

## Law Enforcement of Environmental Agreement Violations by Business Entities



Moehammad Nur Taufiq<sup>1</sup>, Umi Enggarsasi<sup>2</sup>, Dwi Tatak Subagiyo<sup>3</sup>

<sup>1,2,3</sup>Faculty of Law, Wijaya Kusuma Surabaya University,

**ABSTRACT:** In the increasing demands for environmental protection and management which are currently increasing and require attention from every child of the nation as both policy makers and the community in general, the environmental law since the enactment of Law Number 4 of 1982 to Law Number 32 of 2009 which was then codified in the main ideas of Law Number 6 of 2023 concerning Job Creation, this is the answer to the government's efforts in enforcing environmental law to be better and more beneficial. In the application of criminal law sanctions as a result of criminal acts by reviewing and highlighting the application of law to the implementation of environmental management as an effort for environmentally sustainable development, problems regarding the consequences of criminal acts committed by Business Entities so that they can result in additional criminal penalties must be based on legal norms by paying attention to the level of public awareness and global environmental developments and international legal instruments related to the environment as well as the awareness and life of the community in relation to environmental management have developed in such a way that they need to be refined to achieve the goals of environmentally sustainable development.

**KEYWORDS:** tindak pidana lingkungan hidup, badan usaha, izin lingkungan

### I. INTRODUCTION

The problematic issues of the Environment in Indonesia today really need our attention, this is because the Environment is a means to fulfill very basic human needs in order to be able to carry out sustainable life in the future. Where the continuity of life that is directed and systematic can run well when based on applicable legal norms and the needs in carrying out the fulfillment of life are basic human rights, so that in this regard, humans have the right to obtain good and healthy environmental conditions as stipulated in the 1945 Constitution Article 28 H which mandates that a good and healthy environment is a basic right of every Indonesian citizen.

In the implementation of human rights for every Indonesian citizen, the State of Indonesia in implementing and organizing the life of the nation and state is a state of law as explained in the Third Amendment of 2001 to the 1945 Constitution of the Republic of Indonesia which clearly states firmly in Article 1 paragraph (3) which reads: "The State of Indonesia is a State of Law", therefore in relation to the process of environmental legal order, the Indonesian nation has made Law No. 4 of 1982 concerning the Principles of Environmental Management and after being enacted for a long time, the Law was updated with Law No. 23 of 1997 concerning Environmental Management which ultimately regarding the provisions of the legislation in order to be better in its implementation, on October 3, 2009, Law No. 32 of 2009 concerning Environmental Protection and Management was enacted.

In relation to the implementation of the provisions of Law No. 32 of 2009 concerning Environmental Protection and Management, the fundamentally protected parties are Indonesian citizens and institutionally are Business Entities in this case business actors or in other words companies in the form of Limited Liability Companies or CV (Commanditaire Vennootschap) or limited partnerships as regulated in Article 1 number 1 of Permenkumham Number 17 of 2018, while the existence of Limited Liability Companies is regulated by the legal provisions governing it, namely Law No. 1 of 1995 concerning Limited Liability Companies which was later amended as Law Number 40 of 2007 and was amended again as Law No. 6 of 2023 concerning Job Creation which came into effect on March 31, 2023. Wherein the implementation of the provisions of the Law has been stipulated in Government Regulation in Lieu of Law (PERPU) Number 2 of 2022 concerning Job Creation.

It is very important and urgent for every business entity or company to be able to manage, process, and utilize the environment around it as well as possible. The paradigm used is that the company does not only aim to gain profit and business efficiency alone, but must also pay close attention to the environment and be able to anticipate the emergence of existing social impacts, because it is possible that along with the running of business activities, all possibilities can occur that have negative

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implications, for example, an environmental tragedy occurs so that the consequences that arise are very detrimental to all, therefore in order to prevent such things from happening, at least the consequences can be minimized, then in establishing a Business Entity in this case a company that has the potential for environmental pollution in the future as a necessity to manage and compile an Environmental Impact Analysis (Amdal) in business licensing as a simultaneous supervision instrument so that environmental pollution does not occur, In addition to aiming to achieve compliance with the law, supervision can also identify violations early on.<sup>1</sup>

In relation to the violation of environmental law that occurs, for violators of the law, in addition to administrative sanctions that can be applied, there are also civil and criminal sanctions. Where in this writing, the author concentrates more on the aspect of the implementation of criminal sanctions that can be directly used as a basis for the revocation of environmental permits or environmental approvals on companies or business entities as a result of criminal acts against the environment in the context of enforcing environmental law. Where the purpose of enforcing environmental law is the arrangement (compliance) of the values of protecting the carrying capacity of the ecosystem and environmental functions which are generally formalized in laws and regulations, including provisions governing waste or emission quality standards.<sup>2</sup>

Considering the implementation of criminal sanctions as one of the very important pillars of environmental law enforcement, Criminal Law has been used as the main support to protect various public interests from disturbances that arise in community, national and state life, one of the aspects that needs to receive criminal law protection is the environment which is the main component in supporting the life and life of humanity which is increasingly complex today.<sup>3</sup>

## II. RESEARCH METHODS

This study uses methods of normative law research that are not limited to approaches to legislative regulations only but also case approaches. Using library materials which are basic data classified as secondary data that are in a state of prepared form and its contents have been compiled by previous researchers, and can be obtained without binding time and place that covers and then against the regulations of legislation or library material the author carries out research and applies his legal concepts to the problems that become research in this writing.

## III. DISCUSSION

### Environmental Approval Mechanism in Business Authorization in Indonesia

Permission is one of the forms of implementation of regulatory functions and is the control that the government has over the activities carried out by the community. Permissions can be in the form of registration, recommendation, certification, quota determination and permission to undertake a business that normally has to be owned or acquired by a corporate organization or person before the person concerned can carry out an activity or action.<sup>4</sup>

In the case of granting permits, it is the obligation of the Government of the State organizer to provide facilities for its applicants to undertake certain acts in order to initiate undertakings that require the observance of the provisions of the law in force, always taking into account the public interest, the implementation of which is supervised by the Government.

Regarding the scope of environmental licensing of a business entity related to its business licensing, among others, it is based on provisions including Article 5 paragraph (12) of the 1945 Constitution of the Republic of Indonesia, Law Number 32 of 2009 concerning Environmental Protection and Management (State Gazette of the Republic of Indonesia of 2009 Number 140, Supplement to the State Gazette of the Republic of Indonesia Number 5059) as amended by Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) and Law Number 11 of 2020 concerning Job Creation (State Gazette of the Republic of Indonesia of 2020 Number 245, Supplement to the State Gazette of the Republic of Indonesia Number 6573) and Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management which revokes Government Regulation Number 27 of 1999 concerning Analysis Regarding the Environmental Impact and this government regulation has also revoked Government Regulation Number 7 of 2012 concerning Environmental Permits. Where the provisions of Government Regulation Number 22 of 2021 in Article 3 clearly state that:

1. Environmental Approval as referred to in Article 2 letter a must be held by every Business and/or Activity that has a Significant or non-significant Impact on the environment.
2. Environmental Approval as referred to in paragraph (1) is given to Business Actors or Government Agencies.
3. Environmental Approval as referred to in paragraph (2) is a prerequisite for the issuance of Business Permits or Government Approval.

<sup>1</sup> Bachrul Amiq, 2013, *Penerapan Sanksi Administrasi Dalam Hukum Lingkungan*, Laksbang Mediatama, Yogyakarta, h. 2.

<sup>2</sup> Syahrul Machmud, 2012, *Problematika Penerapan Delik Formil Dalam Perspektif Penegakan Hukum Pidana Lingkungan di Indonesia (Fungsionalisasi Azas Ultimum Remedium Sebagai Pengganti Azas Subsidiaritas)*, Mandar Maju, Bandung, h. 3.

<sup>3</sup> Ruslan Renggong, 2018, *Hukum Pidana Lingkungan*, Prenamedia Group, Jakarta, h. 23.

<sup>4</sup> Adrian Sutedi, *Hukum Perizinan dalam Sektor Pelayanan Publik*, Sinar Grafika, Jakarta, h. 168.

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4. Environmental Approval as referred to in paragraph (3) is carried out through:
  - a. preparation of Amdal and Amdal feasibility test; or
  - b. preparation of UKL-UPL Form and examination of UKL-UPL Form.
5. Environmental Approval as referred to in paragraph (3) ends simultaneously with the end of the Business Permit or Government Approval.
6. In the event that the Business Permit ends as referred to in paragraph (5) and there is no change in the Business and/or Activity, the extension of the Business Permit may use the existing Environmental Approval as a basis.
7. The form of termination of the Environmental Approval as referred to in paragraph (5) is proven by the person responsible for the Business and/or Activity having carried out Environmental management at the post-operational stage.

Therefore, based on the above, business licensing related to environmental approval is an important and urgent stage to be carried out by every business and/or activity that has a significant or non-significant impact on the environment so that in every business activity, business actors can be legally accountable to both the state and the community so that it is hoped that there will be no violations of the law in the process of running their business activities in the future.

Types and Requirements for Environmental Approval contain various matters related to Environmental Approval, both from the definition, legal basis, issuance process and the process of changing environmental approval. Where Environmental Approval is an Environmental Feasibility Decision or a statement of Commitment to Environmental Management that has received approval from the Central Government or Regional Government based on Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management with changes to the nomenclature which was originally Environmental Permit to Environmental Approval.

In providing legal protection for environmental management, Environmental Impact Analysis (Amdal) in Indonesia is part of environmental protection and management which in the context of the state based on the provisions of applicable laws is stated in the 1945 Constitution and specifically in Law Number 32 of 2009 concerning Environmental Protection and Management where Law Number 32 of 2009 is based on Constitutional Court Decision Number 18/PUU-XII/2014 in essence against the provisions of Article 59 paragraph (4) of Law Number 32 of 2009 concerning Environmental Protection and Management is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted as "B3 waste management must obtain a permit from the Minister, governor, or regent/mayor in accordance with their authority and for B3 waste management whose permit extension application is still in process must be deemed to have obtained a permit." Furthermore, the word "can" in Article 95 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force. In addition, the phrase "environmental criminal acts" in Article 95 paragraph (1) of Law Number 32 of 2009 concerning Environmental Protection and Management is contrary to the 1945 Constitution of the Republic of Indonesia and does not have binding legal force as long as it is not interpreted as "including other criminal acts arising from violations of this law."

Regarding the order to maintain the stability of the harmonious environment in a single economic expanse of the regional development plan zone system in accordance with the general plan for regional spatial planning and involving the authority of more than one responsible agency, then in the process of granting business permits for Business Entities or companies that will run their businesses.

Considering the existence of Law Number 11 of 2020 concerning Job Creation, it can be observed that the validity of the regulations has changed from the previous provisions. Where in Law Number 11 of 2020 concerning Job Creation, several provisions in Law Number 32 of 2009 concerning Protection of Environmental Management have been amended, which if observed, there are 39 points of changes to articles in Law Number 32 of 2009. Where the provisions of the articles in Law Number 11 of 2020 concerning Job Creation are all emphasized in Law Number 11 of 2020 concerning Job Creation, which are stated in articles 21 and 22. This is done as an effort to change regulations related to the ease of creating jobs through ease of doing business, protection of environmental permit management, both empowerment of cooperatives, micro, small and medium enterprises. For this reason, the 39 points of change in Law Number 32 of 2009 concerning Protection and Management of the Environment include:

1. In paragraph 3 concerning Environmental Approval Article 21, among others, it is stated that "In order to provide convenience for everyone in obtaining environmental approval, this Law regulates or amends, deletes in the form of Business Licensing regulated in Law Number 32 of 2009 concerning Environmental Protection and Management"
2. In Law Number 11 of 2020 concerning Job Creation related to regulations regarding environmental protection and management, including in Article 22, which if observed, several provisions in Law Number 32 of 2009 concerning Environmental Protection and Management have been amended, including:
  - a. The provisions in Article 1 numbers 11, 12, 35, 36, 37 and number 38 have been amended.
  - b. In the Provisions of Article 20 Number 32 of 2009 concerning environmental protection and management, amended in Law Number 11 of 2020 concerning Job Creation, among others:
    - 1) Determination of environmental pollution is measured through environmental quality standards.

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- 2) Environmental quality standards include: a) water quality standards; b) wastewater quality standards; c) seawater quality standards; d) ambient air quality standards; e) emission quality standards; f) disturbance quality standards; and g) other quality standards in accordance with developments in science and technology.
- 3) Everyone is permitted to dispose of waste into the environmental media with the following requirements: a) meeting environmental quality standards; and b) obtaining approval from the Central Government or Regional Government.
- 4) Further provisions regarding environmental quality standards as referred to in paragraph (2) are regulated in Government Regulation.
3. The provisions of Article 24 are amended to read as follows:
  - a. The Amdal document is the basis for environmental feasibility testing for business plans and/or activities.
  - b. The environmental feasibility testing as referred to in paragraph (1) is carried out by an environmental feasibility testing team formed by the Central Government's environmental feasibility testing agency.
  - c. The environmental feasibility testing team as referred to in paragraph (2) consists of elements from the Central Government, Regional Government, and certified experts.
  - d. The Central Government or Regional Government determines the Environmental Feasibility Decision based on the results of the environmental feasibility testing.
  - e. The Environmental Feasibility Decision as referred to in paragraph (4) is used as a requirement for the issuance of a Business License, or approval from the Central Government or Regional Government.
  - f. Further provisions regarding the implementation of environmental feasibility tests are regulated in a Government Regulation.
4. The provisions of Article 25 are amended to read as follows:

Article 25 The Amdal Document includes, among other things:

  - a. assessment of the impacts of the business plan and/or activities;
  - b. evaluation of activities around the location of the business plan and/or activities;
  - c. suggestions, input and responses from the community directly affected that are relevant to the business plan and/or activities;
  - d. estimates of the magnitude of the impact and the significant nature of the impact that will occur if the business plan and/or activities are implemented;
  - e. holistic evaluation of the impacts that occur to determine environmental feasibility or unfeasibility; and
  - f. environmental management and monitoring plan.
5. The provisions of Article 26 are amended to read as follows:
  - a. The Amdal Document as referred to in Article 22 is prepared by the initiator by involving the community.
  - b. The preparation of the Amdal document is carried out by involving the community directly affected by the business plan and/or activities.
  - c. Further provisions regarding the community involvement process as referred to in paragraph (2) are regulated in Government Regulation.
6. The provisions of Article 27 are amended to read as follows:

Article 27 In preparing the Amdal document, the initiator as referred to in Article 26 paragraph (1) may appoint another party.
7. The provisions of Article 28 are amended to read as follows:
  - a. The Amdal compiler as referred to in Article 26 paragraph (1) and Article 27 must have an Amdal compiler competency certificate.
  - b. Further provisions regarding certification and competency criteria for Amdal compilers are regulated in Government Regulation.
8. Article 29 is deleted.
9. Article 30 is deleted.
10. Article 31 is deleted.
11. The provisions of Article 32 are amended to read as follows:
  - a. The Central Government and Regional Governments assist in the preparation of Amdal for Micro and Small Business businesses and/or activities that have a significant impact on the environment.
  - b. Assistance in the preparation of Amdal as referred to in paragraph (1) is in the form of facilitation, costs, and/or preparation of Amdal.
  - c. Determination of Micro and Small Business businesses and/or activities as referred to in paragraph (1) is carried out based on criteria in accordance with the provisions of laws and regulations.
12. The provisions of Article 34 are amended to read as follows:
  - a. Every business and/or activity that does not have a significant impact on the Environment must meet the UKL-UPL standards.
  - b. Fulfillment of the UKL-UPL standards as referred to in paragraph (1) is stated in the Statement of Commitment to Environmental Management.

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- c. Based on the Statement of Commitment to Environmental Management as referred to in paragraph (2), the Central Government or Regional Government issues a Business License, or approval from the Central Government or Regional Government.
- d. The Central Government determines the types of businesses and/or activities that must be equipped with UKL-UPL.
- e. Further provisions regarding UKL-UPL are regulated in Government Regulation.
13. The provisions of Article 35 are amended to read as follows:
  - a. Businesses and/or activities that are not required to be equipped with UKL-UPL as referred to in Article 34 paragraph (4) are required to make a statement of commitment to environmental management and monitoring that is integrated into the Business Identification Number.
  - b. Determination of the types of businesses and/or activities as referred to in paragraph (1) is carried out for activities that are included in the low-risk category.
  - c. Further provisions regarding the statement of commitment to environmental management and monitoring are regulated in Government Regulation.
14. Article 36 is deleted.
15. The provisions of Article 37 are amended to read as follows:

A Business License may be revoked if:

  - a. the requirements submitted in the Business License application contain legal defects, errors, misuse, and inaccuracies and/or falsification of data, documents, and/or information;
  - b. its issuance without fulfilling the requirements as stated in the Environmental Feasibility Decision or Statement of Commitment to Environmental Management; or
  - c. the obligations stipulated in the Amdal or UKL-UPL documents are not carried out by the person responsible for the business and/or activity.
16. Article 38 is deleted
17. The provisions of Article 39 are amended to read as follows:
  - a. The Environmental Feasibility Decision is announced to the public.
  - b. The announcement as referred to in paragraph (1) is made through an electronic system and/or other means determined by the Central Government.
18. Article 40 is deleted.
19. The provisions of Article 55 are amended to read as follows:
  - a. The Environmental Approval Holder is required to provide guarantee funds for the restoration of environmental functions.
  - b. The guarantee funds are deposited in a government bank designated by the Central Government.
  - c. The Central Government may appoint a third party to carry out the restoration of environmental functions using the guarantee funds.
  - d. Further provisions regarding the guarantee funds as referred to in paragraph (1), paragraph (2), and paragraph (3) are regulated in a Government Regulation.
20. The provisions of Article 59 are amended to read as follows:
  - a. Every person who produces B3 Waste is required to manage the B3 Waste that they produce.
  - b. In the case of B3 as referred to in Article 58 paragraph (1) has expired, its management follows the provisions of B3 Waste Management.
  - c. In the case of any person as referred to in paragraph (1) is unable to carry out B3 Waste Management themselves, its management is handed over to another party.
  - d. B3 Waste Management must obtain a Business License, or approval from the Central Government or Regional Government.
  - e. The Central Government or Regional Government must include the environmental requirements that must be met and the obligations that must be complied with by the B3 waste manager in the Business License, or approval from the Central Government or Regional Government.
  - f. The decision to grant a Business License must be announced.
  - g. Further provisions regarding B3 Waste Management are regulated in Government Regulation.
21. The provisions of Article 61 are amended to read as follows:
  - a. Dumping as referred to in Article 60 may only be carried out with the approval of the Central Government.
  - b. Dumping as referred to in paragraph (1) may only be carried out at a predetermined location.
  - c. Further provisions regarding the procedures and requirements for dumping waste or materials are regulated in Government Regulation.
22. Between Article 61 and Article 62, 1 (one) article is inserted, namely Article 61A so that it reads as follows:

In the case of the person in charge of the business and/or activity:

  - a. produces, transports, distributes, stores, utilizes, and/or processes B3;



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- b. produces, transports, stores, collects, utilizes, processes, and/or stores B3 Waste;
- c. discharges wastewater into the sea;
- d. discharges wastewater into water sources;
- e. discharges emissions into the air; and/or
- f. utilizes wastewater for application to the ground;

which is part of the business activity, the management is stated in the Amdal or UKL-UPL.

23. The provisions of Article 63 are amended to read as follows:

a. In protecting and managing the environment, the Central Government has the duty and authority to:

- 1) determine national policies;
- 2) determine norms, standards, procedures, and criteria;
- 3) determine and implement policies regarding the national RPPLH;
- 4) determine and implement policies regarding KLHS;
- 5) determine and implement policies regarding amdal and UKL-UPL;
- 6) organize an inventory of national natural resources and greenhouse gas emissions;
- 7) develop cooperation standards;
- 8) coordinate and implement control of environmental pollution and/or damage;
- 9) determine and implement policies regarding living and non-living natural resources, biodiversity, genetic resources, and the biosafety of genetically engineered products;
- 10) determine and implement policies regarding climate change impact control and ozone layer protection;
- 11) determine and implement policies regarding B3, waste, and B3 waste;
- 12) determine and implement policies regarding marine environmental protection;
- 13) establish and implement policies on cross-border environmental pollution and/or damage;
- 14) provide guidance and supervision on the implementation of national and provincial policies;
- 15) provide guidance and supervision on the compliance of business and/or activity managers with the provisions of the Environmental Agreement and laws and regulations;
- 16) develop and implement environmental instruments;
- 17) coordinate and facilitate cooperation and dispute resolution between regions and dispute resolution;
- 18) develop and implement policies for managing public complaints;
- 19) establish minimum service standards;
- 20) establish policies on procedures for recognizing the existence of customary law communities, local wisdom, and customary law community rights related to environmental protection and management;
- 21) manage national environmental information;
- 22) coordinate, develop, and socialize the use of environmentally friendly technology;
- 23) provide education, training, guidance, and awards;
- 24) develop environmental laboratory facilities and standards;
- 25) issue Business Permits or Central Government approval;
- 26) determine ecoregion areas; and
- 27) enforce environmental law.

b. In protecting and managing the environment, the provincial government in accordance with the norms, standards, procedures, and criteria set by the Central Government has the following duties and authorities:

- 1) determine provincial-level policies;
- 2) determine and implement provincial-level KLHS;
- 3) determine and implement policies regarding provincial RPPLH;
- 4) implement policies regarding Amdal and UKL-UPL;
- 5) organize an inventory of natural resources and greenhouse gas emissions at the provincial level;
- 6) develop and implement cooperation and partnerships;
- 7) coordinate and implement control of environmental pollution and/or damage across districts/cities;
- 8) provide guidance and supervision of the implementation of district/city-level policies;
- 9) provide guidance and supervision of compliance by those responsible for businesses and/or activities in accordance with the provisions of laws and regulations;
- 10) develop and implement environmental instruments;
- 11) coordinate and facilitate cooperation and dispute resolution between districts/cities and dispute resolution;
- 12) provide guidance, technical assistance, and supervision to districts/cities in the field of programs and activities;
- 13) implement minimum service standards;

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- 14) determine policies regarding procedures for recognizing the existence of customary law communities, local wisdom, and the rights of customary law communities related to environmental protection and management at the provincial level;
  - 15) manage environmental information at the provincial level;
  - 16) develop and socialize the use of environmentally friendly technology;
  - 17) provide education, training, guidance, and awards;
  - 18) issue Business Permits or Regional Government approvals at the provincial level; and
  - 19) enforce environmental law at the provincial level.
- c. In environmental protection and management, the district/city government in accordance with the norms, standards, procedures, and criteria set by the Central Government has the following duties and authorities:
- 1) to determine district/city level policies;
  - 2) to determine and implement KLHS at the district/city level;
  - 3) to determine and implement policies regarding RPPLH at the district/city level;
  - 4) to implement policies regarding Amdal and UKL-UPL;
  - 5) to organize an inventory of natural resources and greenhouse gas emissions at the district/city level;
  - 6) to develop and implement cooperation and partnerships;
  - 7) to develop and implement environmental instruments;
  - 8) to facilitate dispute resolution;
  - 9) to provide guidance and supervision on the compliance of those responsible for businesses and/or activities in accordance with the provisions of laws and regulations;
  - 10) to implement minimum service standards;
  - 11) to implement policies regarding procedures for recognizing the existence of customary law communities, local wisdom, and the rights of customary law communities related to environmental protection and management at the district/city level;
  - 12) to manage environmental information at the district/city level;
  - 13) develop and implement environmental information system policies at the district/city level;
  - 14) provide education, training, coaching, and awards;
  - 15) issue Business Permits or Regional Government approval at the district/city level; and
  - 16) enforce environmental law at the district/city level.
24. The provisions of Article 69 are amended to read as follows:
- a. Everyone is prohibited from:
    - 1) committing acts that result in environmental pollution and/or destruction;
    - 2) importing B3 prohibited by laws and regulations into the territory of the Unitary State of the Republic of Indonesia;
    - 3) importing waste originating from outside the territory of the Unitary State of the Republic of Indonesia into the environmental media of the Unitary State of the Republic of Indonesia;
    - 4) importing B3 waste into the territory of the Unitary State of the Republic of Indonesia;
    - 5) dumping waste into the environmental media;
    - 6) dumping B3 and B3 waste into the environmental media;
    - 7) releasing genetically engineered products into the environmental media that are contrary to laws and regulations or environmental approvals;
    - 8) clearing land by burning;
    - 9) preparing an AMDAL without having an AMDAL compiler competency certificate; and/or
    - 10) providing false information, misleading, removing information, damaging information, or providing incorrect information.
  - b. The provisions as referred to in paragraph (1) letter h are exempted for communities who carry out the activities in question by seriously paying attention to local wisdom in their respective regions.
25. The provisions of Article 71 are amended to read as follows:
- a. The Central Government or Regional Government supervises the compliance of those responsible for businesses and/or activities with the provisions stipulated in laws and regulations in the field of environmental protection and management.
  - b. The Central Government or Regional Government may delegate its authority to carry out supervision to technical officials/agencies responsible for environmental protection and management.
  - c. In carrying out supervision, the Central Government or Regional Government shall appoint environmental supervisory officials who are functional officials.
  - d. Further provisions regarding environmental supervisory officials shall be regulated in Government Regulation.
26. The provisions of Article 72 are amended to read as follows:  
The Central Government or Regional Government in accordance with its authority based on the norms, standards, procedures, and criteria set by the Central Government is required to supervise the compliance of the person in charge of the business and/or activity with the Business License, or the approval of the Central Government or Regional Government.

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27. The provisions of Article 73 are amended to read as follows:

The Minister may supervise the compliance of the person in charge of the business and/or activity whose Business License or Regional Government approval is issued by the Regional Government if the Minister considers that there has been a serious violation in the field of environmental protection and management based on the norms, standards, procedures, and criteria set by the Central Government.

28. The provisions of Article 76 are amended to read as follows:

- a. The Central Government or Regional Government applies administrative sanctions to the person in charge of the business and/or activity if during the supervision a violation of the Business License, or the approval of the Central Government or Regional Government is found.
- b. Further provisions regarding the procedure for imposing sanctions are regulated in Government Regulation.

29. The provisions of Article 77 are amended to read as follows:

The Minister may impose administrative sanctions on the person in charge of a business and/or activity if the Minister considers that the Regional Government has intentionally not imposed administrative sanctions on serious violations in the field of environmental protection and management.

30. Article 79 is deleted.

31. The provisions of Article 82 are amended to read as follows:

- a. The Central Government has the authority to force the person in charge of a business and/or activity to carry out environmental restoration due to environmental pollution and/or damage carried out by him/her.
- b. The Central Government has the authority or may appoint a third party to carry out environmental restoration due to environmental pollution and/or damage carried out by him/her at the expense of the person in charge of the business and/or activity.

32. Between Article 82 and Article 83, 3 (three) articles are inserted, namely Article 82A, Article 82B, and Article 82C so that they read as follows:

Any person who carries out business and/or activities without having:

- a. Business License, or approval from the Central Government or Regional Government as referred to in Article 24 paragraph (5), Article 34 paragraph (3), Article 59 paragraph (1) or Article 59 paragraph (4); or
- b. Approval from the Central Government or Regional Government as referred to in Article 20 paragraph (3) letter b;

Subject to administrative sanctions, including:

Article 82 B:

a. Any person who carries out business and/or activities who has:

- 1) Business License, or approval from the Central Government or Regional Government as referred to in Article 24 paragraph (5), Article 34 paragraph (3), Article 59 paragraph (1), or Article 59 paragraph (4);
- 2) approval from the Central Government or Regional Government as referred to in Article 20 paragraph (3) letter b; or
- 3) approval from the Central Government as referred to in Article 61 paragraph (1);
- 4) which does not comply with the obligations in Business Licensing, or approval from the Central Government or Regional Government, and/or violates the provisions of laws and regulations in the field of environmental protection and management, shall be subject to administrative sanctions.

b. Any person who violates the prohibitions as referred to in Article 69, namely:

- 1) committing acts that result in environmental pollution and/or damage as referred to in Article 69 letter a, where such acts are committed due to negligence and do not result in harm to human health and/or injury and/or serious injury, and/or death of a person shall be subject to administrative sanctions and require the Person in Charge of the act to restore the environmental function and/or;
  - 2) other necessary actions; or
  - 3) compiling an Amdal without having a certificate of competence for compiling an Amdal as referred to in Article 69 letter i shall be subject to administrative sanctions.
- c. Any person who due to his/her negligence commits an act that results in exceeding the ambient air quality standard, water quality standard, sea water quality standard, or environmental damage criteria that are not in accordance with the Business License he/she holds shall be subject to administrative sanctions.

Article 82 C:

- a. Administrative sanctions as referred to in Article 82A and Article 82B paragraph (1), paragraph (2) and paragraph (3) shall consist of: a) Written warning; b) Government coercion; c) Administrative fines; d) Freezing of business licenses; e) Revocation of business licenses.



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- b. Administrative sanctions as referred to in Article 82A and Article 82B paragraph (1), paragraph (2), and paragraph (3) shall consist of: a) written warning; b) government coercion; c) administrative fines; d) freezing of Business Licenses; and/or e) revocation of Business Licenses.
- c. Further provisions regarding the criteria, types, amounts of fines, and procedures for imposing administrative sanctions as referred to in paragraph (1) shall be regulated in Government Regulation.

33. The provisions of Article 88 are amended to read as follows:

Any person whose actions, business, and/or activities use B3, produce and/or manage B3 waste, and/or which pose a serious threat to the environment is absolutely responsible for losses resulting from their business and/or activities.

34. Article 93 is deleted.

35. Article 102 is deleted.

36. The provisions of Article 109 are amended to read as follows:

Any person who carries out a business and/or activity without having:

- a. Business Permit or approval from the Central Government, or Regional Government as referred to in Article 24 paragraph (5), Article 34 paragraph (3), Article 59 paragraph (1), or Article 59 paragraph (4);
- b. approval from the Central Government or Regional Government as referred to in Article 20 paragraph (3) letter b; or
- c. approval from the Central Government as referred to in Article 61 paragraph (1);

which results in victims/damage to health, safety, and/or the environment, shall be punished with imprisonment of at least 1 (one) year and a maximum of 3 (three) years and a fine of at least Rp. 1,000,000,000.00 (one billion rupiah) and a maximum of Rp. 3,000,000,000.00 (three billion rupiah).

37. Article 110 is deleted.

38. The provisions of Article 111 are amended to read as follows:

Any official issuing environmental approval who issues an environmental approval without being accompanied by an AMDAL or UKL-UPL as referred to in Article 37 shall be subject to a maximum imprisonment of 3 (three) years and a maximum fine of Rp. 3,000,000,000.00 (three billion rupiah).

39. The provisions of Article 112 are amended to read as follows:

Any authorized official who intentionally fails to supervise the compliance of the person in charge of a business and/or activity with laws and regulations and Business Licensing, or the approval of the Central Government or Regional Government as referred to in Article 71 which results in environmental pollution and/or damage resulting in loss of human life shall be subject to a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).

### **The Purpose and Function of Environmental Impact Analysis (AMDAL) Policy in Business Licensing in Indonesia**

Considering the importance of environmental approval for business actors in this case Business Entities, the objectives and functions of the environmental impact analysis (Amdal) study are very necessary to be a priority in starting their business activities, then regarding the enactment of Law Number 32 of 2009 concerning Environmental Protection and Management, in its journey it has been codified into Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation and then due to something, Government Regulation (Perpu) Number 2 of 2022 concerning Job Creation was issued. Where the provisions regarding AMDAL can be based on Government Regulation Number 29 of 1986, which is regarding the definition of AMDAL (Environmental Impact Analysis). The issue regarding Amdal arises because of the large number of developments in various regions in a country that can no longer be avoided because of the progress and development of the region itself. The development carried out is usually in several sectors, such as industry, factories, and others. In carrying out development, an understanding of the Environmental Impact Analysis (AMDAL) is needed. This needs to be done because AMDAL can prevent environmental damage from occurring and if environmental damage can occur due to development, it can endanger humans, especially those who live near the development, therefore with the existence of AMDAL it is hoped that every development carried out by a business entity or company can make the surrounding community still feel safe to live in the development area.

In relation to the development of the times, AMDAL has also begun to develop, so that those who want to carry out development must be able to understand the developments that occur in AMDAL. Where to start a business in each legal subject will generally make an AMDAL document before carrying out development and with the AMDAL document that is made will be examined by the institution that handles AMDAL issues, so that for this matter, both those who want to carry out development or institutions that handle AMDAL documents must really understand AMDAL, that with the AMDAL document that has been made and completed, the institution that handles AMDAL can make a decision whether development can be carried out or cannot be carried out. If from the AMDAL document there are many things that can harm the environment, then development cannot be carried out, and vice versa.

On the other hand, related to the understanding of AMDAL, it can be observed before the existence of AMDAL, namely when Law Number 4 of 1982 concerning the Principles of Environmental Management was made. In the Law, there are many things about environmental management, natural resources, artificial resources, and others that require anticipatory attention from

## Law Enforcement of Environmental Agreement Violations by Business Entities

environmental damage, then along with the development of the era, a Law on environmental management has been issued with Indonesia making a Government Regulation in which the provisions of the regulation explain the definition of Environmental Impact Analysis (AMDAL), so that finally based on Government Regulation Number 29 of 1986, the definition of AMDAL can be understood as the result of a study on the impact of a planned activity on the environment which is needed for the decision-making process and with the existence of the Government Regulation, it can be seen that it is only right for those who want to carry out development to pay attention to environmental conditions whether it can result in damage or whether the sustainability of the environment can be maintained properly.

As stipulated in Government Regulation Number 29 of 1986, in its development it has undergone improvements with the existence of a new Government Regulation, namely Government Regulation Number 51 of 1993 concerning Environmental Impact Analysis. Where in the Government Regulation, the definition of Environmental Impact Analysis (AMDAL) is explained more completely or it can be said that there are several definitions of AMDAL, such as multi-sector activity AMDAL, regional AMDAL, and regional AMDAL. Even Government Regulation Number 51 of 1993 also explains the agency responsible for AMDAL and the AMDAL commission. Where the agency referred to based on Government Regulation Number 29 of 1986 is the Minister or Head of a non-departmental institution whose function is to carry out a business plan or activity in question. In addition, the Governor of the Level I Regional Head functions to provide supervision of activities or businesses under his authority. Based on Government Regulation Number 51 of 1993 Number 51 of 1993 AMDAL is an integrated or multisectoral activity which is the result of a study on the significant impact of a planned integrated business or activity on the environment in a single ecosystem and involves the authority of more than one agency. Regional environmental AMDAL is the result of a study on the significant impact of a planned business or activity on the environment in a single ecosystem and concerns the authority of one responsible agency. On the other hand, still in the same provisions of Government Regulation Number 51 of 1993, regional AMDAL is the result of a study on the significant impact of a planned business or activity on the environment in a single economic zone system development plan in accordance with the general regional spatial plan and involves the authority of more than one responsible agency. Based on the provisions of Law Number 11 of 2020 concerning Job Creation and then due to certain circumstances, Government Regulation (Perpu) Number 2 of 2022 concerning Job Creation was issued, then for legal entities that are perpetrators of environmental violations or crimes, it is a top priority in combating environmental crimes committed by business entities, criminal sanctions need to be imposed *primum remidium*, acts of environmental pollution and destruction need to be addressed firmly through the application of criminal sanctions because of the large impact caused by environmental pollution on the sustainability of a clean and healthy environment, so there needs to be control over environmental impacts so that the risk of environmental pollution can be minimized. On the other hand, the form of policy as one form of overcoming environmental impacts in addition to legal regulations in the form of Law Number 11 of 2020 concerning Job Creation and then due to certain circumstances, Government Regulation (Perpu) Number 2 of 2022 concerning Job Creation can also be observed in Law No. 32 of 2009 concerning Environmental Protection and Management which can be used as a basis in the field of environmental management in Indonesia because all of its regulations contain principles regarding environmental management protection as well as its legal instruments.

In the context of law enforcement against acts of environmental pollution carried out by Business Entities, the sanctions that can be imposed explicitly if the incident of environmental violation or crime is carried out by a Business Entity, namely as based on the provisions of Law Number 11 of 2020 concerning Job Creation Article 37 concerning the cancellation of business permits, namely Business Permits can be canceled if:

1. the requirements submitted in the Business Permit application contain legal defects, errors, misuse, and untruths and/or falsification of data, documents, and/or information;
2. its issuance does not meet the requirements as stated in the Environmental Feasibility Decree or the Statement of Commitment to Environmental Management; or
3. the obligations stipulated in the Amdal or UKL-UPL documents are not carried out by the person in charge of the business and/or activities.

where it can be seen from this that law enforcement activities also include all activities intended to ensure that the law as a set of normative rules that regulate and bind legal subjects in all aspects of social and state life is truly obeyed and truly implemented.

## IV. CLOSING

### CONCLUSION

In relation to the enforcement of the law on violations of environmental agreements by business entities, with the enactment of Law of the Republic of Indonesia Number 11 of 2020 concerning Job Creation and then due to certain circumstances, Government Regulation (Perpu) Number 2 of 2022 concerning Job Creation was issued, then the legal subject entity of the perpetrator of environmental violations or crimes becomes the main priority in combating environmental crimes committed by business entities. Criminal sanctions need to be imposed *primum remidium*, because in all its regulations there are principles regarding the protection of environmental management as well as its legal instruments.

## Law Enforcement of Environmental Agreement Violations by Business Entities

### SUGGESTION

It is hoped that if there is a violation of the law against environmental agreements committed by business entities, then the enforcement of the law which also includes all activities intended as a set of normative rules that regulate and bind legal subjects in all aspects of community and state life is truly obeyed and seriously carried out.

### REFERENCES

- 1) Undang-Undang Dasar Republik Indonesia Tahun 1945.
- 2) Undang-Undang Nomor 5 Tahun 1960 tentang Pokok-Pokok Agraria.
- 3) Undang-Undang Nomor 1 Tahun 1995 tentang Perseroan Terbatas.
- 4) Undang-Undang Nomor 32 tahun 2004 tentang Pemerintahan Daerah.
- 5) Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas.
- 6) Undang-Undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup.
- 7) Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan.
- 8) Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja.
- 9) Undang-Undang Nomor 6 Tahun 2023 tentang Penetapan Peraturan Pemerintah Pengganti Undang-Undang Nomor 2 Tahun 2022 tentang Cipta Kerja menjadi Undang-Undang.
- 10) Peraturan Pemerintah Nomor 27 Tahun 2012 tentang Izin Lingkungan.
- 11) Peraturan Menteri Hukum dan HAM Republik Indonesia Nomor 17 Tahun 2018 tentang Pendaftaran Persekutuan Komanditer, Persekutuan Firma dan Persekutuan Perdata.
- 12) Peraturan Pemerintah Republik Indonesia Nomor 25 Tahun 2021 tentang Penyelenggaraan Bidang Energi dan Sumber Daya Mineral.
- 13) Peraturan Pemerintah Nomor 22 Tahun 2021 tentang Penyelenggaraan Perlindungan dan Pengelolaan Lingkungan Hidup.
- 14) Peraturan Pemerintah Pengganti Undang-Undang Republik Indonesia Nomor 2 Tahun 2022 Tentang Cipta Kerja.
- 15) Amiq, Bachrul, 2013, *Penerapan Sanksi Administrasi Dalam Hukum Lingkungan*, Laksbang Mediatama, Yogyakarta.
- 16) Machmud, Syahrul, 2012, *Problematika Penerapan Delik Formil Dalam Perspektif Penegakan Hukum Pidana Lingkungan Di Indonesia (Fungsionalisasi Azas Ultimum Remedium Sebagai Pengganti Azas Subsidiaritas)*, Mandar Maju, Bandung.
- 17) Renggong, Ruslan, 2018, *Hukum Pidana Lingkungan*, Prenamedia Group, Jakarta.
- 18) Sutedi, Adrian, *Hukum Perizinan dalam Sektor Pelayanan Publik*, Sinar Grafika, Jakarta.



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