

Indonesian Environmental License after the Enactment of the 2020 Job Creation Law



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ABSTRACT: This study aims to explain the concept of environmental licensing in Law no. 32 of 2009 concerning Environmental Protection and Management and to describe the reformulation of environmental licensing in creating an environmentally sound business climate. This research was conducted using a normative legal approach, namely research that focuses on legislation as primary legal material. Based on the results of research and discussion, it was found that reformulation of the concept of environmental licensing must be returned to the nature of Law no. 32 of 2009 so that changes in the concept of environmental licensing in Law no. 11 of 2020 must be revoked concerning the impact of the application of the Law on environmental damage. A business climate built in the spirit of bringing in investment does not fundamentally have to do so by removing the important environmental licensing principles. Penganuliran the amendment of the Environment Protection and Management Law articles in the Job Creation Law to become a form of legal reformulation solution while maintaining environmental licensing principles that are environmentally sound.

KEYWORDS: business climate, environmental insight, environmental licensing, Job Creation Law.

I. INTRODUCTION

The investment activities carried out by business actors are increasing every year. However, following the provisions of laws and regulations, every Business run by a business actor is required to have a business license. The process of obtaining a business license is not easy. It has to go through rules that are interrelated with one another, including having to obtain an environmental impact analysis first, as a condition for obtaining an environmental permit. This environmental permit is used as a condition for obtaining a business license, in supporting the ease of doing business by the government through Presidential Instruction Number 7 of 2019 concerning the Acceleration of Ease of Doing Business in coordinating remedial steps in the context of increasing Ease of Doing Business (EODB). The government has even coordinated with the Indonesian Investment Coordinating Board (Badan Koordinasi Penanaman Modal/BKPM) by forming a special team involving 15 ministerial or institutional institutions, including local governments, in improving the ten business ease indicators set by the World Bank. One of the EoDB indicators believed to influence other indicators is starting a business. [1]

This is still not enough. The government and the House of Representatives simultaneously seem to be in a hurry to immediately pass the Job Creation Bill, which was promulgated in Law No. 11 the Year 2020 last year. Even though in the process of formation until its legalization, there has been much resistance from the community, especially labourers' and environmental activists, regarding the reform of the Manpower Law and the Environmental Law, which have fundamentally changed the concept of environmental permits on the pretext of simplifying permits which eliminates the substance of Environment Impact Analysis (EIA) provisions and environmental permits which are very important in protection and management of the environment in Indonesia.

It is as if the government has not learned from the previous application of the concept of environmental licensing in Indonesia, which still causes polemics and gaps for interested parties to legalize their business activities by bypassing the environmental licensing bars that have been made so tight. One of the disputes that caught the public's attention was the Rembang community's lawsuit against PT. Semen Indonesia, which has been rolling since 2012. The removal of pairs of old and new environmental permits by the Provincial Government of Central Java seems to have ignored the democratic action of the Rembang community, which was carried out after the judicial decision regarding the revocation of PT. The Supreme Court did not follow semen Indonesia. Besides, there are opportunities to exploit loopholes in the concept of environmental licensing as outlined in the Law on Environmental Protection and Management.[2]

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The concept of environmental licensing regulated in Law No. 32 the Year 2009 concerning Environmental Protection and Management stipulates that an environmental permit is a requirement for obtaining a business license, whereby the revocation of an environmental permit results in the cancelation of the business or activity license (Article 40 paragraph 1 and 2) [3].

In the Job Creation Law which was passed, the government negated article 40 regarding environmental permits' provisions to obtain a business license. In addition to eliminating the provisions of several articles that are quite important, including removing the provisions of the EIA, the government has also changed from an environmental permit to an environmental approval with the authority of the central government, thus leading to centralization, which directly reduces the role of regional governments in issuing permits. Another crucial change is eliminating the principle of strict liability for those responsible for B3 waste pollution. This will immediately become a breath of fresh air for the perpetrator of the pollution regarding the plaintiff's obligation to prove an element of guilt for the perpetrator. Environmental observers' participation is also minimized in environmental licensing, thereby significantly cutting community participation by limiting it to impacted communities only.

The change in the concept of environmental permits fundamentally raises the urgency of reformulating the concept of environmental licensing, which has been so well regulated in the Environmental Protection and Management Law. The government's steps in passing the Job Creation Law are to facilitate investment in the country and increase environmental damage by eliminating environmental permit provisions and EIA, which are very important for business actors. The concept of environmental licensing in creating an environmentally sound business climate is necessary while maintaining justice and the environment's ecological sovereignty.

Based on these problems' background, two problem formulations can be formulated, namely: a) how is the environmental licensing concept in Environmental Protection and Management Law? b) How is the reformulation of the environmental licensing concept in creating an environmentally sound business climate?

II. METHODS

This research was conducted using a normative legal approach, namely research that focuses on studying statutory regulations as primary legal material and is supported by secondary legal materials. This study examines the internal aspects of positive Law [4], which includes research on legal principles, research on legal systematics, research on the level of vertical and horizontal synchronization, and legal comparisons [5]. This research was conducted by analysing and comparing laws and regulations in Indonesia related to environmental licensing, namely Law No. 32 of 2009 concerning Protection and Management of the Environment and Law No. 11 of 2020 concerning Job Creation and environmental licensing regulations in various countries. Data collection was carried out through literature study by conducting document studies of secondary data in primary and secondary legal materials. This research's primary legal materials include Law no. 32 of 2009 concerning Protection and Management of the Environment and Law no. 11 of 2020 concerning Job Creation. Meanwhile, secondary legal materials consist of books, journals, and other scientific articles related to Indonesia's concept of environmental licensing. Data analysis is presented in a descriptive qualitative manner [6] by comparing existing laws and regulations to find regulatory weaknesses and remedial solutions in the form of legal reformulation.

III. LITERATURE REVIEW

The opinion of Dutch jurist N.M. Spelt and J.B.J.M. Ten Berge, said, "permission" is an approval by the authorities based on laws or government regulations to in certain circumstances deviate from the provisions of the statutory prohibition. Meanwhile, according to Van Der Pot, "permission" in a broad sense is a decision that allows any action to be carried out which in principle is not prohibited by the regulator [7]. There are two types of permits in the UUPPLH, first, environmental permits which are permits given to every person who carries out a business and/or activity that is obliged to do EIA or UKL-UPL in the framework of environmental protection and management which is a prerequisite for obtaining a business license and /or activities (Article 1 point 35). Second, a business and/or activity license is a license issued by a technical agency to carry out a business and / or activity (Article 1 point 36) [8]. Business plans or activities that have an important impact on the environment must have an Amdal. Environmental impact analysis (EIA) is a study of the major and significant impacts of a planned business and/or activity on the environment required for the decision-making process regarding the conduct of a business and/or activity. Amdal is a requirement for obtaining an environmental permit for every business and or activity that has an important impact on the environment. [9] Amdal, environmental permit and business permit are all interrelated in the environmental licensing system in Indonesia.

IV. RESULT AND DISCUSSION

A. The Concept of Environmental Licensing in the Environment Protection and Management Law

Environmental licensing regulations in Indonesia are entering a new phase, where all the latest regulations are integrated into Law no. 11 of 2020, which the government realized despite the presence of many pros and cons surrounding its creation. The Environment

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Protection and Management Law, which was born in 2009, has become the legal umbrella or "umbrella act/ umbrella provision" for the provisions of environmental protection and management from various sectorial laws in the environmental sector, both in the fields of forestry, plantation, mining and so on.

Indonesia, which affirms its goal as a welfare law state (self-regency) as outlined in the 1945 NRI Constitution, which is already so green, further regulation is made in the Environment Protection and Management Law as the embodiment of green legislation. Thus, in the framework of protecting and managing the environment in Indonesia, the government's form of authority is to implement an environmental license. The permit is termed a license, permit (UK); vergunning (Netherlands). An environmental permit has a function as a legal instrument as well as a guide, planner for business actors or activities in realizing the objectives of environmental protection and management and in order to prevent environmental problems caused by human activities or activities that are attached to the basis of a permit as well as a juridical means of preventing pollution and environmental damage [10].

The Environment Protection and Management Law regulate two very important environmental licensing concepts, namely the regulation of environmental permits, which are permits given to business actors or activities that are obliged to have an Environmental Impact Assessment as a prerequisite for obtaining a business license and regulations on business permits as permits whose issuance is carried out by specialized agencies in obtaining business or activity permits. This is stated in Article 40 of the Environment Protection and Management Law, which states that "An environmental permit is required to obtain a business and/or activity license. If the environmental permit is revoked, the business and/or activity license is cancelled. If the business and or activity changes, the person in charge of the Business and or activity is obliged to renew the environmental permit. "

In addition to environmental permits, several improvements in the management and protection of the environment have been guaranteed in the Environment Protection and Management Law, including those related to the provision of environmental dispute resolution outside the court, class action, and strict liability, application of civil Law, administrative sanctions, and criminalization of acts. Environmental violations committed by corporations. The enforcement of Law No. 32 the Year 2009, on the one hand, exhales the air of freedom for the improvement of environmental management in Indonesia. However, on the other hand, it creates a dilemma of anxiety for entrepreneurs who think that these licensing provisions can hamper the company's operations.

The nature and essence of the environment that is comprehensive from one another are interconnected. According to the environmental principle itself, "everything is connected to everything else," as well as the nature of its motion, "everything must go somewhere." This makes it important to be able to integrate the principles of sustainable and environmentally sound development as the basis for the substance of the regulation of an integrated licensing system in the environmental sector, which includes the principle of intergenerational justice, the principle of justice in one generation, the principle of early prevention, and the principle of protection of biodiversity [11].

Concerning environmental licensing requirements in Indonesia, which have an important meaning for environmental management, it can also be compared to the environmental licensing regulations developed in the United States, the Netherlands, Japan, and Singapore. The United States CAA regulates environmental licensing requirements for environmental management activities that are covered in the "permit programs" (Article 502) and "permit conditions" (Article 504) provisions in the EPA United States Environmental Protection Agency. The Netherlands makes arrangements regarding procedural, substantial, and evaluative requirements regarding environmental permits, specifically outlined in the Environmental Management Establishment and Licenses Decree. This Environmental Management Establishment and Licenses Decree legal document made by the Dutch Government contains environmental licensing requirements relating to the establishment and operation of an installation ("establishment"). Meanwhile, the Japanese APCL regulates environmental licensing requirements to control environmental pollution in Articles 18-18.3 of the APCL concerning "Report of the Establishment of Particulates Discharging Facility." Meanwhile, CAA Singapore formulates environmental permit requirements that are relevant to environmental management in Section 15 regarding: "Power of Minister to Prohibit Use of Combustible Materials, Fuel Burning Equipment or Industrial Plant in Certain Areas" [12]

Based on comparisons in several countries, it indicates the importance of environmental licensing in various countries, which is used as a prerequisite for carrying out activities or business activities that impact the environment.

Each policy direction in natural resources and the environment must be inspired in its implementation of the spirit or essence of environmentally sound development as development based on three proportional considerations, including economic considerations, social considerations, and ecological considerations. The spirit of idealism in the concept of environmental licensing regulated in the UUPPH is a means of realizing this, where the improvement of the existing concept makes a comprehensive requirement for the integration of an integrated environmental licensing system without the need for government efforts to negate or eliminate one or several regulations that have been regulated.

In its concept, Omnibus Law is a law that in substance makes changes or revisions to many laws, where the omnibus law concept has developed in common law countries with Anglo Saxon legal systems such as the United States, Belgium, England, and Canada.

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One of the countries that adopted the concept of the omnibus law in 2002 was the Serbian state, which made arrangements for the autonomous status of Vojvodina Province. The omnibus law concept offers problem-solving due to over-regulation and overlapping, which, if resolved in the usual way, can take a long time at a lot of costs [13].

The Indonesian government formed the Omnibus Law, and the DPR, which was passed through Law No. 11 of 2020, has resulted in the pros and cons and resistance of the Law's people. Even international institutions also paid attention to the formation of the Draft Job Creation, namely Moody's Corporation (MCO), an international rating company. Several things that concern Moody's are related to several things in the omnibus law that can reduce the positive impacts of environmental sustainability, including those related to tax reform, oil palm plantations, and labor regulations. Besides, eliminating EIA from business reporting can reduce the interest of foreign investment that focuses on environmental sustainability and sustainability and is related to the production of environmentally friendly commodities in the Business being run [14].

After the government passed the omnibus law on the Job Creation Law in 2020, it contained crucial changes in various laws, including the amendment of several articles in Law No. 32 of 2009 concerning Environmental Protection and Management. Several important points of the environmental licensing concept that have been regulated were subsequently deleted in Law no. 11 of 2020 concerning Job Creation on the pretext of simplifying licensing by eliminating EIA.

Many parties consider that the simplification of environmental permits by removing the EIA provisions conflicts with sustainable development goals. This is because it only puts development in a short-term perspective by not applying the environment to economic development. The government should continue to carry out the spirit of simplifying licensing in environmental permit procedures without eliminating the substance of environmental permits as a strategic formula in achieving sustainable and environmentally sound development goals. At least we can reflect on Japan, which still maintains the Environment Impact Assessment (EIA). Seeing the problem of EIA obligations where there are still many violations, the indicator inhibiting investment itself does not lie in the permit's substance aspect but lies in the licensing process. The government does not properly construct this in the omnibus law because it emphasizes economic development without paying further attention to environmental impacts [15].

Besides, the concept of environmental licensing is regulated in Law no. 32 of 2009. Environmental Protection and Management using a license-based approach was changed using a standardized and risk-based approach (RBA) in the omnibus law. Environmental permit provisions are removed and replaced in the approval concept. As stated in the amendment to Article 11 paragraph (2), the license is an approval of the central government in carrying out business activities that must be fulfilled by business actors before carrying out business activities. The granting of permits in the Job Creation Law falls under the authority of the Central Government. This indicates that indirectly the authority of local governments in controlling and issuing permits is trimmed and experiences a conceptual change in environmental permits for a worse direction without an EIA that has an important impact on the environment [16].

Thus, it is important to understand that instead of bringing investment flows into the country, which are carried out to protect the environment, they are two opposites. This is due to bringing in investments that are realized by destroying the environment, negating important principles in environmental protection and management, which will instead cause new environmental pollution and damage problems, which each year will increase in intensity. The decadence of the government's paradigm of thinking as outlined in the omnibus law has injured the ecological spirit inspired by the legislators in Law no. 32 of 2009 concerning Environmental Protection and Management, which has been so good that it adheres to the principles of environmental licensing with an environmental perspective.

B. Reformulation of Environmental Permit Law in Creating an Environmentally Friendly Business Climate

Indonesia is one of the countries involved in the 2030 Agenda for Sustainable Development Goals (SDGs). The new development will move to the sustainable development based on the human rights and equality to achieve social development, economic development, and the living environment development. This SDGs shall make sure that there is no-one left behind in the development. There are 17 goals and 169 targets in order to continue an effort and achievement of the Millennium Development Goals (MDGs) which has been ended on the last 2015. [17] Those 17 SDGs could be simplified into 4 important pillars: social development pillar; economic development pillar; environmental development pillar; law and governance development pillar.

SDGs are somehow being contested one another, when it comes to the dilemma on the very simple question of whether to develop economy and business and to preserve the environment. Thus, some business activities require environmental permit which was regulated under the 2009 Environmental Protection and Management Law. As has been explained above, the environmental permit in the 2009 EPM Law has been amended by the enactment of the Omnibus 2020 Job Creation Law, and resulting to the controversial rules regarding environmental approval as well as EIA.

The biggest challenge on achieving SDGs is to provide integrated mechanism of sustainable, covering such as creating an environmentally friendly business climate. A business with its major activity concerns with the exploration, exploitation of and/or

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production from the natural resources would unavoidably impact environment. Not to mention any other exploitation business activity. Therefore, in order to be consistent with the SDGs commitment, there shall be an integrated environmental permit to create an environmentally friendly business climate.

On September 2020, Indonesian Government through the National Development Planning Agency has issued four Indicator Metadata Documents. [18]–[21] One of the books concerns with the Economic Development Pillar. For the goal 8, Promote Inclusive and Sustainable Economic Growth, Productive and Comprehensive Job Opportunities, and Decent Work for All, target 8.1. mentions to progressively increase, until 2030, the efficiency of global resources in consumption and production, as well as efforts to remove economic growth from environmental degradation, in accordance with the 10-Year Framework of Programs on Sustainable Consumption and Production, with developed countries as the guide.[20]

An interesting issue is, if the targets of the SDGs is awaiting by using terms “efforts to remove economic growth from environmental degradation”, however on the other hand, the applicability of EIA as the legal basis to issue business license is being questioned after the issuance of the 2020 Job Creation Law. Therefore, in order for the creating an environmentally friendly business climate, there shall be a reformulation of the environmental business license at the very first place. The reformulation could be based on a certain comparative study of best practices in other countries.

CONCLUSIONS

The form of reformulation of the concept of environmental licensing must be returned to the nature of Law no. 32 of 2009. Law no. 11 of 2020 must be revoked related to the impact of the Law's application on environmental damage. A business climate built in the spirit of bringing in investment does not fundamentally have to do so by removing the important environmental licensing principles. The amendment of the Environment Protection and Management Law articles in the Job Creation Law shall be abolished to form of legal reformulation solution while maintaining environmental licensing principles that are environmentally friendly.

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