

IMPACT OF CHANGES IN ENVIRONMENTAL LAWS AFTER THE IMPLEMENTATION OF THE JOB CREATION LAW

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Abstract

Indonesia is a country full of natural resources, of extraordinary value from an ecological and social standpoint. However, this is not accompanied by regulatory arrangements that have the principle of sustainable development (sustainable development goals). The government is an institution that is obliged to ensure that the development carried out, even though it is profitable in terms of investment, must still involve nature conservation. It's just that, because there are so many articles (over capacity) that overlap (over lapping), the government is trapped in a condition of simply simplifying its regulations without paying attention to environmental conservation. This is proven by the implementation of the omnibus law, namely a system of simplifying regulations by revising, changing or deleting articles that are considered inefficient. One of the impacts of this method is the change in the Environmental Protection and Management Law to the Job Creation Law which allegedly has an impact on environmental preservation due to the loss of the essence of the AMDAL document. Thus, this study focuses on looking at changes to these articles and their impact using a descriptive analysis method, by discussing the existing articles as a basis. The results of this study indicate that the change in the Environmental Protection and Management Law to the Job Creation Law has an impact on Environmental Regulations, Environmental Permits, as well as the preparation of an AMDAL and provision of information to the public.

Keywords: EIA, Perppu, Environmental Law.

INTRODUCTION

Indonesia is one of many countries that is rich in natural resources. In the development process carried out, the government is also trying to achieve Sustainable Development Goals (SDG) with the concept of sustainable development. There are four dimensions that are the focus in this development pattern: economic, social, environmental and institutional development¹. Although development in the environment is often seen as only having a positive side (income and welfare), actually its sustainability brings more needed benefits, because a healthy environment (including a healthy community) is a more comprehensive element of well-being.

Development, which from an economic perspective provides benefits for the country, is also exploitative of the environment. It was noted that the East Java WALHI (Indonesian Forum for the Environment) report stated that as many as 70,000 hectares (Ha) of forest showed damage during 2014-2017, and forest deforestation in this region reached 30 percent.² This damage was triggered by several reasons, some of which were forest fires and illegal logging³. There are also cases of environmental damage in Ponorogo due to the conversion of hilly land into plantations. This transition

¹ et al. Setianingtias, MODELING INDICATORS OF SUSTAINABLE DEVELOPMENT GOALS IN INDONESIA MODELING INDICATORS OF SUSTAINABLE DEVELOPMENT GOALS IN INDONESIA, 2019.

² Marzellina Hardiyanti and Aminah Aminah, "JURIDICAL REVIEW OF THE PRINCIPLES OF COMMUNITY EMPOWERMENT AND SUSTAINABLE DEVELOPMENT IN FOREST RESOURCE MANAGEMENT ON THE ISLAND OF JAVA," Environmental Law Development 4, no. 1 (2019).

³ Alycia Sandra Dina Andhini and Ridwan Arifin, "Analysis of Legal Protection Against Violence Against Children in Indonesia," Adjudication: Journal of Legal Studies 3, no. 1 (July 2, 2019): 41.

causes significant damage, such as landslides, lack of clean water, reforestation and loss of existing land characteristics.⁴

In this guarantee, the principle of "state responsibility" states that there is a principle of intergenerational justice, where development (positive exploitation) must guarantee availability for current and future generations. Moreover, the government actually has the option to implement good environmental governance, namely "good government, which cares about the survival and preservation of the environment"⁵with the principles of good management⁶.

So, the government formulates regulations that can become the legal basis for development. The government is also making efforts to improve the investment climate and economic growth⁷. In its draft formulation, this law contains three clusters, namely: the Job Creation Bill (Ciptaker), the Taxation Bill and the Community Empowerment Bill⁸. The CK Law is one of the most highlighted, because it is the legal basis for protecting the environment. So this law cannot escape public attention. It's just that, because this law implements the omnibus law (a method by amending, deleting and revising and amending 79 laws) in its application, this law has faced protests from the public. Although in the end this law was repealed by Government Regulation in Lieu of Law Number 2 of 2022⁹ which has been stipulated as Law Number 6 of 2023¹⁰. One of the protests from the public was that the substance of this law had the potential to be negative for the environment. In fact, in practice, this method has been implemented in various countries such as Belgium, the United States, England and Canada. This method was selected and implemented in these countries. This is based on the assumption that this method is efficient in overcoming the reality of over-regulation (many rules) and overlapping regulations.¹¹ Regulatory reform is actually needed because it can minimize obstacles to competitiveness and market openness as wide as possible and target social welfare for the wider community. Research result¹²previously indicated that the implementation of the Omnibus Law is important because it is able to make changes to several laws in one law.

Even though it received a lot of rejection and even controversy, this bill finally became legal through the DPR plenary session on October 5 2020, becoming Law no. 11 of 2020 concerning Job Creation has been revoked by Government Regulation in Lieu of Law Number 2 of 2022which has then been stipulated as Law Number 6 of 2023. However, the CK Law has become a new problem because its formulation method uses omnibus law and this has become even more complicated after the Constitutional Court issued Decision Number 91/PUU-XVIII/2020. After the Constitutional Court's decision, the CK Law had conditional unconstitutional status.

One form of change impacting from the application of this method is a new regulation regarding business licensing as well as the abolition, revocation and revision of several articles contained in

⁴ Dinda Riskanita, "REGIONAL GOVERNMENT EFFORTS TO OVERCOME DAMAGE CAUSED BY LAND FUNCTION TRANSFER BASED ON THE WELFARE STATE," *Journal of Legal Research* 28 (2019): 123–134.

⁵ Purniawati Purniawati, Nikmatul Kasana, and Rodiyah Rodiyah, "Good Environmental Governance in Indonesia (Perspective of Environmental Protection and Management)," *The Indonesian Journal of International Clinical Legal Education* 2, no. 1 (2020).

⁶ NHT Siahaan, *Environmental Law and Development Ecology* (Erlangga, 2004).

⁷ AL SENTOT SUDARWANTO and Dona Budi Kharisma, "OMNIBUS LAW AND ENVIRONMENTAL PERMITS IN THE CONTEXT OF SUSTAINABLE DEVELOPMENT," *Journal of Rechts Vinding: National Legal Development Media* 9, no. 1 (2020).

⁸ Adhi Setyo Prabowo, Andhika Nugraha Triputra, and Yoyok Junaidi, "The Legal Politics of Omnibus Law in Indonesia," *Pamator Journal* 13, no. 1 (2020).

⁹ *Government Regulation in Lieu of Law of the Republic of Indonesia Number 2 of 2022 concerning Job Creation*, nd

¹⁰ Republic of Indonesia, *LAW OF THE REPUBLIC OF INDONESIA NUMBER 6 OF 2023 REGARDING THE ESTABLISHMENT OF GOVERNMENT REGULATIONS IN LIEU OF LAW NUMBER 2 OF 2022 CONCERNING WORK CREATION INTO A LAW*, 2023.

¹¹ Ima Mayasari, "Regulatory Reform Policy Through the Implementation of Omnibus Law in Indonesia [Regulatory Reform Policy Through Implementation of Omnibus Law in Indonesia]," *Rechts Vinding Journal* 9, no. 1 (2020).

¹² *Ibid.*

Law no. 32 of 2009 concerning PPLH. These changes in provisions and implications also have an impact on AMDAL (Environmental Impact Analysis). Moreover, in implementing the environment, it must be based on legal norms that answer sustainable development goals (sustainable development needs). The essence of sustainable development is to "achieve quality economic growth, the government increases the intensity of implementing inclusive and sustainable development, with more attention to environmental aspects"¹³.

This regulation, even though it was considered to really accommodate common interests, was abolished by the CK Law which resulted in the absence of information/absence of involvement expected by the local community. Apart from that, there are also quite significant changes in this regulation, namely changes to the provisions of Article 39. Before the changes, Article 39 of the PPLH Law stated that applications for environmental permits and their announcements must be easily accessible to the public. However, in the CK Law, this was changed to an electronic system or methods regulated by the Central Government. Apart from the articles above, the process of drafting Law No. 11 of 2020 concerning Job Creation which has been revoked by Government Regulation in Lieu of Law Number 2 of 2022 which has then been stipulated as Law Number 6 of 2023 also experienced rejection and gave rise to new problems.

RESEARCH METHODOLOGY

This research uses normative legal research methods, where library materials become a reference in legal research. This method is used to find legal foundations, principles and doctrines as an effort to overcome the legal issues that are the focus of the research. The data collected and processed is secondary data from existing literature. In this research method, data is processed to search for information as well as a theoretical and legal basis.

Secondary legal materials in this research are literature that is continuous with the research problem. Additional (tertiary) materials come from newspapers, legal dictionaries, the internet and KBBI (Big Indonesian Dictionary)¹⁴. 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 enactment of Law no. 11 of 2022 which discusses copyright work that has been revoked by Government Regulation in Lieu of Law Number 2 of 2022 which has then been stipulated as Law Number 6 of 2023 as well as an analysis of the principle of sustainability, as an effort to prevent environmental damage and pollution in this CK Law.

RESEARCH RESULTS AND DISCUSSION

With the ratification of the CK Law which has been revoked by Government Regulation in Lieu of Law Number 2 of 2022 which has then been stipulated as Law Number 6 of 2023, there is an impact that is felt due to changes in legal constructions that directly regulate environmental permits, especially in business activities.


Changes in Environmental Regulations after the passing of the UUCK

In fact, Indonesia already has a legal umbrella for sustainable development, as stated in Law no. 32 of 2009, concerning environmental protection and management (UU PPLH). This law is considered ideal for covering sustainable development because it combines environmental elements economically. There are at least four strategic steps in supporting sustainable development: spatial planning, environmental standards planning, implementation of environmental impact analysis (AMDAL), and damage rehabilitation¹⁵.

¹³ SUDARWANTO and Kharisma, "OMNIBUS LAW AND ENVIRONMENTAL PERMITS IN THE CONTEXT OF SUSTAINABLE DEVELOPMENT."

¹⁴ E Setiawan, "KBBI - Big Indonesian Dictionary," big Indonesian dictionary (2019).

¹⁵ SUDARWANTO and Kharisma, "OMNIBUS LAW AND ENVIRONMENTAL PERMITS IN THE CONTEXT OF SUSTAINABLE DEVELOPMENT."



Changes to 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 states that AMDAL is not required for businesses/activities located in the RDTR (Detailed Spatial Planning) space). For sustainable development which functions to protect the environment, RDTR cannot replace the function of AMDAL because its tasks are different. AMDAL has the function of supervising that development has sustainable and environmentally sound principles, so of course there are management functions, prevention of pollution/damage/waste, as well as conflict management with the community. On the other hand, RDTR only has a role in zoning regulations or area designation, so it does not regulate project details such as AMDAL. So, of course this RDTR cannot be equated, even replacing AMDAL. RDTR which was assigned to replace AMDAL had several negative impacts, namely: (a) no party could be held responsible for environmental matters due to the absence of environmental documents (AMDAL, UPL-UKL), (b) Investment patterns changed, because the perpetrators businesses will look for a strategic location, even though that location has been locked by the RTDR. Moreover, the elimination of AMDAL reflects that the CK Law only focuses on looking at development from a short-term perspective, not sustainable development because business actors will look for a strategic location, even though that location has been locked by the RTDR. Moreover, the elimination of AMDAL reflects that the CK Law only focuses on looking at development from a short-term perspective, not sustainable development because business actors will look for strategic locations, even though that location has been locked by RTDR. Moreover, the elimination of AMDAL reflects that the CK Law only focuses on looking at development from a short-term perspective, not sustainable development¹⁶. Emphasizing this, it can be concluded that changes in regulations after the passing of the UUCK brought its own concerns, considering that the omnibus law was constructed more for exploitation, not for protection, let alone conservation.

Administratively, the government considers that the ratification of the CK Law which has been revoked by Government Regulation in Lieu of Law Number 2 of 2022 which has then been stipulated as Law Number 6 of 2023 this is necessary, given the number of policies and their risky nature of overlapping. Thus, the CK Law is considered a legal breakthrough that can streamline 80 laws and 1,200 articles at once with just one regulation as a tool. With the passing of this law, of course many sectors will feel the impact, one of which is the focus of this research, namely the environment. In the environmental sector, the CK Law changed the permit system and scheme for business development. Unfortunately, the design process does not represent a comprehensive study that focuses on environmental preservation. This conclusion was obtained by focusing on the purpose of issuing the CK Law, as stated above: it was constructed for exploitation, not protection or conservation.

Environmental Permit after ratification of UUCK

Directly, the changes are due to the CK Law which has been repealed by Government Regulation in Lieu of Law Number 2 of 2022 which has then been stipulated as Law Number 6 of 2023 causes two impacts: negative impacts and positive impacts in the PPLH Law. The positive impact is of course related to the simplification of licensing for business actors, so that bureaucratic complexity is no longer a problem and barrier in business formation and investment. However, the ease of forming a profitable business for business actors has the potential to have a negative impact on the environment. One of the impacts is changes to the provisions on business activities that require environmental approval as regulated in Government Regulation Number 5 of 2021, which contains risk-based business permits. According to environmental activists in Indonesia, changes like this will lead to a weakening of environmental management and protection, especially because AMDAL is only required for high-risk business activities. If this is done, then the scenario that is feared is the easy issuance of environmental permits without control from the surrounding community who feel the

¹⁶ Dwi Febriyanti et al., "Function of AMDAL in Controlling Environmental Damage and Pollution After the Enactment of the Job Creation Law," *Widya Pranata Hukum* 3, no. 2 (2021).

direct impact on their environment. Moreover, research¹⁷ shows that the position of AMDAL is very important because it plays a function as an instrument for preventing environmental pollution which can demonstrate the quality of the environment through the document mechanism. Ideally, changing environmental permits to environmental approvals in business activities is expected to be able to become the basis for strong regulations to prevent environmental damage, because there are regulations that are able to manage and provide protection.

If this system must be implemented, the government must strengthen risk-based permits in the CK Law, especially for business actors whose business activities have a large risk of environmental damage and pollution. As we all know, regulations are one of the most important aspects so that the CK Law can run according to expectations: the hope that the CK Law will succeed in supporting the environment more than it supports investment. So, this can be seen from the implementing regulations which directly regulate the AMDAL testing mechanism and its risks, while providing the widest possible opportunity for the public to participate in its supervision.

Involvement in Preparing Environmental Impact Analysis and Providing Information

During its drafting, several articles were changed, especially regarding the right to environmental information which was originally stated in the PPLH Law Article 26 paragraph (2). In this article, it is stated that business actors must involve the public in preparing AMDAL documents by paying attention to the principles of providing complete, open and transparent information. This article was then amended in the CK Law (which was subsequently revoked and replaced by Government Regulation in Lieu of Law Number 2 of 2022) to read: paragraph (1) the AMDAL document as intended in article 22 is prepared by the proponent with involvement of the community; paragraph (2) preparation of AMDAL documents is carried out by involving communities directly affected by business plans/activities; paragraph (3) further provisions regarding the community involvement process as stated in paragraph (2) in the Government Regulation.


In practice, community control is really necessary so that there are parties who are pro-environment in the decision-making process and implementation of environmental protection and management. Unfortunately, there are many cases that state that community participation in this monitoring is very minimal or non-existent, such as what 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 AMDAL update for mine opening and disposal. *PT Freeport Indonesia tailings in Mimika Regency, Papua*¹⁸. In short, the Freeport case in Mimika illustrates community dissatisfaction with the socialization of AMDAL (which at that time occurred during Covid), and this made the local community feel that the initiator was hiding information that residents around the mining area should know. This proves that providing space for community participation in environmental preservation is still very minimal. Moreover, environmental pollution and its destruction are in line with the weak knowledge or information received by the public about changes in environmental conditions that they will face as a result of business activities.¹⁹

Even though it simplifies the environmental permit process, the interests in the CK Law continue to be filled with concerns over bias towards investment domination actions that can accelerate environmental damage. A real case in the field that could be an example is the case of PT Semen Gresik Persero in Rembang. In this case, this PT obtained an environmental permit even though it did not include potential damage/pollution. Even though in the end the environmental permit was revoked due to a legal breakthrough taken by a judge, there was a violation of norms in the Minister of Environment Regulation Number 17 of 2012. In this case, it can be observed that the local

¹⁷ Satria Sukananda and Danang Adi Nugraha, "The Urgency of Implementing Environmental Impact Analysis (AMDAL) to Control the Impact on the Environment in Indonesia," *Journal of Law Enforcement and Justice* 1, no. 2 (2020).

¹⁸ Ahmad Hunaeni Zulkarnaen, "WAGE LAW CREATE WORK LAW (UUCK) AND THE DESIRE OF ALL PARTIES IN INDUSTRIAL RELATIONS," *Journal of Law Mimbar Justitia* 6, no. 2 (2020).

¹⁹ Henri Subagiyo, "GUARANTEE OF INFORMATION ACCESS IN ENVIRONMENTAL PROTECTION AND MANAGEMENT (RECOMMENDATIONS FOR STRENGTHENING ENVIRONMENTAL INFORMATION ACCESS RIGHTS)," *Indonesian Journal of Environmental Law* 1, no. 1 (2014).



government should not only rely on AMDAL in issuing permits, but should also look at whether the purpose and provision of information principles have been carried out according to their function. As an institution that is supposed to implement the law, the government should be more active in monitoring the implementation of the law, because in practice, there are differences between the regions that implement this law. For example, Karawang Regency includes environmental permits as environmental information that must be included in the SILH (Environmental Information System), while other regions do not.

The ideal AMDAL document is a document that includes the impact of business activities on the environment, which can be a reference for the public to make suggestions, responses and opinions (SPT). This SPT will then be processed by the initiator, which will then be submitted to the government for review, whether this business activity is indeed worthy of obtaining a permit or not. Even though it has been regulated in such a way, there are still many cases of issuing environmental permits without SPT. 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 PPLH Law has been changed to the CK Law, and the CK Law eliminates the provision of AMDAL information (Article 26 paragraph (2)). In comparison, when providing AMDAL information is still a requirement, there are still many violations regarding the provision of information which is considered not optimal or seems hiding the real risks. Then, when the CK Law was revoked by Government Regulation in Lieu of Law Number 2 of 2022 which has then been stipulated as Law Number 6 of 2023 taking over, there are no more articles that can be used as a basis for recognizing the right to AMDAL information.

Not only that, according to²⁰, there are at least six things that must be considered in providing environmental information: legal subject (who is responsible for providing information), principles of fulfilling access to information (principles that must be fulfilled in providing information), type of information, minimum standards (standards for bearers obligations), complaint and dispute resolution mechanisms, and sanctions. So, based on the discussion above, to strengthen regulations, at least three things must be considered: involving AMDAL, strengthening the forum and basis of information systems, and providing environmental information. So, in making regulations, the government should review the important function of AMDAL and also supervise the process of providing information, so that sustainable development efforts can be carried out well.

CONCLUSION

After the enactment of Law Number 11 of 2020, which is better known as the CK Law, which was then repealed by Government Regulation in Lieu of Law Number 2 of 2022, there were several changes which gave rise to two impressions as a result of positive impacts and negative impacts. The negative impact of this law change is the concept of risk-based environmental permits which states that environmental impact analysis is only required for high-risk business activities. With this regulation, 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. So many permits will be issued that do not carefully assess the impact on the environment.

On the other hand, this change has a positive impact because it streamlines permits which makes business activities easier, which also directly absorbs human resources and investment. The CK Law also provides opportunities for local communities to be actively involved even since the AMDAL has been carried out. Unfortunately, risk-based environmental permits are closely related to environmental pollution, considering whether environmental impacts are truly studied carefully while considering nature preservation for future generations. Therefore, efforts to tighten regulations must be truly implemented, so that the CK Law is not seen as a regulation that only protects business actors and government investment interests, but in practice also protects the rights of the community as well as environmental sustainability. When the rules made are accompanied by good supervision, then business actors have no opportunity to commit violations that pose risks to environmental

²⁰ Ibid.

sustainability. Of course, if this happens, their permit documents will get a red report card or what is often known as negative risk based.

Ideally, environmental permits in carrying out business activities, as stated in the CK Law (Government Regulation in Lieu of Law Number 2 of 2022), must be continuous with the objectives and reasons for formulating 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 will become victims. Especially if permits are made easier without strict supervision. So, this law should be made in an integrated manner by implementing sustainability aspects, so that at one time, there is legal certainty that covers bureaucratic effectiveness and environmental sustainability. Environmental approval which is one of the important aspects in this conservation must also be able to become a product of State Administrative Decrees, which, if a violation occurs, can legally be canceled by the State Administrative Court. To further strengthen the legal basis, the government also needs to add clear provisions that provide a cover for canceling the permit if at any time problems arise.

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