

THE IMPACT OF JOB CREATION ACT AGAINST THE PARTICIPATORY PRINCIPLE IN ENVIRONMENTAL LAW

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Abstract: The enactment of Act 11/2020 on Job Creation in October 2020, resulted in several changes in laws and regulations. One of the crucial articles that were abolished by the Job Creation Act was Article 93 of the Environmental Act (UUPPLH) which regulates rights to file a lawsuit at the Administrative Court, this is contrary to the private law. Also based on Article 2 of the Environmental Act states that environmental protection and management is carried out based on the principle of Participation. This research focuses on the impacts of eliminating Article 93 of the Environmental Act by the Job Creation Act specifically on the principle of Participation. The method used in this research is normative legal research conducted with qualitative analysis. The result is that the elimination of Article 93 of the Environmental Act by Article 21 and Article 22 of the Job Creation Act is contrary to the Participatory Principle contained in Article 2 letter k and Article 70 of the UUPPLH. The abolition of Article 93 of the UUPPLH also causes the judicial power to be unable to exercise the principle of checks and balances.

Keywords: *Participatory Principle; Environment; Job Creation Act.*

1. INTRODUCTION

Humans live, grow and develop in a natural environment. Humans and nature are an inseparable unity. Humans depend on natural resources to continue life. To keep nature so that it is sustainable for living things, regulations are made that contain provisions to protect the natural environment, to keep nature in balance, and not to damage nature. Development in Indonesia is carried out in the context of realizing the national goal of advancing public welfare. The main elements in development are natural resources and the environment. Ability in environmental management. The ability in the environmental management of natural resources must be adjusted to the limitations of existing natural resources. The utilization of natural resources must be carried out wisely. Environmental preservation has the connotation that the

environment must be maintained as it is. This means that the environment undergoes a process of change. In this process of change, it is necessary to maintain the environment so that it can support life in the development effort (Danusaputro, 1985: 198).

The 1945 Constitution of the Republic of Indonesia in Article 33 paragraph (3) states that the earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. This confirms that the state is committed to protecting the environment and utilizing the environment for the welfare of all Indonesian people.

Further regulation regarding the environment in the Laws and Regulations in Indonesia is regulated through Act 4/1982 on the Basic Provisions for Environmental Management (UULH 1982) which was replaced by Act 23/1997 on Environmental Management (UULH 1997) and Act 23/1997 repealed by Act 32/2009 on the Environmental Protection and Management (UUPPLH 2009).

The three laws contain administrative, criminal, and civil law provisions. Act 32/2009 as the main formal source of environmental law in Indonesia contains new provisions that are not contained in the previous law, namely, legal protection for any person fighting for the right to the environment, the authority of Civil Servant Investigating Officers (PPNS) and the creation of new material offenses. The new legal norms contained in Act 32/2009, namely (Rahmadi, 2015):

1. UUPPLH adopts the principles contained in the 1922 Rio Declaration, namely the principles of state responsibility, integrity, prudence, justice, polluter pays, participation, and local culture. These principles are contained in Article 2.
2. In Article 66 UUPPLH provides legal protection to people who are fighting for their rights to the environment from possible criminal and civil charges.
3. There is a change in the area of investigative authority in environmental cases.
4. The criminal law approach is not the last resort (*ultimum remedium*) to punish business behavior that causes environmental problems.
5. UUPPLH explicitly places criminal responsibility on the head of a business entity that has caused environmental pollution or damage (contained in Article 116).

Act 32/2009 recognizes three pathways in the enforcement of administrative law environment, civil law enforcement, and criminal law enforcement. Law enforcement through these 3 channels can be in the form of repressive measures, which need to be carried out effectively, consistently, and consistently against perpetrators of pollution and environmental damage and can also be in the form of preventive measures, but these efforts only exist through the enforcement of the environment administrative law (Erliyani, 2020: 2).

The issuance of Act 11/2020 (Job Creation Act) in October 2020, resulted in several changes in Act 32/2009. This change occurs due to the application of "*Lex Posterior Derogat Legi Priori*" which means that the new law (norm/rule of law) negates the old law (norm/rule of law) (See Irfani, 2020: 312). The Job Creation Act provides changes and abolition of articles on the UUPPLH. One of the crucial aspects was the

abolishing of Article 93 of the UUPPLH which regulates the right to file a lawsuit to the State Administrative Court based on the Participatory Principle. Therefore this study examines the impacts of the elimination of Article 93 of the UUPPLH by the Job Creation Act?

2. METHODS

Legal science has characteristics as a prescriptive and applied science. In prescriptive, the science of law studies the objectives of the law, the values of justice in law, the good and bad of a rule of law, concepts, and legal norms. Whereas in applied science, legal science establishes a procedure, provisions, and limitations in enforcing a legal rule (Nurhayati, 2020: 9). Legal research seeks to present legal developments following the needs of legal studies in an integral manner (Nurhayati, 2013: 15). the dichotomy of legal research methods (doctrinal and non-doctrinal) is also influenced by the development of legal philosophers' schools of thought (Nurhayati, Ifrani, Said, 2021: 1-25). The method used in this study is doctrinal legal research focusing on sources of law. The analysis is performed qualitatively without numbers, statistical formulas, and mathematics.

3. RESULTS AND DISCUSSION

The Act 32/2009 on Environmental Protection and Management is a statutory regulation that aims to provide legal certainty for environmental protection and management. The purpose of the formation of Act 32/2009 is contained in Article 3 which:

1. Protect the Republic of Indonesia from pollution and/or damage to the environment;
2. Ensuring safety, health, and human life;
3. Ensuring the survival of living things and the preservation of environmental functions;
4. Maintain the preservation of environmental functions;
5. Achieve harmony, harmony, and balance in the environment;
6. Ensuring the fulfillment of the present and future generations of justice;
7. Ensuring the fulfillment and protection of the right to the environment as part of human rights;
8. Controlling the use of natural resources wisely;
9. Realizing sustainable development; and
10. Anticipating global environmental issues.

Article 2 of the UUPPLH states that environmental protection and management is carried out based on the principles of state responsibility, sustainability, harmony and balance, integration, benefits, prudence, justice, ecoregion, biodiversity, polluter pays, participatory. However, in October 2020, Act 11/2020 regulates several changes to Act 32/2009. Article 21 of the Job Creation Act states that "To provide convenience for everyone in obtaining environmental approval, this Law amends, removes, or stipulates new regulations on several provisions related to Business Permit which are regulated in

Act 32/2009 on Environmental Protection and Management. Meanwhile, Article 22 states the provisions of the Articles which are amended.

In the amendment to the provisions of the articles in the UUPPLH, there are several important articles regarding environmental protection and environmental law enforcement efforts that have been changed and even deleted. One of the crucial articles that were removed by the Job Creation Act was Article 93 UUPPLH which was the legal basis for filing a lawsuit at the State Administrative Court.

Article 93 UUPPLH, which reads:

- (1) *Every person can file a lawsuit against a state administrative decision if:*
 - a. *State administrative bodies or officials issue environmental permits to businesses and/or activities that are subject to Environment Impact Analysis mandatory but are not equipped with the documents;*
 - b. *State administrative bodies or officials issue environmental permits for activities that are UKL-UPL compulsory, but are not equipped with UKL-UPL documents; and/or*
 - c. *State administrative bodies or officials that issue business and/or activity licenses that are not equipped with environmental permits.*
- (2) *The procedure for filing a lawsuit against state administrative decisions refers to the Procedural Law for State Administrative Courts as regulated in Act 5/1986 on State Administrative Courts as amended twice by Act 9/2004 on Amendments to Act 5/1986 on State Administrative Courts and Act 51/2009 on Second Amendment to Act 5/1986 on State Administrative Courts.*

The function of the Administrative Court in the settlement of environmental disputes is not only to provide legal protection to persons or civil legal entities who are harmed as justice seekers, but the state administrative court also protects the environment that has suffered damage due to the issuance of state administrative decisions to carrying out a business and/or activity that harms the environment (Harjiyatni & Raharja. 2014: 262). The settlement of environmental disputes by state administrative courts has advantages compared to environmental dispute resolution in general courts, whether through civil suit or criminal prosecution. Environmental dispute lawsuit at the State Administrative Court is aimed at canceling environmental permits owned by a business and/or activity. With the cancellation of the environmental permit, it means that a business/activity can no longer continue its business/activity so that the source of its pollution can be stopped. The target here is the aspect of the action (the polluter) (Effendi, 2013: 17).

The elimination of Article 93 UUPPLH by Article 21 and Article 22 of the Job Creation Act will certainly reduce public participation in environmental law enforcement.

This is of course contrary to the principle of Participation, the principle contained in Article 2 letter k as described in the Elucidation of Article 2 means that every member of the community is encouraged to play an active role in the decision-making process and implementation of environmental protection and management, either directly or indirectly (Sabarno, 2007: 40).

Article 2 letter k and Article 70 UUPPLH clearly state community participation in environmental protection and management. This is also in line with the human rights contained in Article 17 of Act 39/1999 on Human Rights, which states that "*every person without discrimination has the right to obtain justice by submitting applications, complaints, and lawsuits in both criminal and civil cases, as well as administratively as well as being tried through a free and impartial process, following the law of procedure which guarantees an objective examination by an honest and fair judge to obtain a fair and correct decision.*"

After the 1945 Constitution underwent 4 amendments, the 1945 Constitution adopted the separation of powers based on the principle of checks and balances (Asshiddiqie, 2015: 292). The checks and balances in democracy aim to avoid the abuse of power and concentrating power on a person or an institution because with this principle between institutions will control or supervise each other and even complement each other (Yani, 2018: 9). With *checks and balances*, state power can be regulated, limited, and even controlled as well as possible so that the abuse of power by state apparatus or individuals who happen to be occupying positions in the relevant state institutions can be prevented and handled properly (Huda, 2016: 115).

The function of the judicial power of the judiciary is one of the authorities in Article 24 paragraph (1) and paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that the judicial power is an independent power to administer the judiciary to enforce the law and justice that is carried out. by a Supreme Court and the judiciary under it in the environment of general courts, religious courts, military courts, and state administrative courts, and the Constitutional Court.

That the abolition of Article 93 UUPPLH can lead to arbitrariness by the government if the community is not given a role to be able to file claims and/or challenges for decisions taken if the decision has exceeded the limit. This also does not provide legal certainty and legal protection for the people if the actions and decisions taken are in favor of personal and certain group interests above the people's interests and without heeding the provisions of the Amdal document and UKL-UPL document.

So because the deletion of Article 93 UUPPLH by Article 21 and Article 22 of the Job Creation Law is contrary to Article 2 letter k and Article 70 of the UUPPLH, where Article 2 letter k and Article 70 contained in the UUPPLH are not changed by the Job Creation Act, then this creating conflicts between legal norms. The conflict between legal norms is a form of uncertainty that will hinder the process of enforcing environmental laws in civil matters.

4. CONCLUSIONS

Act 32/2009 on Environmental Protection and Management is a statutory regulation on environmental protection which aims to provide legal certainty for environmental protection and management. However, in October 2020, Act 11/2020 on Job Creation was passed which regulates several changes to Act 32/2009. In the amendment to the provisions of the articles in the UUPPLH, there are several important articles regarding environmental protection and environmental law enforcement efforts that have been changed and even abolished. One of the crucial articles that were removed was the legal basis for filing a lawsuit at the Administrative Court in the case of an administrative lawsuit.

The elimination of Article 93 UUPPLH will certainly reduce public participation in environmental law enforcement. This is contrary to the Participatory Principle contained in Article 2 letter k and Article 70 of the UUPPLH concerning community participation in environmental protection and management. The abolition of Article 93 of the UUPPLH also causes the judicial power to be unable to exercise checks and balances. Therefore this is creating conflicts between legal norms. The conflict between legal norms is a form of uncertainty that will hinder the process of enforcing environmental laws in civil matters.

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REFERENCES

LITERATURE

- Asshiddiqie, Jimly. 2015. *Pengantar Ilmu Hukum Tata Negara*. Jakarta : Rajagrafindo Persada.
- Danusaputro, St. Munadjat. 1985. *Hukum Lingkungan Buku II: Nasional*. Bandung : Binacipta.
- Effendi, A'an. 2013. *Penyelesaian Sengketa Lingkungan Melalui Peradilan Tata Usaha Negara*. Artikel dalam "Perspektif". Vol. XVIII. No. 1. Januari.
- Erliyani, Rahmida. 2020. *Penegakan Hukum Lingkungan Kepidanaan*. Banjarmasin: Istana Print.
- Harjiyatni, Fransisca Romana dan Sunarya Raharja. 2014. *Fungsi Peradilan Tata Usaha Negara Dalam Menyelesaikan Sengketa Lingkungan (Studi Gugatan*

- Organisasi Lingkungan Hidup*). Artikel dalam "Mimbar Hukum". Vol. 26. No. 2. Juni.
- Huda, Ni'matul. 2016. *Hukum Tata Negara Indonesia Edisi Revisi*. Jakarta : Rajawali Pers.
- Irfani, Nurfaqih. 2020. "Asas *Lex Superior, Lex Specialis, dan Lex Posterior* : Pemaknaan, Problematika, dan Penggunaannya Dalam Penalaran dan Argumentasi Hukum". Artikel dalam "Jurnal Legislasi Indonesia". Vol. 17. No. 3. September.
- Rahmadi, Takdir. 2015. *Perkembangan Hukum Lingkungan di Indonesia*. Artikel dalam "Perkembangan Hukum Lingkungan di Indonesia".
- Sabarno, Hari. 2007. *Memandu Otonomi Daerah Menjaga Kesatuan Bangsa*. Jakarta : Sinar Grafika.
- Yani, Ahmad. 2018. *Sistem Pemerintahan di Indonesia : Pendekatan teori dan Praktek Konstitusi Undang-Undang Dasar 1945*. Artikel dalam "Jurnal Legislasi Indonesia". Vol. 15. No. 2. Juli.
- Nurhayati, Y. 2020. *Pengantar Ilmu Hukum*, Nusa Media, Bandung, 2020.
- Nurhayati, Y. (2013). Perdebatan Antara Metode Normatif Dengan Metode Empirik Dalam Penelitian Ilmu Hukum Ditinjau Dari Karakter, Fungsi, dan Tujuan Ilmu Hukum. *Jurnal Al Adl*, Vol. 5, No. 10, P.15
- Nurhayati, Y.; Ifrani; M.Y. Said. (2021). Metode Normatif dan Dalam Ilmu Hukum. *Jurnal Penegakan Hukum Indonesia*, Vol. 2, No. 1, PP.1-25

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Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia (Lembaran Negara Republik Indonesia Nomor 165 Tahun 1999, Tambahan Lembaran Negara Republik Indonesia Nomor 3886)

Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup (Lembaran Negara Republik Indonesia Nomor 140 Tahun 2009, Tambahan Lembaran Negara Republik Indonesia Nomor 5059)

Undang-Undang Nomor 11 Tahun 2020 (Lembaran Negara Republik Indonesia Nomor 245 Tahun 2020, Tambahan Lembaran Negara Republik Indonesia Nomor 6573)