact using the descriptive method of analysis, by discussing existing articles as a basis. The results of this study show that the change of the Environmental Protection and Management Law into the Job Creation Law, which then revoked by Government Regulation in Lieu of Law Number 2 Year 2022, has an impact on Environmental Regulations, Environmental Permits, as well as the preparation of Environmental Protection and Management Law and the provision of environmental impact assessments information to the public.

Keywords: Environmental Impact Analysis, Government Regulation in Lieu of Law, Environment Regulation

INTRODUCTION

Indonesia is one of many countries rich in natural resources. This natural resource has rich values in terms of sociological and economy. Because it has more value economically, this natural resource is managed in such a way to bring benefits to the surrounding community, as well as attract investment from the outside. However, excessive and unsupervised development will certainly have an impact that is unwelcomed by the community or the government, because the environment can be damaged and cannot be preserved anymore. Therefore, instruments are made with the task to protect the environment and ensure the sustainability of the existing ecosystems, which in Indonesia are known as environmental regulations. Environmental regulation has a very important role in people's lives, especially to minimize the negative impact of development on the environment, which will also have an impact on future generations (the community itself). To protect the environment from the negative impacts of development, the government becomes that one institution which role is making solutive policies, and providing a scheme to overcome development risks itself. In the process of development, the government strives to implement the Sustainable Development Goals (SDG) within the frame of sustainable development. There are four dimension which become the main focus on this development framework: economy, social, environment and institution (Setianingtias, 2019). Although development is often seen only from the positive side (income and welfare), in fact its sustainability brings more needed benefits, because a healthy environment (including a healthy society) is a more comprehensive element of welfare.

Development, which indeed economically provides benefits for the state, is also exploitative to the environment. A report from WALHI (Wahana Lingkungan Hidup Indonesia) East Java stated that as many as 70,000 hectares (Ha) of forest are damaged during 2014-2017, and deforestation in this region reached 30 percent (Hardiyanti & Aminah, 2019). This deforestation is triggered by several causes, which some are the forest fires and illegal logging (Andhini & Arifin, 2019). There is also a deforestation case in Ponorogo caused by a forest conversion which converted hills to farms. This conversion causes several main damages, such as the landslide, insufficient clean water, reforestation and the loss of land-use characteristic (Dinda Riskanita, 2019).

After all, on the other hand, this is done as an effort to achieve certain goals and one of them is investment. As a regulation, the Environmental Protection and Management Law actually guarantees the fulfillment of human rights which include the Indonesian people right to have a good and healthy living environment. In fact, ensuring the sustainability of the ideal environment is a "state responsibility" which one is ensuring the environmental benefits for the welfare and quality of life of the present generation to the future; healthy living environment, to preventive efforts from environmental damage due to environmental exploitation. In this guarantee, the principle of "state responsibility" states that there is a principle of justice between generations, where development (positive exploitation) must ensure availability for current and future generations. Moreover, the government actually has the option to implement good environmental governance, namely "good governance, which cares about the sustainability of the environment" (Purniawati et al., 2020).

In this concept, the ideal government is mentioned as a system of government that pays attention to the reciprocal aspects between social and ecological, since a good government reflects good environmental arrangement and vice versa. In practice, there are obstacles to achieve a balance between environmental regulation and the economic welfare of the community, considering that these two s have different goals. On one hand, the existence of environmental regulations provides a legal basis for the government and society to utilize natural resources for profit without causing damage to nature. It is just that, on the other hand, the utilization of natural resources certainly brings great damages, and one of them is the destruction of nature. This backfired in itself, considering that the use of existing natural resources (Natural Resources) may be qualified for the needs of this generation, but is doubtedly able to pass on the same quality (healthy and sufficient) natural resources to the next generation.

Thus, the government formulated rules that are able to become the legal basis for the construction. The government has also made such efforts to improve the investment and economic growth (SUDARWANTO and Kharisma 2020). In its arrangement draft, this law contains three clusters, namely: the Job Creation Law (UU CK), the Taxation Bill and the Community Empowerment Bill (Prabowo et al., 2020). The Job Creation Law is one of the most highlighted, as it becomes the basis that protects the environment. Recently, this law is revoked by the Government Regulation in Lieu of Law No. 2 Year 2022 (*Peraturan Pemerintah Pengganti Undang-Undang Republik Indonesia Nomor 2 Tahun 2022 Tentang Cipta Kerja*, n.d.). Because of its urgency, this law cannot be separated from the public's attention. However, because this law implements omnibus law in its application, which is a method by changing, deleting and revising 79 laws, this law faces protests from the public. One of the protests criticise the substance of the material since this law affects negatively for the environment.

Actually, in its application, this method is already applied in some countries such as Belgium, the United States, the United Kingdom and Canada. This method is used based on the assumption that this method is efficient in simplifying over-regulations (many rules) and overlapping regulations (Mayasari, 2020). Regulatory reform is actually needed because it can minimize obstacles to competitiveness, and ensure market openness as widely as possible while also targeting social welfare for the wider community. The previous research done (Mayasari, 2020) also presents that the Omnibus Law implementation is essential to be implemented for its efficiency in gathering several acts into one.

Simply put, omnibus law seeks efficiency in three ways: abolishing crisscrossing regulations, simplifying repeal and alteration mechanisms, and eliminating sectoral egos in these regulations. Furthermore, there are eleven policy areas in this bill that include the areas of simplification of licensing; areas of investment requirements; the field of employment; the field of convenience, empowerment, and protection for MSMEs and Cooperatives; areas of research and innovation support; field of government administration; areas of application of sanctions; land and related fields; the field of government investment and national strategic acceleration; and the field of economic zones. Although it received many rejections and even controversies, finally this bill became valid through the plenary meeting of the parliament on October 5, 2020, becoming Law No. 11 of 2020 concerning Job Creation. However, the Job Creation Law became a new problem because of the implementation of omnibus law and this became even more complicated after the Constitutional Court issued Decision Number 91/PUU-XVIII/2020 (Chamdani et al., 2022). After the Constitutional Court Decision, the Job Creation Law has a conditionally unconstitutional status.

One form of change that has an impact on the application of this method is a new regulation related to business licensing as well as the abolition, revocation and revision of several articles listed in Law No. 32 of 2009 concerning Environmental Protection and Management Law. Changes in these provisions and implications also have an impact on EIA (environmental impact analysis). EIA is one of the important factors in the development and exploitation of the environment, considering that a study must be carried out to consider environmental feasibility as a consideration in making decisions before business operators or entities get business permits or environmental approvals. Moreover, in the implementation, it must be based on legal norms that answer the sustainable development goals. The essence of sustainable development is "to achieve economic growth, the government increases the intensity of the implementation of inclusive and sustainable development, with more attention to environmental aspects" (SUDARWANTO & Kharisma, 2020). In addition, ideally, public awareness and international law should be used as basis in policy making with environmental insights. Apart from the pros and cons of the Job Creation Law, the government only has only three (3) months to complete it because this PP is expected to provide protection in environmental management and development that ensures the sustainability between generations.

RESEARCH METHOD

The issuance of Job Creation Law and its derivatives that specifically regulate the implementation of environmental permits has an impact on the Environmental Protection and Management Law. In general, the Job Creation Law has a negative impact because it is considered to weaken the right of the public to access information, justice and participation. In its amendment, the Job Creation Law replaces Article 26 paragraph (2) of The Environmental Protection and Management Law which states that the community has the right to be involved in activities carried out by business actors. These business actors or activities have the obligation to provide open and complete information before their business is being operated. This regulation, although considered very accommodating to the common interest, was removed by the Job Creation Law which had an impact on the lack of information/lack of involvement expected by the surrounding community. In addition, there is also a significant change in this regulation, namely in the amendment of the provisions of Article 39. Before the amendment, article 39 of the Environmental Protection and Management Law stated that the application for an environmental permit and its announcement must be easily accessible to the public. However, in the Job Creation Law, this was changed to an electronic system or the means regulated by the Central Government. In addition to the articles above, the process of preparing Law No. 11 of 2020 concerning Job Creation also experienced rejection and triggered new problems.

This research uses the normatif legal research method, where the published material becomes a reference in legal research. This method is used to find the basis, principles and doctrines of law as an effort to overcome legal issues that are the focus of research (Soekanto & Mamudji, 2009). The data collected and processed is secondary data from existing literature. In this research method, data is processed to find information as well as theoretical and legal foundations (Ibrahim, 2018). The legal material that is secondary to this study is literature that deals with research problems. Additional materials (tertiary) come from newspapers, legal dictionaries, the Internet and the KBBI (Bahasa

Indonesia Dictionary). To process the above data, a conceptual approach and a statutory approach are used. Furthermore, the data is also processed to provide descriptive research results, so that the descriptive analysis method is used to observe the form of construction used by the government regarding environmental protection and management after the passing of Law No. 11 of 2022 which discusses job creation and analysis of sustainability principles, as an effort to prevent environmental damage and pollution in this Job Creation Law.

RESULT AND DISCUSSION

With the issuance of the Job Creation Law, there is a perceived impact due to changes in legal construction that directly regulate environmental permits, especially in business activities. This change has certainly received critics by the public, because the impact of the abolition and revision of the Environmental Protection and Management Law can be felt directly. Here are some of the changes in the Environmental Protection and Management Law into the Job Creation Law highlighted by the public:

Changes in Environmental Regulations after the Passing of the Job Creation Law

Sustainable development is one desired development by countries, especially developing countries. This expected development, has both economic goals and objectives in a long-term perspective. Actually, Indonesia already has a basis for sustainable development, as stated in Law No. 32 of 2009, concerning Environmental Protection and Management Law. This law is considered ideal for promoting sustainable development because it combines environmental elements economically. At the very least, there are four strategic steps in supporting sustainable development: spatial planning, environmental standards planning, application of environmental impact analysis (EIA), and rehabilitation of damage (SUDARWANTO & Kharisma, 2020).

After the issuance of the Job Creation Law (which is then revoked by the Government Regulation in Lieu of Law No. 2 Year 2022), environmental permits were simplified by eliminating EIA. In fact, Government Regulation No. 24 of 2018 concerning Electronically Integrated Business Licensing Services also states that the environmental permits can be granted based on the commitment, which means permit can be granted first by including complementary documents later.

Furthermore, there are changes in regulations stipulated through the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number: P.24 / MENLHK / SETJEN / KUM.1 / 7/2018 which writes that EIA is not required for businesses / activities that are in the RDTR (Detailed Spatial Plan) room. For sustainable development which function is to protect the environment, RDTR cannot replace the function of EIA because of its different implementation aims. EIA has a function to supervise so that development is principled sustainably and environmentally, then of course there is also a management function, prevention of pollution / damage / waste, as well as conflict management with society. On the other hand, RDTR only has a role in zoning regulations or area designations, so it does not regulate project details such as EIA. So, of course, this RDTR cannot be equalized, even aimed in replacing the EIA. The RDTR assigned to replace the EIA has several negative impacts, namely: (a) no party can be held accountable for environmental matters due to the absence of environmental documents (EIA, UPL-UKL), (b) Changing investment patterns, because business actors will look for a strategic location, even though the location is already locked by RTDR. Moreover, the abolition of the EIA reflects that the Job Creation Law only focuses in development in a short-term perspective, with no concern in sustaining the environment (Febriyanti et al., 2021). Emphasizing this, it can be concluded that the regulatory changes after the issuance of the Job Creation bring its own concerns, considering that the omnibus law is more constructed for exploitation, not protection, let alone conservation.

As a democracy country, Indonesia provides guarantees, protection and recognition for citizens to receive information, and one of them is about the environment. Because of democracy, the government is also obliged to ensure development that reflects the common will of all citizens at every level. In its implementation, this obligation can be carried out by providing access to information to the public, and the public can see elements of truth, accountability and transparency related to policies, preparation, and implementation. Thus, it should be concluded that, even in the process of preparing bill, the community needs to be involved, let alone its implementation.

Administratively, the government considers that the ratification of the Job Creation Law (which is then revoked by the Government Regulation in Lieu of Law No. 2 Year 2022) is necessary, given the number of policies and their nature that overlap. Thus, the Job Creation Law is considered a legal breakthrough that can streamline 80 laws and 1,200 articles at once with only one regulation as a tool. With the enactment of this law, of course, many sectors are impacted, one of which becomes the focus of this research, the environment. In the environmental sector, the Job Creation Law changes the system and scheme of permits for business development. Unfortunately, the design process did not

show a comprehensive study focused on preserving the environment. This conclusion is obtained by emphasizing on the purpose of issuing this Job Creation Law, as stated above: it is more constructed for exploitation, not protection/conservation.

Environmental Permits after the Ratification of the Job Creation Law

Directly, changes due to the Job Creation Law (now the Government Regulation in Lieu of Law No. 2 Year 2022) have two impacts: negative and positive impacts in the Environmental Protection and Management Law. The positive impact, of course, is related to the simplification of permits for business actors, so that bureaucratic complexity is no longer a problem and a barrier in business formation to investment. However, the ease of forming a profitable business for business actors brings a negative impact on the environment. One of the impacts is the change in the provisions of business activities which should include environmental approval regulated in Government Regulation Number 5 of 2021, only demanded for risk-based business. According to environmental activists in Indonesia, changes like this will cause a weakening in environmental management and protection, especially because EIA is only required for high-risk business activities. If this is done, then the worst scenario is the easiness in issuing environmental permits which is done without control from the surrounding community who feel the direct impact on their environment. Moreover, research (Sukananda & Nugraha, 2020) shows that the position of EIA is very important because it holds a function as an instrument for preventing environmental pollution that can show the quality of the environment through the mechanism of the document. Ideally, the change of environmental permits to environmental approvals in business activities is expected to become a strong regulatory basis as a prevention to environmental damage, because there are regulations that are functioned to manage and provide protection well.

As discussed above, business actors will receive many benefits due to the change of environmental permits to environmental approvals. It is just that, if it is seen from the legal side for the people, this will become detrimental. This is because if there is a problem or conflict, loose regulations cannot be used as the object of dispute in the State Administrative Court. It can also be clearly said that the simplification of environmental permits does attract tremendous investment, but also at the same time accelerates environmental damage. Moreover, it was also mentioned that only the affected communities were demanded to become EIA assessors. If this is the case, then the rights of the outside community as environmentalists, who can give their views more objectively, are also injured. In a nutshell, these changes limit community participation and access to vote in environmental due diligence. Of course, this is important, considering that the community affected by environmental damage usually receives compensation, but the damage that occurs greatly affects nature and the sustainability of the environment for future communities. Thus, contributions from the wider community are needed in preserving this environment.

If this system is indeed to be carried out, the government must strengthen risk-based permits in the Job Creation Law, especially for business actors whose business activities brings a great risk of destruction and environmental pollution. As we all know that the rules are one of the most important aspects so that the Job Creation Law can run as expected: the hope that the Job Creation Law succeeds in favor of the environment more than its partiality to investment. Thus, this can be seen from the implementing regulations that directly regulate the EIA testing mechanism and its risks, as well as providing the widest possible opportunity for the community to participate in its supervision.

Involvement in the Preparation of Environmental Impact Analysis and Provision of Information

In its preparation, there are several articles that have changed, especially regarding the right to environmental information which was originally contained in The Environmental Protection and Management Law Article 26 paragraph (2). In this article, it is stated that business actors must involve the public in the preparation of EIA documents by paying attention to the principle of providing complete, open, and transparent information. This article is then amended in the Job Creation Law (now the Government Regulation in Lieu of Law No. 2 Year 2022) which stated: paragraph (1) of the EIA document as referred in article 22 is prepared by the initiators; paragraph (2) the preparation of the EIA document is carried out by involving communities affected by business plans/activities; paragraph (3) further provisions regarding the community involvement process listed in paragraph (2) in a Government Regulation.

In practice, community control is indeed very necessary so that there is an involvement of a party who is pro-environment in the decision-making process and the implementation of environmental protection and management. Unfortunately, there are many cases reflecting that community participation in this supervision is very minimal and even non-existent as happened in the case of PT Semen Gresik in Central Java, PLTU PT Cirebon Energi Persada and the case of the process of preparing the renewal of the EIA for the opening of PT Freeport Indonesia's mine and tailings disposal

in Mimika Regency, Papua (Zulkarnain, 2020). Briefly, the Freeport case in Mimika illustrates the public's dissatisfaction with the socialization of EIA (which was occurred during Covid), and this made the surrounding community feel that the initiators concealing information that should have been known to residents of the surrounding mine. This proves that the provision of space for community participation in environmental conservation is still very minimal. Moreover, environmental pollution and its destruction run in line with the limited knowledge or information received by the community about changes in environmental conditions that will be faced by them as a result of business activities (Subagiyo, 2014).

Despite simplifying the environmental permit process, the interests in the Job Creation Law continue to be filled with concerns over partiality towards investment dominance actions that can accelerate environmental damage. A real case in the field that can be an example is the case of PT Semen Gresik Persero in Rembang. In this case, this company obtained its environmental permit even though it did not include the potential for damage/pollution. Although in the end the environmental permit was revoked due to a legal breakthrough taken by the judge, there was a violation of the norms of the Minister of Environment Regulation No. 17 Year 2012. In this case, it can be noted that local authorities should not only rely on EIA in issuing permits, but should also look at whether the purpose and the information given has worked according to its function. As an institution that should implement the Law, the Government should be more active in supervising the law implementation, because in practice, there are differences between the regions that implement this Act. For example, Karawang Regency includes environmental permits as environmental document that must be contained in SILH (environmental information system) while the regions others do not.

The ideal EIA document is a document that includes the impact of business activities on the environment, which can be a reference for the community to make suggestions, responses and opinions (known as SPT). This tax return will then be processed by the initiator, be handed over to the government for review, to assess whether this business activity deserves to get a permit or not. Even though it has been arranged in such way, there are still many cases of issuing environmental permits without SPT (suggestion responses and opinions). This reflects that even though regulations already exist, the government only views the SPT as a substantial document, as evidenced by the continued issuance of permits.

However, now the Environmental Protection and Management Law has been changed to the Job Creation Law, and this Job Creation Law removes the provision of EIA information (Article 26 paragraph (2)). In comparison, when the provision of EIA information is still a requirement, there are still many violations of providing information that are considered not optimal or seem to hide the actual risk. Then, when the Job Creation Law (now the Government Regulation in Lieu of Law No. 2 Year 2022) takes over, there is no article that can be used as a basis for recognizing the right to EIA information. Moreover, there is an overlapping change in the provision of information that was once direct (in any way to reach the widest possible provision of information), now turning into an electronics system. The electronic system used also overlaps between SILH and EIA.net so it will be a confusion for the public about which one should be used as a reference. This policy indirectly limits the role of society in preserving the environment. This limits the involvement of society, in all levels, in ensuring environmental sustainability as stipulated in the Environmental Protection and Management Law. Especially in obtaining and accessing the results of due diligence on environmental risks and impacts themselves.

Not only that, according to (Subagiyo, 2014), there are at least six things that must be considered in the provision of environmental information: the subject of the law (who is responsible in provision of information), principles of fulfilling access to information (principles that must be met in the provision of information), types of information, minimum standards (standards for carrying out obligations), grievance and dispute resolution mechanisms, and sanctions. So, based on the discussion above, to strengthen regulations at least, there must be three things considered: the involvement of EIA, the provision of medium and the basis of information systems and the provision of environmental information. So, in making regulations, the government should review the important functions of EIA and also supervise the process of providing information, so that sustainable development efforts can be done.

CONCLUSION

After the enactment of Law Number 11 of 2020 (now the Government Regulation in Lieu of Law No. 2 Year 2022), which is more familiar as the Job Creation Law, there were several changes that caused two impacts: positive impacts and negative impacts. The negative impact of this law change is the concept of risk-based environmental permits which states that the impact of environmental analysis (EIA) is only required for high-risk business activities. With this rule, it is feared that many business

activities will be able to apply for permits and obtain them without conducting a study of the impact of their business on the environment first. Then a lot of permits will be issued without examining the impact on the environment.

On the other hand, this change has a positive impact due to the streamlining of permits that facilitate business activities, which directly absorbs human resources and investment. This Job Creation Law also provides an opportunity for the surrounding community to be actively involved even since the EIA was carried out. Unfortunately, risk-based environmental permits are closely related to environmental pollution, given whether environmental impacts are really carefully studied while considering the sustainability of nature for the next generation. Thus, efforts to tighten the rules must be strictly implemented, so that the Job Creation Law (now the Government Regulation in Lieu of Law No. 2 Year 2022) is not seen as a rule that overshadows business actors and government investment interests only, but in practice also protects people's rights as well as environmental sustainability. When the rules made are accompanied by good supervision, business actors do not have loopholes to commit violations that carry risks to environmental sustainability. Of course, if this happens, then their permit documents will get a red report card or what is often known as negative risk based.

Ideally, environmental permits in the implementation of business activities, as stated in the Job Creation Law (now the Government Regulation in Lieu of Law No. 2 Year 2022), should be in line with the objectives and reasons for the formulation of changes. If these goals and reasons focus more on the interests of investment and business actors, then the environment will be one of several aspects that become victims. Especially if the permit is facilitated without strict supervision. Therefore, this law should be made in an integrated manner by applying aspects of sustainability, so that at one time, there is legal certainty that ensures the effectiveness of the bureaucracy and environmental sustainability. Environmental approval, which is one of the important aspects of conservation, must also be able to become a product of a State Administrative Decree, which in the event of a violation occurs, can be legally overturned by the State Administrative Court. To further strengthen the legal basis, the government also needs to add clear provisions that become a shield for the cancellation of the permit if at any time there are problems that arise.

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