

Legal Review of Policy Changes on Environmental Pollution in the Law on Environmental Protection and Management of the Job Creation Law in Indonesia

Fatma Ulfatun Najicha¹

¹*Universitas Sebelas Maret Surakarta, Indonesia
fatmanajicha_law@staff.uns.ac.id*

Abstract-The environment is an object and living creature that is incorporated in a place including humans, in Indonesia itself is famous for the diversity of natural resources that are very abundant, humans use and also maintain and preserve natural resources so that they are not damaged or extinct. Until now, many people in Indonesia understand that environmental sustainability is now getting worse and polluted, from inappropriate Amdal processes, illegal logging, all of which are actually stated in Law Number 32 of 2009 concerning the protection and management of the amended environment. the last time with Law Number 11 of 2020 concerning Job Creation.

Keywords-Environment, Damage, Policy, Job Creation.

I. INTRODUCTION

Indonesia is a developing country in the world that has biological and vegetable diversity, it is not strange and it is not surprising that the Indonesian state makes the best use of nature, the era has changed, technology has developed very rapidly in all fields from transportation to the economy.[1] The number of factories invites various questions for environmentalists because they are considered to damage the surrounding natural conditions such as waste and garbage in rivers which result in changes in the environmental order by human activities which cause environmental quality to decline.[2]

The environment is a very important thing for sustainability in the cycle of human life and is regulated in Law no. 32 of 2009 concerning Protection and Management of the Environment in article 1 paragraph (1) which reads "The environment is the unity of space with all objects, forces, conditions, and living things, including humans and their behavior, which affect nature itself, the continuity of life, and welfare of humans and other living creatures" [3]. The environment as a resource is an asset that can improve the welfare of society.[4] This is in accordance with the instructions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which states that the earth, water and natural resources contained therein are used for the greatest prosperity of the people.[5]

However, changes to the UUPH are considered by various parties and groups to be detrimental to the environmental condition in Indonesia, turning the wheels of the economy by utilizing natural resources to the fullest without clear regulations, which will make the environmental situation in Indonesia worse.[6]

II. RESEARCH METHODS

The research method used uses historical data from the past as a reference in the present and new policies and is explained in a normative juridical manner explaining how the impact of waste pollution on the environment in the UUPH law and its efforts and what are the changes in the Copyright Act Work on Environmental Law.[7]

III. FINDINGS AND DISCUSSION

The impact of waste pollution on the environment in the UUPH law and its efforts:

1. In the 1945 Constitution of the Republic of Indonesia and its amendments as the constitutional basis, it is obligatory that natural resources be used for the greatest prosperity of the people, as stated in Article 33 paragraph of the 1945 Constitution that the Earth and water and wealth The nature contained therein is controlled by the state and used for the greatest prosperity of the people [3]. Along with the need for development to improve welfare and overcome many problems, experience shows that development can and has caused various negative impacts.[8] Moreover, environmental pollution and destruction are carried out by companies engaged in various fields of activity, be it mining, forestry and others [9]. If this happens, it is not just one or two people who lose, but the entire human race on this earth.[10] Therefore, the aspect of law enforcement requires maximum attention and empowerment actions, especially for companies that damage and pollute the environment.[11] Koesnadi Hardjasoemantri takes the opinion of Moenadjat, that environmental law is Modern Environmental Law establishing provisions and norms to regulate human

actions with the aim of to protect the environment from damage and deterioration of its quality, in order to ensure its sustainability so that it can be used by present and future generations [12]. It was also stated that there was an erroneous opinion stating that law enforcement was only through a process in court.[13] Besides, it seems as if law enforcement is solely the responsibility of law enforcement officials. every company engaged in various fields of activity, is required to do the following things [14]:

- a. Companies are required to have an Environmental Impact Analysis (Article 22 paragraph (1), and (2), Article 23 paragraph (1) and (2), Article 24, Article 25, Article 26 paragraph (1), (2), (3) and (4), Article 27, Article 28 (1), (2), (3) and (4), Article 29 paragraph (1), (2) and (3), Article 30 paragraph (1), (2) and (3), Article 31, Article 32 (1), (2) and (3) and Article 33 of Law Number 32 of 2009 concerning Environmental Protection and Management). Environmental impact analysis is a study of the major and significant impacts of a planned business and/or activity on the environment which is required for the decision-making process regarding the implementation of a business and/or activity.
- b. Every business and/or activity that is not included in the mandatory AMDAL criteria, must have an Environmental Management Effort and Environmental Monitoring Effort called UKL-UPL (Article 34 paragraph (1) and (2), Article 35 paragraph (1), (2) and (3) Law Number 32 of 2009 concerning Environmental Protection and Management) [3].
- c. Companies are required to manage hazardous and toxic materials. Management of hazardous and toxic materials includes: Produce, Transport, Distribute, Store, Use and or Dispose of. Management of Hazardous and Toxic Materials and Hazardous and Toxic Waste (Article 58 paragraphs (1) and (2), Article 59 paragraph (1), (2), (3), (4), (5), (6) and (7) Law Number 32 of 2009 concerning Protection and Management of the Living Environment.[15] In addition to these obligations, companies are also prohibited from violating the Quality Standards and Standard Criteria for Environmental Damage (Article 20 paragraph (1), (2), (3), (4) and (5), Article 21 paragraphs (1), (2), (3) and (4) of Law No. 32 of 2009 concerning Environmental Protection and Management).[16]

Therefore, for companies that pollute and destroy the environment can be given legal action [17], namely as follows:

1) Administrative Sanctions

Administrative sanctions are the first legal action given to companies that pollute and destroy the

environment. Administrative sanctions have an instrumental function, namely the prevention and control of prohibited acts and are primarily aimed at protecting the interests protected by the violated legal provisions.[18] Environmental law enforcement can be carried out in a preventive and repressive manner. Preventive law enforcement means active supervision is carried out on compliance with regulations without direct events involving concrete events that give rise to allegations that legal regulations have been violated. This effort can be done by monitoring and using supervisory authority. (Article 71 paragraph (1), (2) and (3), Article 72, Article 73, Article 74 paragraph (1), (2) and (3), Article 75 of Law Number 32 of 2009 concerning Protection and Management Environment.[15]

2) Civil Sanctions

Civil sanctions are the second legal action given to companies that pollute and destroy the environment. Based on article 84 of Law Number 32 of 2009 it is explained that for the settlement of environmental disputes to claim compensation and or environmental restoration costs, namely:

- a. Settlement of environmental disputes outside the court.
- b. Settlement of environmental disputes through the courts.

Settlement of environmental disputes outside the court according to Article 85 and Article 86 of Law Number 32 of 2009 concerning Environmental Protection and Management states that the settlement of environmental disputes outside the court is carried out to reach an agreement on the form and amount of compensation and / regarding certain actions to ensure non-occurrence or recurrence of negative impacts on the environment.[19] This is done voluntarily by interested parties, namely those who are harmed and who cause losses, relevant government agencies and can also involve parties who have a concern for environmental management.[20] However, it must be remembered that environmental mediation does not reach the resolution of the criminal aspect. What has been resolved is only the civil aspect.

(1) Compensation

Every unlawful act in the form of environmental pollution and destruction that causes harm to other people or the environment, requires the person in charge of the business and/or business activity or the company to pay compensation and/or take certain actions. In addition to being charged with carrying out certain actions referred to, the judge may determine the payment of forced money for each day of

delay in the completion of certain actions. The legal stipulation of this provision is a realization of the principle in environmental law called the polluter pays principle. In addition to being required to pay compensation, the polluter or environmental damage can also be burdened by the judge to take certain legal actions such as carrying out restoration of environmental pollution and damage.

(2) Absolute Responsibility

The person in charge of the business and/or activity whose business has a major and significant impact on the environment using hazardous and toxic materials, is absolutely responsible for the loss that occurs without the need to prove the element of fault.

(3) Government and Local Government Lawsuits

Government agencies and local governments that are responsible for the environment are authorized to file claims for compensation and certain actions against businesses and/or activities that cause environmental pollution and/or damage resulting in environmental losses.

(4) Community Lawsuit

The community has the right to file a group representative lawsuit for their own interests and / or the interests of the community if they suffer losses due to pollution and / or environmental damage.

(5) Environmental Organization Lawsuit

In the context of implementing the responsibility for environmental protection and management, environmental organizations have the right to file lawsuits in the interest of preserving environmental functions. The right to file a lawsuit is limited to a demand to take certain actions without any claim for compensation, except for real costs or expenses.

3) Criminal Sanctions

Criminal sanctions are an aspect of the last legal action.[4] Criminal sanctions are given to companies that pollute and destroy the environment, having the function of educating the company in relation to the actions taken, especially aimed at protecting the public interest which is guarded by the violated legal provisions.[21] In addition, its function is also to prevent or deter potential actors from engaging in irresponsible behavior towards the environment. In order to be able to impose criminal penalties for environmental cases on companies,

regulations such as other criminal cases also apply, namely the principle of legality, meaning that it must be based on the law that existed at the time the act was committed and the guilt must be proven. Criminal provisions are contained in Article 97 to Article Law Number 32 of 2009 concerning Environmental Protection and Management. Article 98 of Law Number 32 of 2009 concerning Environmental Protection and Management states [3]:

a) Any person who intentionally commits an act that results in exceeding the air quality standard, ambient quality standard, water quality standard, sea water quality standard, or standard criteria for environmental damage, shall be punished with imprisonment for a minimum of 3 (three) years and a maximum of 10 years. (ten) years and a fine of at least Rp. 3,000,000,000.00 (three billion rupiah) and a maximum of Rp. 10,000,000,000.00 (ten billion rupiah).

b) If the act as referred to in paragraph (1) results in injury and/or harm to human health, the person shall be punished with a minimum imprisonment of 4 (four) years and a maximum of 12 (twelve) years and a minimum fine of Rp. 4,000,000,000.00 (four billion rupiah) and a maximum of Rp. 12,000,000,000.00 (twelve billion rupiah).

c) If the act as referred to in paragraph (1) results in serious injury or death, the person shall be punished with a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years and a minimum fine of Rp. 5,000,000,000.00 (five billion rupiah) and a maximum of Rp. 15,000,000,000.00 (fifteen billion rupiah).

d) If an environmental crime is committed on behalf of a business entity or company, criminal charges and criminal sanctions are imposed on the business entity or the person who gave the order to commit the crime or the person acting as the leader of the activity in the crime (Article 116 paragraph (1) and (2) Law Number 32 of 2009 concerning Environmental Protection and Management).

Some points that have changed regarding environmental law in job creation [22]:

(1) *Amdal*

Amdal is an abbreviation of Environmental Impact Analysis itself, is a study of the positive and negative impacts of a planned activity/project, which is used by the government in deciding whether an

activity/project is Environmentally Appropriate or not.

Article 1 number 11 of the PPLH Law states that EIA is a study of the significant impact of a planned business and/or activity on the environment that is required for the decision-making process regarding the implementation of a business and/or activity. The definition is slightly changed in the Job Creation Law, so that Article 1 number 11 becomes: "a study of the significant impact on the environment from a planned business and/or activity, to be used as a prerequisite for making decisions regarding the implementation of a business and/or activity and contained in business license or approval from the central government or local government". This definition is also slightly different from the draft job creation bill that was circulated before the DPR and the government ratified it at a plenary meeting on October 5, 2020. In the draft bill, the phrase "approval of the central government or local government" is written as "government approval".

(2) *Role of Environmental Observer*

Another provision that was amended was regarding the role of environmentalists in the preparation of the Amdal document. In Article 26 Paragraph (3) of the PPLH Law, it is regulated, "The Amdal document is prepared by the people who are directly affected, environmentalists, and or who are affected by all forms of decisions in the EIA process". Meanwhile, in the Job Creation Law, the amendments in Article 26 Paragraph (2) of PPLH become: "The preparation of the Amdal document is carried out by involving the community who are directly affected by the business plan and/or activity".

(3) *Public Objections and Involvement Removed*

The Job Creation Law abolishes the provisions of Article 26 Paragraph (2) of the PPLH Law which states that community involvement must be carried out based on the principle of providing transparent and complete information and being notified before activities are carried out. Article 26 Paragraph (4) which originally stipulates that the public can file an objection to the Amdal document is also abolished.

(4) *Capital Appraisal Commission*

In addition, the Job Creation Law also abolishes the existence of the Amdal Assessment Commission. Initially, this commission was regulated in Articles 29, 30 and 31 of the Environmental Law. Article 29 of the Environmental Law states that the Amdal Assessment Commission is formed by the minister, governor, or regent/mayor and is tasked with evaluating the EIA document. The membership of the EIA Assessment Commission consists of elements from environmental agencies, related technical agencies, experts in the field of knowledge related to the type of business and or activity being studied, experts related to impacts arising from a business and/or activity being studied, representatives from potentially affected communities, and environmental organizations. Based on the results of the EIA Assessment

Commission's assessment, the minister, governor, or regent/mayor shall make a decision on the feasibility or inadequacy of the environment in accordance with their authority.

(5) *Feasibility Test Team*

The Job Creation Law further stipulates new provisions regarding the environmental feasibility test team formed by the central government environmental feasibility test agency. The amendment to Article 24 Paragraph (3) in the Job Creation Law states: the environmental feasibility test team consists of elements from the central government, regional governments and certified experts. Furthermore, Paragraph (4) of the same article stipulates that the central government or regional government shall make a decision on environmental feasibility based on the results of the environmental feasibility test.[23]

This decision regarding environmental feasibility is used as a requirement for the issuance of business permits, or approval from the central government or local governments. Further provisions regarding the management of environmental feasibility tests are regulated in a government regulation.[7]

(6) *Cancellation Based on Court Decision Removed*

Not only that, the Job Creation Law also removes the provisions regarding the cancellation of environmental permits by the court. Initially, this provision was regulated through Article 38 of the Environmental Law which states that, in addition to the provisions referred to in Article 37 paragraph (2), environmental permits can be canceled through a decision of the state administrative court.[2]

IV. CONCLUSION

The Indonesian state essentially depends on the surrounding nature and also our environment as humans, just riding as we should be able to maintain and participate in preserving not only using nature as an object to take its benefits. This can work if the community works hand in hand to build the country without destroying nature, in this condition maybe some parties think that the Indonesian government will exploit nature excessively and it seems that people who are not affected should not voice their voices, where the voice of that person may be true, the state can rich but nature also becomes a victim, with the new policy it is hoped that it will bring the situation better, not worse, not only money but also the environment.

Given that social restrictions and self-isolation can cause a person to lose their income, in the end there are still many people who still want to work and companies that allow their workers to carry out production activities. The state in this case also does not prohibit these activities as long as they comply with the Covid-19 prevention

protocol by fulfilling the rights of workers' safety and health guarantees by the company.

In many sectors of the economy, there are still many people who have lost their jobs and cannot get them. The government should also consider their livelihoods through certain policies, so that in this case justice and prosperity can be achieved, not only for those who are still able to work despite the current pandemic situation.

REFERENCES

- [1] M. M. S. Wijaksa and F. U. Najicha, "Policy Update Of The Criminal Sanction Formulation For Corporations In Corruption Case," *Eur. J. Mol. Clin. ...*, vol. 07, no. 10, pp. 1832–1839, 2021, [Online]. Available: https://ejmcm.com/article_6795.html.
- [2] F. U. Najicha, I. G. Ayu, K. Rachmi, and L. Karjoko, "Regulation of Law Enforcement in Prevention and Handling of Fire Forests in Environmental Hazards," *Medico-Legal Updat.*, vol. 21, no. 1, pp. 259–262, 2021, doi: 10.37506/mlu.v21i1.2314.
- [3] Presiden Republik Indonesia, "Peraturan Pemerintah Republik Indonesia Nomor 27 Tahun 1999 tentang Analisis Mengenai Dampak Lingkungan Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup (UU PPLH) salah satunya yang berkaitan dengan Analisis mengenai." 1999.
- [4] I. A. Wicaksono and F. U. Najicha, "Penerapan Asas Ultimum Remedium Dalam Penegakan Hukum Pidana Lingkungan Hidup," *Univ. Bengkulu Law J.*, vol. 3, no. 1, pp. 15–22, 2019, doi: 10.33369/ubelaj.v3i1.4795.
- [5] F. U. Najicha, "Oil and Natural Gas Management Policy in Realizing Equal Energy in Indonesia," *J. Hum. Rights, Cult. Leg. Syst.*, vol. 1, no. 2, pp. 71–79, 2021, doi: 10.53955/jhcls.v1i2.8.
- [6] H. Sudjudiman and F. U. Najicha, "Pengaturan Pemutusan Hubungan Kerja (Phk) di Indonesia dan Singapura," *UIR Law Rev.*, vol. 4, no. 2, Pp. 40–50, 2020, Doi: 10.25299/Uirlrev.2020.Vol4(2).6767.
- [7] H. Izza, N. Fadhila, F. U. Najicha, And U. S. Maret, "Pentingnya Memahami Dan Mengimplementasikan Nilai- Nilai Pancasila Di Lingkungan Masyarakat," Vol. 4, No. 2, 2021.
- [8] F. U. Najicha, "Konstitusionalitas Pengelolaan Migas Dalam Mewujudkan Kedaulatan Energi Indonesia Pena Justisia : Sumber Daya Alam Minyak Dan Gas Bumi . Berdasarkan Data Dari Pertamina Adalah Sebesar 77 , 00 Juta Kl , Sementara Kemampuan Produksi Kilang N," *Pena Justisia Media Komun. Dan Kaji. Huk.*, Vol. 19, No. 2, Pp. 144–155, 2020.
- [9] K. Sonny, *Etika Lingkungan Hidup*. Jakarta: Buku Kompas, 2010.
- [10] I. A. Martines And F. U. Najicha, "Fungsi Perum Perhutani Kesatuan Pemangkuan Hutan (Kph) Surakarta Dalam Pengendalian Kebakaran Hutan Di Kawasan Gunung Lawu," *J. Discret.*, Vol. 1, No. 3, Pp. 210–218, 2020.
- [11] S. H. S. Dewi, I. G. A. K. R. Handayani, And F. U. Najicha, "Kedudukan Dan Perlindungan Masyarakat Adat Dalam Mendiarni Hutan Adat," Vol. 9860, Pp. 21–29, 2016.
- [12] Koesnadi Hardjasoemantri, *Hukum Tata Lingkungan*, Kelima. Yogyakarta: Gajah Mada University Press, 2000.
- [13] I. G. Ayu, K. Rachmi, E. D. Kusumawati, S. Monteiro, A. K. Jaelani, And F. U. Najicha, "2019 Harmonizing The Rights Of Water Resources Regulation Based On Ecological Justice," *South East Asia J. Contemp. Business, Econ. Law*, Vol. 20, No. 4, Pp. 5–10, 2019.
- [14] N. Suparni, *Pelestarian, Pengelolaan Dan Penegakan Hukum Lingkungan*. Jakarta: Sinar Grafika, 1994.
- [15] A. Z. Salsabila And F. U. Najicha, "Pengelolaan Sampah Plastik Di Kawasan Pantai Depok , Kabupaten Bantul," *J. Discret.*, Vol. 1, No. 2, Pp. 87–92, 2020.
- [16] F. U. Najicha, "Water Availability In The Framework Of Environmental Justice: Reconstruction Of Municipal Waterworks (Pdam) Regulations," *Int. J. Business, Econ. Law*, Vol. 20, Issue 4 2019, Vol. 20, No. 4, Pp. 51–55, 2019.
- [17] M. Leden, *Tindak Pidana Lingkungan Hidup Dan Masalah Persepsinya*, Pertama. Jakarta: Sinar Grafika, 1997.
- [18] Waluyo, F. U. Najicha, And S. Hermawan, "Law In The Globalization And Its Influence On Economic Development And Environmental Preservation Based On Pancasila And The Indonesian Constitution Of 1945," Vol. 358, No. Icglow, Pp. 317–321, 2019, Doi: 10.2991/icglow-19.2019.78.
- [19] I. S. Arum, I. G. A. K. R. Handayani, And F. U. Najicha, "Pertanggungjawaban Indonesia Terhadap Pencemaran Internasional," *Justitia J. Huk.*, Vol. 1, No. 6, 2021.
- [20] F. U. Najicha, I. G. A. K. R. Handayani, and Hartiwiningsih, "Legal Protection 'Substantive Rights for Environmental Quality' on Environmental Law Against Human Rights in the Constitution in Indonesia," vol. 140, no. Icleh, pp. 719–724, 2020, doi: 10.2991/aebmr.k.200513.136.
- [21] M. M. S. Wijaksa and F. U. Najicha, "Policy Update Of The Criminal Sanction Formulation For Corporations In Corruption Case," *Eur. J. Mol. Clin. ...*, 2021, [Online]. Available: https://ejmcm.com/article_6795.html.
- [22] Presiden Republik Indonesia, "RUU Cipta Kerja." .
- [23] F. U. Najicha, "Water availability in the framework of environmental justice: reconstruction of municipal waterworks (pdam) regulations," vol. 20, no. 4, pp. 51–55, 2019.