

Undang Undang Cipta Kerja di Sektor Lingkungan Hidup Perspektif Fikih Lingkungan

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Abstract

Environmental testing is currently based on the Job Creation Law in the omnibus law. This research only prioritizes the contents of the Job Creation Law, namely environmental issues. The purpose of this research is to critically examine the contents of the Job Creation Law in the environmental field and to find out the environmental implications of the substances regulated by the Job Creation Law in the environmental field. The results of this study are that the contents of the Job Creation Law in the environmental sector regulate very significant changes compared to the provisions of environmental laws and environmental protection and the Job Creation Law in the Environmental Sector has an impact because there are no regulatory authorities for the licensing system and proper supervision in the environmental field in central and regional relations.

Keywords: UU Cipta Kerja, Fiqh Environment, Omnibus Law

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INTRODUCTION

Article 33 of the 1945 Constitution which reads: "that the earth, water and all the natural resources contained therein shall be used as much as possible for the prosperity of the people" is a strong legal basis which explains that economic constitutionalism cannot be separated from environmental constitutionalism. seen as a global decision that takes into account economic principles and environmental knowledge Economic growth and a good environment are rights that must be defended for the benefit of present and future generations A fundamental human right is the right to live, as explained in Article 28 H Paragraph 1 of the 1945 Constitution "Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and has the right to obtain health services". Rules *law to all* must clarify aspects of environmental needs and economic growth for the prosperity of all Indonesian people.[1]

The right to the environment is explained in Article 9 paragraph 3 of Law Number 39 of 1999 concerning Human Rights which reads: "Everyone has the right to a good and healthy environment".[2] Environmental constitutionalism is also explained in Article 65 paragraph 1 of Law Number 32 of 2009 Concerning the Protection and Management Environment which reads: "Everyone has the right to a good living environment and health as part of human rights".[3]

In February 2020 the government proposed the Job Creation Law (UU Ciptaker) *inlaw to all* to the DPR. Some expressed concern about everything from academic papers to preparation techniques to stakeholder and local government engagement to licensing and oversight difficulties. The reduced laws are Law Number 12 of 2011, Law Number 15 of 2019, Law Number 32 of 2009, and Law Number 23 of 2014.

The natural resources sector is increasingly experiencing an accumulation of legal problems arising from pollution, contamination, and a lack of scrutiny by local governments in carrying out their environmental policy and administrative responsibilities. In terms of environmental protection and management authority, the inability of the central government to provide advice and supervision to local governments has resulted in the weakening of local environmental authorities. The government has the right to sue and take legal action against companies that violate environmental regulations, such as civil lawsuits against companies that burn forests and land under the principle of strict responsibility.^[4]

From approval to supervision, current regulations in the form of state authority over environmental protection and management are not effective, especially the Job Creation Law makes all local governments responsible for the environment. With the provisions of the Job Creation Law which reduce the environmental sector, the provisions of the Environmental Protection and Management Law are reduced, and the environment becomes a profitable resource and pollution levels increase.

METHOD

This research is a qualitative research type of normative legal research used as a research method. This means conducting a prescriptive review of the provisions of the Job Creation Law concerning environmental aspects with Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 23 of 2014 concerning Regional Government as comparison material. The author inventories the legal sources of this article based on relevant literature, books, journals and articles.

RESULT AND DISCUSSION

1. Legal Politics of Employment Law

Laws are basically decisions made by states or national bodies on the basis of attribution and mandate. A constitution or UUD 1945 gives the power to make laws to the head of state, in this case the president continues to be appointed. With this power, the president can initiate independently to put forward statutory regulations whenever he needs them, which are in accordance with the powers mandated by the Constitution and laws.^[5]

Legislation determines the direction of national policy and is basically bound by legal policy. The legal policy of the Job Creation Law begins with planning, deliberations, and approval until it becomes a law. This law stems from the president's political will to form the Ciptaker Law using this method *law to all* It intends to simplify regulations prohibiting job creation and strengthening SMEs through a comprehensive law called the Job Creation Law.^[6]

The current environmental law policy as far as environmental impact monitoring is concerned is inseparable from the issue of the content of the provisions of Law Number 32 of 2009 concerning Environmental Protection and Management. Such supervision has the ability to control environmental pollution or damage, including the fulfillment of environmental permits through Environmental Permits, Environmental Management Efforts - Environmental Monitoring Efforts (UKL-UPL), and Environmental Impact Analysis (Amdal). Furthermore, environmental research is carried out by the government as part of planning in drafting environmental laws.

Environmental law policies have a significant impact because they involve inter-economic control in the implementation of development and risk investment returns through environmental insight. Moreover, there is a risk of loss of customary land owned by the community because it has been replaced by mining activities, production forests and investment in oil palm. The draft Policy for the Job Creation Law in the environmental field determines future prospects in implementing the

principles of sustainable development. Environments with potential natural resources such as forestry become objects of trade, and land ownership ultimately becomes objects of economic activity. The state plays an important role in land management and environmental pollution control through sectoral activities.

Legal policies relating to environmental issues and bound natural resources from TAP MPR No. IX/MPR/2001. Environmental law policies always follow the growth of the local community and pay attention to regional privileges. This is very critical because environmental problems have become increasingly complex with the implementation of regional autonomy. From various concepts of legal policy and environmental law policies, legal politics determines the purpose of law, whether it benefits or harms society, including the environment in the future.

2. Critical Study of the Content of the Environmental Work Creation Law

a. Change from environmental permit to environmental approval

There has been a change in the terminology of environmental permits in the provisions of the Job Creation Law which use Law Number 32 of 2009 concerning Environmental Protection and Management. The terminology change covers questions about different environmental permit laws. Changes in meaning in provincial laws and regulations related to environmental permits and environmental permits related to "confusion" in Indonesian laws and regulations. The definition of an environmental permit can be found in Article 1(35) of the Job Creation Law.

Changes in the meaning of environmental permits directly constitute a determination of ecological feasibility or a statement of environmental management capability as an environmental licensing tool, but the term environmental permit is the content of Law Number 32 of 2009 concerning environmental protection and management, namely: given to everyone in environmental protection and management as a limitations in obtaining business licenses that require Amdal or UKL UPL.

Determination of environmental impact is the basis for issuing environmental permits, because environmental compatibility already exists before environmental permits are issued. The requirement to get a business license is to require an Amdal or UKL UPL. Approval in this clause means conceptual approval or rejection of an activity or transaction, while environmental approval means direct expression in the form of a decision regarding a statement of ecological feasibility or commitment to environmental management.

The term permit, as used in the legal language of environmental management, is interpreted by the Constitutional Court as the right of the state to manage its natural resources in the best sense or mastery, with serious consequences in the form of environmental permits, including environmental approvals that have not applied the principle of inconsistency which is an act or power apply and repeal in state administrative law, and there is no mechanism for changing state administrative decisions by the State Administrative Court (PTUN).

According to Spelt and Berge, permits are agreements and powers based on laws or orders which in certain circumstances are subversive from the taboos of narrowly defined license laws.^[7]

b. Authority Licensing and supervision by the central government

The central government ignores the constitution and regional regulations in dealing with the environment. The spirit of sovereignty gives freedom to citizens to choose their destination and reduces their dependence on central

officials. This situation makes the region more independent and more resilient to economic, social, political and cultural shocks which often lead to societal collapse.

State administrative law as a function of authority, the active role of local governments and local actors in the approval and supervision process is to carry out structured supervision and direction from the central to the sector. Equilibrium function of facilitation and inspection of permits is urgently needed as a preventive measure to prevent corruption in the licensing process. Lord Acton said that "*power tends to corrupt, absolute power corrupt absolutely*", meaning that power tends to be corrupt, absolute power is definitely corrupt.^[8] Centralized licensing with the nuances of the Job Creation Law frees up space and corrupt practices with a permit process without public inspection, community involvement, or local autonomy under Law Number 23 of 2004 concerning Regional Government.

Research conducted by the authors shows that, (1) the factor of trade in the supervision of licensing mechanisms or business permits is controlled by substance and harmonization between authorities or institutions in the local environmental sector and entrepreneurs. (2) the factor of political power in general decisions in the environmental field related to multiple stakeholders to advance local capital or local specific income, and facilitates avoiding monitoring of various economic sectors as well as institutional arrangements characterized by conflicts of interest, where employees are transferred to other units or other services, but they are not responsible for the performance of their work. (3) cultural factors that influence the legal perceptions of employers and the surrounding community regarding the fundamentals of environmental law and the implementation of unfair punishments. This is reflected in the imposition of penalties which are only aimed at business owners. The lack of sentencing has further implications, such as the waiver of permits which are considered very strategic in dealing with environmental influences.^[9]

- c. Only the community is involved in the EIA design process without the involvement of environmentalists.

Good governance is a new paradigm that creates an open gap for participation in the formation procedure. Good governance success is achieved when there is interdependence between the elements of governance: the state, the private sector, and civil society organizations. Community institutions in this situation are environmental activists as civil society organizations that contain a lack of information, knowledge and public awareness in protecting the environment. If this is removed, then there is justification for non-stop exploitation of nature on the basis of state ownership of natural resources. The current environmental management policy rests on participatory and prudent principles in the approval process and environmental administration laws as a management function.

Democratic values are associated with the process of formulating public strategies. Public strategy undermines the public good. In the interests of the democracy of the oligarchic minority, repressive and manipulative actions are carried out to become tools of power. With democratization, it is possible to consider the public interest in politics and the participation of citizens in the process of making public policies. Amdal as a license tool and wisdom product which is contained in the form of an Amdal conclusion relating to business actions carried out is designed to represent the interests of the affected community and nature lovers. Thus, the output of EIA decisions must be

transparent and inclusive as part of public information as a means of control in democracy.

In preparing the AMDAL based on the current provisions of Law Number 32 of 2009 concerning Environmental Protection and Management and Government Regulation Number 27 of 2012 regarding Environmental Permits, it is necessary to consider not only the affected community but also the wider community. There is room for this to include environmentalists who are involved as members of civil society organizations in democratic countries. In addition, it requires a very important role of civil society through academics, research, political advocacy, participation in environmental impact assessments, and the licensing process as a balancing function between state and private actors.

3. Analysis of the Implications of the Job Creation Law in the Environmental Sector Perspective of Environmental Jurisprudence

Globally, Islam is so concerned with nature. This is because Islam is a belief that actually conveys a mandate regarding behavior towards fellow human beings and the natural environment. In interpreting the most important part of human life, the environment is generally 'temporary'. This means that they can suddenly become weak and paralyzed for various reasons at an unknown time.[10] More than half of Indonesia's forests are now gone, and plant and animal populations are declining. Environmental pollution caused by air and water pollution is increasing from year to year.[11] In fact, the existence of comprehensive laws and regulations exacerbates polluted environmental conditions, because the articles that regulate them do not really regulate and protect environmental sustainability. The articles that are regulated are still of very little benefit to the local environment, as follows:

First, Article 40 of the PPLH Law regarding environmental permits was replaced by Article 22 paragraph 18 of the Law *inlaw to all*. Terms *inlaw to all* handling environmental permits is required for a business activity only if the activity is to be carried out, even though environmental permits are not a requirement for doing business.

Second, Article 22 paragraph 5 concerning amendments to Article 26 regarding participation in the preparation of the EIA. Under this provision, only affected communities are involved in preparing the AMDAL document, even though environmental activists were also involved in the previous Environmental Protection and Management Law. It is very important that the involvement of mass organizations in preparing EIA documents is upheld by a decision *law to all*, because the involvement of these institutions is a picture of dual management of environmental protection, management and management. That is, efforts to increase profitability are aligned with ecological interests. Comprehensive legal policies to eliminate the involvement of environmental activists and organizations that represent a weakening of environmental oversight and control. Objective *law to all* is to revitalize the economy, improve the ecosystem and increase employment opportunities.

Third, Article 88 is amended by Article 22 paragraph 33 *inlaw to all* regarding various forms of responsibility for B3 waste. However, there are differences between the Administrative Protection Act and the *ActAll Law*. Therefore, the consequences can create lobbying space among politicians and business actors who are motivated by corporate interests, because law is determined by linguistic certainty in statutory provisions.

Fourth, Article 79 regulates the revocation of environmental permits. This provision is regulated in Article 79 of the Law on Environmental Management and

Protection. The abolition of administrative penalties, also in the form of blocking or abolishing licenses, is a form of relaxation and weakening of copyrights and *law to all*. The law supports economic actors more than environmental management and conservation in society. Where previous laws and regulations stipulated administrative penalties in the form of blocking or abolishing permits, if during the inspection a fraudulent environmental permit is found, then the sanction will be revoked based on the provisions *law to all* which resulted in criminal prosecution. Maintaining environmental sustainability is very weak and does not really reflect people's claims about their environmental needs. So, overall, a comprehensive law has several key points that are very interesting for the ecological environment, including: (1) simplification which leads to weakening of environmental permits. (2) elimination of environmental monitoring institutions that participate in the preparation of the AMDAL. (3) the bias of the responsibility of economic actors in environmental destruction. (4) elimination of sanctions from administrative organs in the form of blocking or abolishing environmental permits in the supervision of identified fraudulent environmental permits.

Head *law to all* very tied to the analysis of environmental jurisprudence, because the Qur'an also regulates the relationship between nature and its environment. In criticizing environmental legislation, if the practice outlined in these articles reconciles use of the environment with its preservation, that is basically acceptable. Therefore it is very important to have the awareness of all stakeholders, including all elements of officials, businessmen and community leaders, in order to be able to function actively in environmental protection efforts. Islam is a very complex teaching that provides guidelines for environmental protection and responsibility that must be considered. Therefore, environmental jurisprudence is devoted to *law to all* at first glance, namely by looking at how Islam determines moral values in the context of the environment that forms the law established by legislators. Indonesian Islamic law expert Ali Yafie explains the basic principles of environmental responsibility from a fiqh perspective.[12]

First, maintenance of the spirit of honor (*hifdzh al-nafs*). From a fiqh point of view, life is great and truly meaningful. The basic human capital to carry out its functions and determine value and dignity is called life. Islam makes many demands on its people for the basic capital carefully and as completely as possible. In this regard, Djazuli mentions in his book that all human behavior that leads to environmental damage means behavior that threatens life, soul, property, lineage, and religion.[13]

Second, The paradigm of living in this world is not the ultimate goal. This is confirmed in the Qur'an, "World life is used as a means of attainment (*wasila*) to obtain the favors of Allah SWT and lead to eternal life after death" (*As-Syu' Ara* 26: 77). In terms of utilizing the environment, it is appropriate for human life, but the happiness in the afterlife is more important, then the use of the environment is permissible as long as it maintains balance and does not harm the world. It is also explained in the Qur'an that "The corruption caused by human hands has appeared on the face of the earth" (*Ar-Rum*, 30: 41). The existence of an omnibus law may not describe the harm caused by its decisions, namely the legal conclusions it creates.

Third, the culture of production and consumption is based on the level of human interests. The perspective of environmental law based on Islamic principles shows that the utilization of the environment is assessed at the level of human interest. So that in terms of excessive exploitation of natural resources it is not permissible, as stated in Al-Qur'an Al-Hud, 11: 85. This means: nature is used for humans to be used for their survival, but humans are required to be wise and wise

in managing nature, not overdoing it and also not taking arbitrary actions in its utilization.[14] This statement shows that the Islamic principles discussed in certain areas of environmental law are aimed at the survival of all living things. Therefore, as stated by Lester R Brown, who explained that religion plays a very important role in overcoming the problem of damage, to enforce rules of good environmental ethics, religion, industry there must be a strong synergy between researchers and academics.

Fourth, Nature (ecosystem) is in perfect harmony and balance. According to al-Alusiy, Allah SWT forbade destroying it after it was created to be used by living beings for the benefit of the mulatto by sending envoys to realize Sharia and the law of Allah SWT. In this case, it means that life on Earth was created for the benefit of all living things.

Fifth, all beings are noble (muhtaram). According to the terminology of the Qur'an, the word living creature is the same as the word ummah which refers to humans (Al-Baqarah (2):213), animals (Al-An'am (6):38). This shows that all creations of Allah SWT are exalted creatures that demand proper treatment, done by caring for everything that exists on earth. Environmental management included in *law to all* must pay attention to the life of living beings. As Yusuf al-Qardawi explains that environmental protection is an effort to create benefits and prevent harm.[15] The role of Islam *asway of life* is the principle of economic development related to the use of the environment to maintain ecological balance.

Sixth, humans are responsible for the administration of the universe through (*mukallaf*). Management of nature is an act of taking responsibility for human behavior in this world and in the hereafter, so that its utilization must show fair and proportional use between the benefits and the preservation of nature.

According to Ali Yafie, in principle, environmental jurisprudence is the utilization of the environment that does not only lead to welfare, meaning that the condition of the human environment can balance the use and maintenance of environmental ecosystems. Therefore, within the framework of national and state life, there is an obligation to regulate the pattern of people's attitudes towards progress and socio-economic development without sacrificing the ecological aspects of society.

Economic globalization has an impact on the management and utilization of the human environment. The large amount of land used in the country's economic development causes an imbalance in human life towards the environment. There are *laws law to all* causing murky environmental problems in society because of environmental content there are several provisions in the law that do not protect environmental interests. Al-Qaradawi said protecting the environment is part of protecting religion, soul, lineage, spirit, and property.[16]

The environmental context *law to all* has not yet become the law expected by society. Several articles provide business opportunities to pollute the environment. Preservation of the environment is something that must be done by humans. The substance of internal environmental fiqh *law to all* lies in the problem of achieving the five goals of Islamic law. The five goals are protecting religion, soul, mind, property, and offspring so that it is in the context of the fiqh environment that is regulated *law to all* Those who do not protect environmental aspects will hinder the achievement of the benefit of the ummah and the impact of damage will be felt by all living things, both humans, animals and damage to plants.

Human existence is greatly assisted by biodiversity in stabilizing ecosystems. Allah SWT has created nature and its contents in perfect condition with various creatures that need each other. Ali Yafie explained that environmental protection is his kifayah responsibility (*obligatory duty*). Mujiono

Abdillah defines environmental protection as a "mukallaf" obligation (*fardhu 'ain*) and brings sin and reward. So it can be concluded that preserving the environment is the responsibility of the community and environmental pollution is the biggest mistake and is of bad value before Allah SWT.

The implication of regulation in comprehensive laws and regulations regarding environmental content must pay attention to the principles of environmental protection, including legal protection to guarantee human life and dignity. The simplification of regulations in the environmental sector is aimed at protecting common interests, particularly natural ecosystems, because they are a basic human need for the environment. The obligation to protect the environment has implications for good and bad values, especially for Muslims and Indonesian society in general, and the fulfillment of sharia objectives in environmental provisions in the omnibus law still does not reflect the protection of religion, life, spirit, property and offspring. In principle, the management and use of the environment can be regulated by national law, but provisions that tend to damage the order of life in society are grounds for environmental law to reject it. Therefore, its use must reflect life in the world as a means to achieve welfare in the hereafter, one of which is not to cause environmental damage that impacts on the imbalance of existence of life in the world.

CONCLUSION

Based on the results of the discussion above, it can be concluded: A critical review of the contents of the Job Creation Law in the environmental field shows that there are clear deviations from the provisions of the Environmental Protection and Environmental Management Law which are not subject to environmental permits. It has sector specific regulations for converting non-environmental permits to environmental permits. Administrative complaints, permit authorities, and central government inspections. This removes local government power over permits and inspections. Because the nature of regional autonomy is no longer influenced by local observers and the environment, it has shifted to the realm of the environment where the threat of environmental pollution and environmental destruction due to spatial and local functions is increasing. In addition, the EIA preparation process only involves affected communities, so environmental monitors do not have space to contribute to the EIA mechanism and access to balance before the state administrative court can reject decisions on the Law on Government Administration and the State Gazette.

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