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Act of Cipta Kerja: An Environmental Legal Reversion from A Globalization Perspective

Adimas Haryosetyo[1], Joko Setiyono[2]

[1,2]Faculty of Law, Universitas Diponegoro

ABSTRACT: Developments in the era of globalization cover various aspects of human life, ranging from economic aspects to legal aspects. Harmonization between countries is formed as a result of the process, including harmonization of laws. In the realm of environmental law, harmonization of national environmental law with international environmental law is carried out to achieve the shared dreams and goals of the world community in carrying out sustainable development that ensures environmental sustainability, so that it can be passed on to future generations. This study uses normative juridical research that examines the relevant laws and regulations. This research will examine how the implications of globalization on Indonesian law, how the development of international environmental law and how the development of national environmental law. From the results of research, internationally, changes in international environmental law were marked by the 1972 Schockholm conference which introduced new aspects of international environmental law, and continued to grow to recognize animal rights in environmental law. Indonesia itself actually has an environmental concept in the 1945 Constitution, so that as a source of all laws and regulations in Indonesia, Indonesian legislation should reflect this concept, but with the enactment of Law number 11 of 2020 concerning Job Creation (UU Cipta Kerja) and its amendments to previous regulations indicate a setback in the field of environmental law in Indonesia.

KEYWORDS: Act of Cipta Kerja, law reversion, Environmental, Globalization

I. INTRODUCTION

Globalization is defined as a series of changes that take on a scale between nations, which is based on the fact that humans have a tendency to interact with one another. Globalization itself can be described as a broad narrowing process, in terms of distances between countries, and communication boundaries, as if they did not exist. Of course this brings various impacts, both positive and negative, positive for example the exchange of information technology becomes faster so that technology tends to develop faster, as well as on globalization in the legal aspect, during this period there is harmonization between international law and national law which is of course adapted to the needs and intricacies of the development of problems in the country's society. One of the negative impacts, which certainly do not want to be experienced by every country, is the emergence of international crimes or the entry of a culture that is not in accordance with the identity and personality of the nation.

Harmonization of law in this era of globalization is interpreted as a process of mutual influence between international law and national law. The special feature of harmonization when viewed from the process, if national law is influenced by international law, the state should create legislation that realizes international agreements in terms of achieving the same goal. In accordance with the development of globalization, including massive industrialization, it has a negative impact on the environment (environmental impact).

Environmental damage is caused by the attitude of obtaining the maximum profit with the minimum possible sacrifice, causing an environmental crisis. Globally, according to Nurmar diansyah, the environmental crisis is caused by an error in the understanding or way of view of humans towards themselves and the environment itself (environment in a comprehensive sense including nature to ecosystems). Humans at that point err in seeing the environment, or nature as a whole and fail to place themselves on the level of the universe, as Albert Schweitzer states in The Ethics of Reverence for Life that, "the fatal mistake of all ethics so far is these ethics. Only focuses on human-human interaction.

Environmental issues can be categorized as political issues related to power and authority, then these two things are closely related to something called policy. In this case the environmental policy is referred to as environmental policy or environmental policy. When referring to environmental damage in Indonesia, the highest damage is caused by errors in state policies in environmental

management and protection. Ironically, in its implementation, there is an image that environmental law seems unable to provide solutions to various problems related to the environment which, according to Muhammad Akib, is caused by understanding, implementing, and enforcing environmental law principles and norms that are not carried out comprehensively in accordance with legal politics. Applicable.

The principle of sustainable development must be the axis of national development, so that the pro-environmental nature of development can be realized and ensure the survival and sustainability of environmental resources for the survival of future generations. In the idea of Indonesian law originating from the 1945 Constitution, it has a green constitution, although this pattern is still thinly depicted (light green constitution), Indonesian law still has the potential and room to develop in a better direction, Jimly Asshidique stated that:

"Although the environment has been stated in the Law (Law Number 32 of 2009 concerning Environmental Protection and Management), but once you mix it with the Trade, Industry, (even) Cooperative Law alone, the Environment Law will surely lose in practice."

The government in making policies often commits environmental injustice that is not in accordance with the elements of pro-environment policies mandated through the 1945 Constitution, for example cases of clearing oil palm land in non-concession forest areas, or lack of firm action against burning cases. forest in the realm of clearing plantation land. This certainly threatens the survival of the community and the environment which should be guaranteed by the State itself. The same thing is also illustrated by the ratification of the Job Creation Bill as Law no. 11 of 2020 concerning Job Creation (UU Cipta Kerja), especially on the environmental cluster, raises a big question mark on the seriousness of the government in making policies that are pro-environmental, even though the government has declared itself to carry out development based on sustainability through the Presidential Regulation of the Republic of Indonesia. No. 59 of 2017 concerning the Implementation of the Achievement of Sustainable Development Goals which is also a marker of harmonization of Indonesian environmental law with the Sustainability Development Goals (SDGs) proclaimed by the United Nations, which contains important points that must be considered in carrying out sustainable development which includes elements -environment-based elements.

The ratification of the Job Creation Law indicates a setback in terms of environmental law in Indonesia which was previously regulated by Law no. 32 of 2009 concerning Environmental Protection and Management. There are several articles that seem to override environmental sustainability in terms of development. Meanwhile, in the realm of development of international environmental law, it has continued to develop since the first time since the 1972 Stockholm declaration until now. Based on these facts raises concerns about the future of environmental law. Will globalization bring Indonesia towards sustainable development or vice versa? On that basis, the author will examine the Job Creation Act: A Setback in Environmental Law in the Perspective of Globalization.

II. FORMULATION OF THE PROBLEM

1. What are the implications of globalization for law in Indonesia?
2. How is the development of international environmental law?
3. How is the Development of Environmental Law in Indonesia?

III. RESEARCH METHODS

The research method used to analyze environmental law problems in this paper uses a normative juridical method (legal research) or often referred to as doctrinal research. This research uses descriptive analysis consisting of primary legal materials and secondary legal materials in the form of laws and regulations relating to the environment. Besides that, it also uses comparative studies of international environmental law sourced from international declarations regarding the environment. Legal analysis based on legal theories and legal opinions related to the Job Creation Act: A Setback in Environmental Law in the Perspective of Globalization.

IV. DISCUSSION

Implications of Globalization on Law in Indonesia

Globalization is a phenomenon that cannot be avoided and must be faced in order to ensure human survival, because "free access to information, which eliminates geographical barriers, creates needs at the global level, so that it must be followed by global products". Thus, the implementation of development in Indonesia will also adapt to global needs, for the benefit of the citizens themselves. Globalization aims to connect countries into one global village. Such globalization has implications for the development of law at the national and international levels. If we refer to the international economic system, we can find the formation of regional economic blocs such as APEC, AFTA, NAFTA and others, in which there is no contradiction between the

formation of regional economic groups in economic globalization, but with an agreement on cooperation in the economic field it will bring change or globalization. law too.

Legal globalization is realized through legal standardization, including multilateral agreements. In line with the spirit of globalization, which is trying to transcend the boundaries of space and time, it is carried out through harmonization of law. The existence of globalization has resulted in the similarity of legal provisions in various countries because basically a country tends to follow the model of developed countries related to legal institutions to obtain capital accumulation. Like the Limited Liability Company laws in various countries, both adopting civil law and common law models, they have similarities in terms of legal substance.

The "development and free trade" mode is used by the government and corporations as an excuse to exploit the environment and natural resources which leads to damage to the ecosystem level, and if allowed to drag on, ecocides can occur which of course will ultimately affect human survival. It should be realized by axiocentric minded that the damage to this ecosystem is permanent and reversible, so that whatever has been damaged it is impossible to restore it to its original state. What should be worried about here is the survival of the community in the current and future generations with the protracted environmental/ecosystem damage.

This concern was followed up through the emergence of the concept of Sustainable Development Goals (SDGs) which was born from a conference on sustainable development facilitated by the United Nations in Rio de Janeiro in 2012. The conference aims to unite universal goals and dreams that are determined to maintain a three-dimensional balance in development. sustainable, namely: environmental, social, and economic. In maintaining the harmony of these three dimensions, the SDGs are built using 5 fundamental things, namely humans, planet, welfare, peace, and partnerships that want to eradicate poverty, realize equality and overcome climate change by 2030, so that 17 development points are compiled in the SDGs.

Indonesia itself has adopted a similar spirit through PERPRES RI No. 59 of 2017 concerning the Implementation of the Achievement of Sustainable Development Goals which is also the commitment of the Indonesian government to make global commitments successful in the context of sustainable development goals. Of course this is done by taking into account the national interest, which is stated by the Nawa Cita as the agenda and the national interest itself. The Nawa Cita if observed has harmonization with the SDGs, this harmony can be seen through the comparison of Nawa Cita with the SDGs inTable 1.

Table1. Comparison of Indonesia's Nawa Cita with SDGs

No.	Nawa Cita	SDGs
1	Bringing back the state to protect the entire nation and provide a sense of security to all citizens	Goal 3, 10, 16, 17
2	Making the Government always present by building clean, effective, democratic and reliable governance	Goal 16
3	Building Indonesia from the periphery by strengthening regions and villages within a single state	Goal 1-11
4	Reject weak countries by reforming the system and law enforcement that is free of corruption, dignified and trustworthy	Goal 14-16
5	Improving the quality of life of Indonesian people	Goal 1-6
6	Increasing people's productivity and competitiveness in the international market so that the Indonesian nation can advance and rise together with other Asian nations	Goal 1-10
7	Realizing economic independence by moving strategic sectors of the domestic economy	Goal 1-5, 8, 9 dan 12- 15
8	Carrying out a National Character Revolution	Goal 3-4 dan 11
9	Strengthening Diversity and strengthening Indonesia's social restoration	Goal 5, 10, 16, 17.

Source: Irhamsyah, Center for Social and Political Studies

The alignment of Nawa Cita values with the SDGs as shown in Table 1 above shows the harmonization of Indonesian national law with international law in the area of sustainable development. And this suitability is an important indicator that Indonesia is ready to face globalization.

Developments in International Environmental Law

The formation of international environmental law is basically influenced by the principles of international environmental law contained in the 1972 Stockholm Declaration. These principles replace the general principles of international law. The

environmental principles in the declaration emphasize the urgency of protecting the environment, while at the same time paying more attention to the principles of conservation of natural resources whose damage is irreversible. The dream of eco-development (eco-development) grew rapidly after the 1970s. This environmental-style declaration accelerated the growth of the environmental awareness movement which also brought new developments in the formation and implementation of environmental law.

The characteristic that distinguishes the formation of international law from environmental law is the ecological nature it carries, which in the process of its formulation is guided by environmental science or ecology. The development of international environmental law is marked by the introduction of new values in the aspects of law formation as follows:

a) State Rights and Obligations

The Stockholm Declaration introduces the rights and obligations of states in international environmental law which were previously regulated through customary international law and related international treaty law. The Stockholm Declaration is proof of the concern and concern of the international community regarding the current environmental conditions. The declaration became a monumental event in introducing the rights and obligations of the state over its resources which include those on land, those in the sea, those in the sky and those contained therein. The important point in this declaration is the provision that obliges the state to guarantee the environmental impact received by other countries originating from activities in its territory or territory which is the responsibility of the state concerned. This principle is a form of implementation of Principle 21 of the 1972 Strockholm Declaration, where this obligation revolves around efforts to prevent, reduce, and control environmental impacts which are the effects of activities under its jurisdiction.

b) Enforcement, Management and Resolution of Environmental Problems

Implementation of other international provisions contained in relation to the position of the state in the effort to guarantee the effectiveness of the implementation of these provisions. This is closely related to issues of enforcement, compliance and dispute settlement. Referring to environmental problems, the principles of international law prioritize the existence of regulatory measures in the effort to monitor and protect the environment from potential environmental damage as well as carry out conservation, sustainable use and development of natural resources, and protect the biosphere ecosystem as a whole.

c) Development of environmental rights (eco-rights)

Recognition of environmental rights (eco-rights) around animal rights and ecosystem (nature) rights is a new thing introduced through the development of international law. In this stage, the emergence of non-governmental organizations (NGOs) is one of the milestones in the recognition of eco-rights which is emphasized to be considered in the formulation of environmental law in each country, because basically humans do not only interact with each other, but also interact with the environment. where there are animals and ecosystems in which if one party experiences an imbalance especially damage, then the other party will also feel the impact, in this case environmental damage will have an impact on human benefit.

The introduction of new aspects in international environmental law that have been described above is certainly influenced by globalization itself, where environmental damage and pollution is the result of human and state behavior that does not see the urgency to protect the environment itself. Besides, the existence of the 1972 Stockholm Declaration provides significant benefits in environmental protection. Although the state has the right and authority to exploit its own natural resources at its national policy, the state must also ensure that such exploitation activities do not cause environmental damage.

The Development of Environmental Law in Indonesia

Talking about environmental law in a country is automatically related to the country's economic policies, because based on historical reviews environmental policies were born as a form of reaction to economic activities that are not pro-environmental. However, it should be noted that environmental damage is not directly related to economic activities, but to all aspects of development, including the law itself.

Juridically, Indonesia's concern for the environment began with the enactment of Law Number 4 of 1982 concerning Basic Provisions for Environmental Management (UULH) which was later refined into Law Number 23 of 1997 concerning Environmental Management (UUPLH), which was then replaced with Law Number 32 of 2009 concerning Environmental Protection and Management (PPLH), and all criminal provisions formulated insofar as the formulation of these provisions aims to protect the environment as a whole or the parts contained therein, both biotic and abiotic components , such as animals, humans, land, water, and air. In detail, UUPPLH contains legal sanctions for acts that damage the environment. However, over time, in order to facilitate investment, the government enacted Law Number 11 of 2020 concerning Job Creation which it felt needed to be refined and simplified licensing and several other substances.

The enactment of the Job Creation Law in 2020 raises many question marks, especially in the Environmental cluster. There are several provisions that have changed with the ratification of the Omnibus law, including:

a) The Job Creation Law abolishes the provisions of Article 40 of the UUPPLH, where the article states matters relating to environmental permits, namely: "(1) Environmental permits are requirements for obtaining business and/or activity permits; (2) in the event that the environmental permit is revoked, the business and/or activity permit is canceled; (3) in the event that the business and/or activity undergoes a change, the person in charge of the business and/or activity is obliged to renew the environmental permit.

b) Changes in the clause because of administrative sanctions in the Job Creation Law, previously in Article 76 paragraph (1) UUPPLH stated: "Ministers, governors, or regents/mayors apply administrative sanctions to the person in charge of businesses and/or activities if under supervision it is determined that a violation of environmental permits is being carried out" while Article 76 paragraph (1) of the Employment Creation Law states: "The Central Government or Regional Government applies administrative sanctions to the person in charge of the business and/or activity if during supervision it is found that a violation of the Business Licensing or Government Approval is found", wherein the environmental permit is no longer an important factor for administrative sanctions for actions that may be carried out by corporations, besides that there is a potential for confusion regarding the subjects that are authorized by law where in the scenario of administrative sanctions imposed by local governments, the central government which has full executive authority has the possibility to conduct inter- intervention by a higher authority.

c) The disappearance of the strict liability concept contained in the UUPPLH, in Article 88 of the UUPLH related to proof of action states: "Every person whose actions, business, and/or activities use B3, produces and/or manages B3, and/or poses a serious threat to the environment. life is absolutely responsible for the losses that occur without the need to prove the element of error", while Article 88 of the Job Creation Law states "Everyone whose actions, business, and/or activities use B3, generates and/or manages B3 waste, and/or who poses a serious threat to the environment, is absolutely responsible for losses that occur from its business and/or activities." The loss of the phrase "without the need for proof" in Article 88 of the Job Creation Law has implications for the return of liability based on fault that is unable to anticipate risky activities. such as UUPPLH which categorizes activities what is done endangers the environment as an ultrahazardous activity so that based on UUPPLH, the person is obliged to bear all losses/damages arising from his activities.Hilangnya sifat strict liability dalam pertanggungjawaban perusakan lingkungan yang terjadi akibat pemberlakuan Omnibus Law tersebut menjadi implikasi dari kemunduran di ranah hukum lingkungan di Indonesia. Perubahan frasa "tanpa perlu pembuktian unsur kesalahan" pada pasal 88 Undang-Undang Nomor 32 tahun 2009 diganti dengan "dariusaha dan/ataukegiatanya" telahmencederainiat pemerintah Indonesia dalammelindungi dan memliharalingkungan, karenaakan mempermudah terjadinya kesewenang-wenangan suatu korporasi dalam merusak lingkungan lebih jauh. Sebagai sebuah langkah untuk menempatkan persoalan lingkungan menjadi perhatian dan pertimbangan dalam perumusan hukum dapat dilakukan dengan memperbaiki konstitusi hukum melalui UUD 1945. Di mana hal ini bukanlah sebuah hal yang benar-benar baru mengingat bahwa UUD 1945 melalui Pasal 33 ayat (1) serta Pasal 28H ayat (1) UUD 1945 melakukankonstitusion alisasiterhadapnormalingkungan hidup sebagai materi muatan dalam hukum tertinggi (green constitution).

In addition, the abolition of environmental permits, although replaced with environmental approvals amid global conditions that are increasingly raising awareness to protect the environment so that climate change can be controlled by tightening seat belts, protecting the environment and managing economic growth, Indonesia actually drives by not involving local governments in the management of approvals. environment as a form of relaxation in environmental management. So that in the future it is feared that environmental damage will be more real and incurable.

The work copyright law in this case can be said to have failed in carrying out the constitutional mandate, where environmental aspects should receive important attention, it does not mean that this law ignores these aspects, but rather that the changes made in it have the potential to give rise to legal irregularities that can result in environmental damage, which can be assessed as a setback in the field of environmental law in Indonesia.

V. CLOSING

Based on the discussions conducted regarding the ratification of Law no. 11 of 2020 concerning Job Creation, there are several changes that occur that have the potential to cause actions that damage the environment as an emphasis on environmental permits that were previously used to control activities that have the potential to damage the environment, this illustrates the decline of environmental law in Indonesia and will increasingly looking to work on the environment in the future. When compared with international environmental law, which continues to develop, even to the point of introducing animal rights. This proves that the world community in the era of globalization encourages the strengthening and tightening of natural resource management in order to preserve the environment. However, Indonesia actually makes it easier for licensing in the exploitation of natural resources. However, as a form of protection for the environment in Indonesia. It is necessary to have a separate regulation outside Article 33 of the 1945 Constitution in the context of realizing a "green constitution" in order to realize environmental protection.

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