

Legal Problems in the Job Creation Act in the Environmental Sector

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Abstract. The government revokes the environmental permit as a condition for obtaining a business license in the Job Creation Law. Environmental permits are integrated into business licenses which simplify the process of business licensing when in fact the future of the environment is threatened. This is because the role of the community in protecting the environmental impacts arising from development has been eliminated and the correction mechanism for companies and license issuers has also been removed. In the Job Creation Law, it is seen that environmental permits become Environmental Approval, namely a decision on environmental feasibility or a statement of environmental management capability that has received approval from the central government, whose scope of business license includes AMDAL and UKL-UPL efforts. The problem is how is the enforcement of criminal law in the Job Creation Law related to environmental problems? The method in this research is juridical normative with analytical descriptive specifications which conclude that in the Cipta Karya Law there is no longer a strict criminal sanction, but administrative sanctions are emphasized so that many business actors can repeatedly make environmental crime violations. This is reinforced by the amendment and elimination of articles in the UUPPLH so that space for people affected by industry is considered a form of deprivation of community rights and environmental permits issued by small to large industries cannot be contested. Even though the environmental permit requirements must have an Amdal. And Amdal is now in the hands of the central government.

Keywords: *Job Creation Act, Environmental Sector, Legal Problems*

1. INTRODUCTION

In his inauguration speech, President Jokowi mentioned the five priorities of the government in his second term of leadership (2019-2024), namely human resource development, infrastructure development, simplification of regulations, simplification of the bureaucracy, and economic transformation. One of the ways that will be taken to realize the third priority is to compile an omnibus law, which is described by the President as "a law that simultaneously revises several (dozens) of laws." Initially the President stated that there were two omnibus laws that would be compiled, namely the Omnibus Law for Job Creation (CLK) and the Omnibus Law for Empowerment of MSMEs (PMUKM). On various other occasions, the President stated that the omnibus law is needed to accelerate the issuance of regulations that encourage ease of investment.

This policy paper was launched, the Government has at least prepared a CLK Omnibus Law Draft. Unfortunately, the process of making the omnibus law is very closed, even the script cannot be accessed by the public. The government in its official statement stated that it would only pay

attention to public input and considerations when the omnibus bill was submitted by the DPR.

The Indonesian Center for Environmental Law (ICEL) plans to oversee the process of discussing the CLK Omnibus Law, one of which is a series of policy policies. This policy paper is to respond and provide input to decision makers involved in the preparation of the CLK Omnibus Law. However, given the absence of an alias-demik script and an official CLK Omnibus Law draft that can be obtained, the basis of information used as a reference in the formulation of this policy (Series 1) is statements of government officials in the media, exposures by ministry officials and seminar / workshop institutions regarding omnibus law, and the trend of policies issued by the Jokowi government from the first period to January 15, 2020.

Omnibus Law has long been recognized and applied in countries that adhere to common law systems. However, in Indonesia, the term seems to have only been discussed since the preparation of the CLK Omnibus Law. In literature, the meaning of Omni-bus Law is very diverse. However, in general it can be concluded that the omnibus law is a law that regulates various kinds of content, both directly and indirectly, in order to achieve a certain goal. To

achieve this goal, the material of the omnibus law generally will as well as clarifying authority and coordination between agencies, correcting errors or inconsistencies in existing regulations, or changing regulations that are not controversial and not complex. Meanwhile, the Government itself defines the omnibus law as a statutory regulation that contains more than one content regulations that 'aim to create an independent regulation without being bound (or at least able to negate) other regulations'. This definition used by the government contains problems, considering that the omnibus law should reflect the integration of regulations and be oriented to the effective application of regulations.

Based on the CLK Omnibus Law Law and also some information obtained from several discussion meetings, the CLK Omnibus Law seems to change the paradigm of business licensing, from a permit-based approach to a risk-based approach. as well as revoke permits and provisions deemed to be hindering investment. The environment is considered one of the risks in business licensing.

If the above material is included in the Omnibus Law CLK, then of course it will have an impact on environmental protection efforts in Indonesia. In addition, if the manufacturing process is carried out without accommodating the principles of environmental law, various environmental protection instruments, and conditions for environmental management in Indonesia, it is feared that the omnibus law will conflict with environmental protection efforts. In series 1 of this policy paper, Researchers will provide critical notes on four aspects in the preparation and design of the CLK Omnibus Law, namely: risk-based regulation, abolition of environmental permits, elimination of criminal sanctions for administrative violations, and restrictions. community involvement.

Therefore, the elimination of environmental permits in the CLK Omnibus Law has the potential to cause several problems, including the following: 1) First, whether without an environmental permit, the Government will find it difficult to supervise and enforce the law. 2) and second, whether the elimination of environmental permits will result in reduced opportunities for the community to overturn or correct unlawful decisions relating to environmental aspects. And third, whether the elimination of environmental permits will reduce the aspect of preventing environmental pollution and / or damage. Therefore, this research will be studied more deeply, considering that the aim of the omnibus law that is currently being formulated is to increase investment, it is possible to neglect other aspects,

such as the environment. Without sufficient understanding, environmental protection measures can be considered as obstacles to accelerating business

2. METHODS

This research is a normative juridical study using quantitative methods that apply the law in a concrete, descriptive manner where the type of data used is secondary data obtained through library research related to the omnibus law work copyright law.

3. RESULT AND DISCUSSION

3.1 Difficulty in supervising and enforcing the law without an environmental permit.

Supervision is one way of ensuring compliance. Environmental permits make it easier to achieve the objectives of supervision because when the Government decides whether to issue a permit or not, the Government may include several requirements, including: the obligation of business actors to prevent impacts, schedule for compliance supervision by supervisory officials, authority for license issuers to implement other policies to encourage obedience, and impose sanctions when violations occur.

Thus, the bureaucratic process becomes more efficient. In addition, with a license, business / activity history data should be easier to organize and access when needed. If the environmental permit is removed, the bureaucracy to carry out supervision is potentially more complicated and uncoordinated. Likewise, data is potentially difficult to access because it is not easily integrated. Permits are usually required for activities that require special supervision.

Permits can help determine specific / detailed obligations for each business / activity that cannot be regulated solely in regulations. In the environmental sector, it is very possible for a business / activity of a kind to be given obligations different, for example because of differences in regional characteristics and the technology used. It is clear that the specific obligations for each business / activity will on the one hand make it easier to supervise and on the other hand provide more certainty for the permit holder. In addition, violations of environmental obligations have the potential to have dangerous impacts on the environment.

The impact of violations of obligations related to the living environment is also vulnerable to

protests from affected communities and civil society although the causality (causal relationship) between the business / activity and its impact is not necessarily proven. This certainly poses a risk to the sustainability of the business / activity. Therefore, environmental permits are important to ensure that the environment and natural resources are managed in a sustainable manner to ensure the sustainability of long-term investments.

3.2 The Removal of Environmental Permits Will Reduce the Role of the Community

The permit issuance process can give affected communities the right to provide input, which the government can sometimes use as material to determine the conditions in the permit. Eliminating environmental permits means reducing opportunities for community participation in the development of an activity. Moreover, the public cannot challenge the decision to issue permits to the court through administrative law, so that public access to justice is also reduced.

3.3 The Elimination of Environmental Permits Will Reduce the Aspect of Preventing Environmental Pollution and / or Damage

In environmental management, the aspect of prevention is highly prioritized so that no harmful impacts of pollution and / or damage occur. Therefore an environmental permit that specifies in detail the requirements for prevention is important. Optimizing the preventive aspects through environmental permits certainly has an impact on business actors and society.

4. CONCLUSION

In conclusion, the following answers can be given on the issue of narrative conclusions regarding the function of legal issues in the law on job creation in the environmental sector. The conclusions drawn are:

1. Compiling the omnibus law in a transparent manner and involving all stakeholders (including affected and / or interested people) in the formulation process, both at the government level and in the DPR, and open to all opinions conveyed
2. Review options for risk-based approaches and ensure that environmental protection is one of the

main considerations in policy making. Special attention should be paid to:

- a. Not locking up licensing and supervision only to high-risk activities, because there are risks that are volatile in intensity (volatile) as well as low but systemic risks.
 - b. Identification and ranking of risks that should be carried out periodically using a mechanism that is transparent and involves the community.
3. Maintain environmental permits with the following considerations:
 - a. An environmental permit is a strategic instrument for supervising business actors' compliance with environmental quality regulations and standards.
 - b. The existence of an environmental permit guarantees more access for the community to be able to participate in environmental decisions and get justice when their rights are violated.
 - c. Ensure that there are instruments that can prevent pollution and environmental damage as well as losses to the community due to environmental pollution and damage.
 - d. The selection of the right instrument in environmental management needs to be built through the stages of the policy-making process, namely the discovery of environmental problems, the determination of various alternative solutions to the problem, an assessment of these alternatives, various policy options, implementation and evaluation.
 4. Maintaining the threat of criminal sanctions for administrative violations (including violations of permits) because:
 - a. Business actors who have received administrative sanctions do not obey or repeat their actions;
 - b. There are actions which, if done without permission, will cause enormous danger to the environment and cannot be recovered (irreversible damage). so that heavier sanctions (criminal sanctions) are needed to ensure a deterrent effect and uphold justice.
 5. Maintain, even strengthen, regulations regarding community involvement in line with the principles of sustainable development. Thus, the policies to accelerate investment and development are chosen to be more inclusive and get support from the community (legitimate).

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