

Implications Of Omnibus Law (Undang-Undang Tentang Cipta Kerja) In The Shift Of Sustainability Policy Towards Indonesian Environmental Law Politics Direction

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Abstrak

Pembangunan memiliki hubungan yang erat dengan lingkungan. Ketika pembangunan tidak memperhatikan kelestarian lingkungan, lingkungan tidak hanya rusak tetapi mengakibatkan kepunahan. Kepunahan lingkungan berarti kepunahan manusia itu sendiri. Pembangunan berkelanjutan hadir sebagai paradigma yang diharapkan dapat memberikan solusi terhadap dampak negatif yang timbul dari pembangunan tersebut. Konsep pembangunan berkelanjutan mencoba untuk menjadi suatu jawaban atas banyaknya pertanyaan yang muncul terkait bagaimana ekonomi dan pembangunan yang sekiranya akan berdampak pada lingkungan. Lahirnya Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja menyebabkan proses perizinan berbasis resiko yang dikhawatirkan membuat pemerintah mengalami degradasi pengawasan yang berakibat fatal.

Abstract

Development has a close relationship with the environment. When development is not paying attention to environmental sustainability, the environment is not only damaged but causes extinction. Environmental extinction means the extinction of humans themselves. Sustainable development existence as a paradigm that is expected to provide solutions to negative impacts arising from the development. The concept of sustainable development tries to be an answer to the many questions that arise regarding how the economy and development will have an impact on the environment. The enactment of Law Number 11 of 2020 concerning Job Creation or known as Omnibus Law, has led to a risk-based licensing process which is feared to make the government experience a degradation of supervision which has fatal consequences.

Preliminary

Indonesia's current environmental management system can be felt that there is no reflection of the integral, holistic implementation of sustainability between the achievement of prosperity and sustainable environmental management. As we know, it is no secret that since the beginning of the discussion related to environmental politics, there must have been a tug of war of interest, in this case, a tug of war between environmental interests and economic interests. Consumers' choice and valuation of the sustainability attributes significantly relate to their fundamental attitudes towards the environment and sustainable practices, as well as their knowledge towards environmental sustainability.¹ Environmental damage in Indonesia, starting from natural disasters, massive exploitation to cases of environmental pollution that occurred, is a genuine implication that we need to implement the concept of sustainability policy.

A global solution called the concept of sustainable development goals then emerged to deal with environmental problems. In this case, the concept became the primary order, namely the concept of unifying interests between development and ecology.

This concept is shaded by World Commissions for Environmental and Development (WCED). World Summit Report 2005, Sustainable development must be based on three main pillars, namely social, economic, and environmental. These three pillars are related to each other. They mutually support their existence, so it can be concluded that the formula for sustainable development does not only focus on development aspects in economic and social concepts but must also be based on the concept of environmental protection. The development of the concept of sustainable development also includes the fulfillment of basic needs and the channeling of opportunities to provide aspirations for a better life.² The concept of sustainable policy tries to answer the many questions that arise regarding how the economy and development will have an impact on the environment. We have seen that this concept focuses on how development will have implications for meeting current (economic) needs without affecting the ability of the environment to perform its role for future generations.

In November 2020, the enactment of Law Number 11/2020 concerning Job Creation or known as Omnibus Law, had more or less succeeded in changing the political views of Indonesian law, including legal politics related to the environment. With the birth and ratification of the law, many environmental provisions have now changed. Significant changes in environmental law politics, among others, occur in the issue of environmental permit management, now experiencing a

¹ Enoch Owusu-Sekyere, Awudu Abdulai, Henry Jordaan dan Helena Hansson, *Heterogeneous demand for ecologically sustainable products on ensuring environmental sustainability in South Africa*. Journal Environmental Economics and Policy Studies. Published on 03 June 2019.

² Dinah M. Payne dan Cecily A. Rainborn, 2008, "Sustainable Development: The Ethics Support the Economics", dalam Thomas A. Easton, editor, *Taking Sides: Clashing Views on Controversial Environmental Issues*, (McGraw Hill Education, New York), p. 28.

shift to risk-based licensing. This is certainly different from the existing policies in Law No. 32/2009 on Environmental Management Protection, with this risk-based licensing system, arise a question of whether it has a positive or negative impact on the environment?

Discussion

Issues related to the environment are closely related to economic problems, in this case including policies that arise from the economic policy because it is known that in the history of environmental policy, it has emerged as a reaction to economic activities that have an impact on the environment. Still, other than that, another thing that is we can not remove is the relation related to the development aspect. Aspects of development are one of the initial goals of an economic policy that impacts the environment. Therefore, it is necessary to manage politically with an environmental policy perspective. Politics is very influential in Indonesia, morals as one of the holders of power in Indonesia, how committed it is to the environment, maintaining its sustainability, the direction of policies and regulations that will be issued. Legal politics is a legal policy that will be or has been implemented nationally by the Government of Indonesia, which includes the development of laws with the core of making and updating laws that are in accordance with the needs and implementation of existing legal provisions, in this case including the affirmation of the function of the Institution and fostering law enforcement officers themselves.³ The conclusion is that legal politics is included in the scope of the process of making and implementing a legal rule that leads to future laws.

The emergence of risk-based licensing that replaces the licensing pattern in Law No. 32/2009 is feared to make environmental problems even more significant. Why did the author analyze it this way? Because in risk-based licensing, business licensing and implementation of supervision are based on the level of business risk. In this case, businesses are grouped into several categories. We all know that before the issuance of Law 11/2020, even with outstanding regulations there were even many problems with environmental licensing in Indonesia that business actors carried out. With the presence of risk-based licensing and its classification, it was feared that the government would experience a degradation of supervision, resulting in fatal for the environment.

Closing

As the heart of governance is the notion of “sovereignty”, which implies the power to rule without constraints and which, for the last tree centuries, has been associated with the nation state.⁴ The essence of a government is based on sovereignty as a sign of power to carry out its authority

³ Hakim Garuda Indonesia, 1986, *Politik hukum Nasional*, (makalah, Jakarta), p. 7

⁴ Zubair Hassan, 2013, *Chapter 4- The political legal economic and technological environment*, (Tata McGraw-Hill Education, New York International Business), p. 1

through a government. There are no boundaries other than law, and in the last three years, between countries have been interrelated. In this case, it should be emphasized that in the formation of a government, sovereignty is the essence of power itself, and its implementation has been adequately regulated. In its formation, it must be affected by the interrelationships that exist between countries.

The basic rule as the starting point for the development of legal politics in Indonesia refers to Paragraph 4 of the 1945 Constitution, which reads: “kemudian daripada itu untuk membentuk suatu pemerintahan Negara Indonesia dan seluruh tumpah darah Indonesia dan untuk memajukan kesejahteraan sosial...”, in this case, it means Indonesia has recognized that the state must pay attention to sustainability to protect all Natural Resources in Indonesia for the welfare of the Indonesian people. The conclusion is that all government policies and actions, both economically and from an environmental point of view, must be based on the constitution's content. From Indonesia recognizing and paying attention to the sustainability of natural resources, we can interpret that Indonesia now recognizes the concept of a green constitution or what we are usually familiar with, or environmentally sound development. After the birth of the concept of sustainable policy, the political concept of environmental law in Indonesia is indirectly affected by this concept. Indonesia, which recognizes the concept of a green constitution, is now starting to shift to sustainable policy thinking in its policymaking, namely forming a law or a regulation that must not conflict with environmental policy. The concept of sustainable development in this regard must always be considered be applied. Law Number 32 of 2009 is one of the laws formed with the basic concept of sustainable development.

The direction of legal policy in the environmental field is referred to as environmental law politics. Environmental law politics is a guide to the direction of a legal policy made by the government with the goals and objectives of a system of protection and management of an environment which is the direction of legal policy.

The implications of the concept of the sustainable policy contained in Law No. 32/2009 which was lost by the legal politics of Law No. 11/2020 includes:

1. Affirmation and elaboration of sustainable development principles in every economic activity. In Omnibus Law, this concept is ruled out by a risk-based licensing policy system;
2. Strengthening decentralization and regional autonomy for environmental management is also omitted in the Job Creation Law. All environmental management systems are withdrawn at the center, and this is controversial considering that the concept of decentralization and regional autonomy is one concept that plays an essential role in environmental sustainability and its preservation;

3. The basis for environmental protection and management is severe and consistent by all stakeholders, in this case working together to maintain environmental sustainability, in the Omnibus Law, this is more focused on a centralized system; and
4. Providing legal certainty guarantees and protects everyone's right to a good and healthy living environment which is the goal of protecting the entire ecosystem. In the Job Creation Law, protection is selected based on the risk level, namely grouping categories low, medium, and high. It is feared that this will have implications for the potential hazards that may arise.

After the concept of sustainability policy appears in the SDGs, Indonesia will undoubtedly be affected. The impact that occurs is intended as a positive impact that makes Indonesia participate in thinking about the concept of sustainability. After the existence of this concept and changing the political direction of Indonesian environmental law to adopting an environmentally sound sustainability policy concept, such as those that have been well described in the provisions contained in Law No. 32/2009. But unfortunately, this principle is not emphasized much in the Omnibus Law, even though the primary purpose of this principle is expected to make natural resources more protected and ensure their sustainability, in this case, including living natural resources and their ecosystems. Still, this Omnibus Law causes a shift in the direction of environmental law politics from a sustainable policy system to a risk-based licensing policy system which can be concluded to override the sustainability of an environment because the sustainability policy principles that have been instilled now seem to be forced to be replaced, this makes environmental conditions even more worrying.

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