

Impact of Changes Criminal Sanction and Liability on Living Environment in the Job Creation Law

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Abstract

Enactment of the Law on Job Creation (Act 11/2020) which brought the impact of changes to the laws it accommodated, one of which was the Law on Environmental Protection and Management (Act 32/2009). There are consequences with the accommodation of Act 32/2009 in Act 11/2020 in the form of changes and abolition of norms regarding sanctions and criminal responsibility for the environment in Act 11/2020. This study aims to provide insight into the potential for new crimes that arise due to changes in criminal sanctions and responsibility for the environment in Act 11/2020. This research is a normative juridical type with a law and conceptual approach. The results of the study indicate that changes in the norms of sanctions and criminal responsibility for the environment: the emergence of potential crimes in implementation and the environment in Indonesia, the emergence of potential arbitrariness of state businesses in issuing state administrative decisions because they are related to governance regarding state business governance administrative decisions complex state efforts are abolished, as well as weakening access to justice for people affected by previous environmental problems because the government has difficulty in carrying out responsibilities based on mistakes, which has the convenience of having strict principles of responsibility in environmental crime cases. Given the importance of the environment in daily life, it is essential to anticipate the consequences above so that they do not occur massively. When there is an opportunity to commit a crime, the law must be present to provide protection and justice.

Keywords: Criminal; Job Creation Law; Responsibility; Sanction;

Introduction

Job Creation Bill began to be discussed on April 2, 2020, and finally, on October 5, 2020, People's Representative Council (from now on referred to as the "DPR") officially ratified the Job Creation Law which of course, also cannot be separated from various community response, most of which gave negative responses regarding this validation. However, the DPR did not respond much to this after ratifying it, and on November 2, 2020, Joko Widodo, as the current 8th President of the Republic of Indonesia, has signed this Job Creation Law, which after being signed by the President, then This law has been valid and has been enacted since then as Act Number 11 of 2020 on Job Creation (from now on referred to as the "Act 11/2020").

If the President does not sign the law because of his disapproval, Act 11/2020 will remain in effect after 30 days of promulgation. This is by Article 73 paragraph (2) of Act Number 12 of 2011 concerning the Establishment of Legislative Regulations (from now on referred to as the "Act 12/2011"), which reads: "If the President does not sign a bill within 30 (thirty) days from the time the bill is mutually approved, the bill will become law and must be promulgated (Elwan, 2018).

Act 11/2020 was made using the Omnibus Law method. In the Black Law Dictionary, the Omnibus Law is more familiar the term Omnibus Bill which means a method of making law by entering or combining several subjects or regulating and covering all matters regarding different types of material contained in one draft law, where the different subject or material content is one purpose of regulating matters relating to the draft law that is made. Omnibus law focuses on simplifying the number of regulations because of its revision and repeal of many laws at once. The use of the concept of the omnibus law has not been accommodated in Act 12/2011, but the use of this concept is not prohibited (Putra, 2020).

The purpose why the Act 11/2020 was made using the omnibus law method is because it is to provide the broadest possible absorption of Indonesian labor, so this method is deemed suitable to facilitate this, considering that the law which uses the omnibus law method directly covers 10 (ten) in the field of policy to facilitate the goodwill of the government to improve people's welfare and move the wheels of the nation's economy which is sluggish because one of them is due to COVID-19. These fields include (Riyanto et al., 2020):

1. Increasing the investment ecosystem and business activities;
2. Employment;
3. Convenience, protection, and empowerment of cooperatives and UMKM;
4. Ease of doing business;
5. Research and innovation support;

6. Land acquisition;
7. Economic Zone;
8. Central Government Investment and National Strategic Project Acceleration;
9. Implementation of government administration;
10. Imposition of sanctions

Act 11/2020 combines 79 (seventy-nine) laws and regulations, where all these regulations change to eliminate articles from the law. So that a new problem arises where the amended or abolished article is a vital article and results in leeway for anyone to commit acts that are allegedly exceeding the reasonable limits associated with the article (Harefa & Alhusain, 2020).

The discussion this time will focus on the elimination of several articles related to criminal sanctions in Act 11/2020, which previously existed in Act Number 32 of 2009 on Environmental Protection and Management (from now on referred to as "Act 32/2009"), which was carried out to make it easier for everyone to obtain environmental approval, several articles deleted, among other things:

1. Article 102, which reads: "Every person who manages B3 waste without a permit as referred to in Article 59 paragraph (4), shall be sentenced to imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at most. At least Rp1,000,000,000.00 (one billion rupiahs) and a maximum of Rp.3,000,000,000.00 (three billion rupiahs)".
2. Article 110 reads: "Every person who prepares an Environmental Impact Analysis (Amdal) without having a certificate of competency in drafting an Amdal as referred to in Article 69 paragraph (1) letter i, shall be punished with imprisonment of 3 (three) years and a maximum fine of Rp. 3.000.000 (three billion rupiah)".

Article 88 is amended to: "Every person whose actions, business and / or activities use B3, produce and or manage B3 waste, and / or who pose a serious threat to the environment are responsible for the losses that occur from their business and / or activities".

Initially, Article 88 reads: "Every person whose actions, business, and / or activities use B3, produce and / or manage B3 waste, and / or who pose a serious threat to the environment are absolutely responsible for the losses incurred without the need to prove elements".

Article 111 is amended to: "The official who gives environmental approval who issues environmental approval without being equipped with Amdal or UKL-UPL as referred to in Article 37 shall be sentenced to imprisonment of 3 (three) years and a maximum fine of three billion rupiahs)"

Initially, Article 111 reads:

- (1) Officials issuing environmental permits who issue environmental permits without being equipped with Amdal or UKL-UPL as referred to in Article 37 paragraph (1) shall be subject to imprisonment for a maximum of 3 (three) years and a maximum fine of Rp.3,000,000,000.00. (three billion rupiah).
- (2) Officials issuing business and / or activity permits that issue business and / or activity licenses without environmental permits as referred to in Article 40 paragraph (1) shall be punished with imprisonment of 3 (three) years and a maximum fine. IDR 3,000,000,000.00 (three billion rupiah).

The last change in Act 11/2020 Article 112 became: "Every authorized official who deliberately does not supervise the compliance of the person in charge of a business and / or activity with the laws and regulations and Business Licensing or the approval of the Central Government or Regional Government as referred to in Article 7 L which causes pollution and / or environmental damage resulting in loss of human life, shall be punished with imprisonment of up to 1 (one) year or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiahs)".

Initially, Article 112 reads: "Every authorized official who deliberately does not supervise the compliance of the person in charge of a business and / or activity with the laws and regulations and environmental permits as referred to in Article 71 and Article 72, which results in environmental pollution and / or damage. resulting in loss of human life, shall be punished with imprisonment of 1 (one) year or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah)".

Based on the background description, this research will focus on the consequences of changes (changing and eliminating norms) regarding sanctions and criminal responsibility towards the living environment in the job creation law. This research also has a scientific contribution as material: 1) making improvements to the job creation law, 2) future considerations in formulating new environmental regulations, 3) as secondary legal material for other research with environmental themes.

Research Methods

Based on the formulation of the problem to be studied, it was chosen to use a normative research type. Normative juridical legal research is a process to find the rule of law, legal principles, and legal doctrines to answer legal issues; in other words this research focuses on norms which in this case are the norms contained in the Act 11/2020 and Act 32/2009. The research was carried out with the statute approach, which was carried out by examining all laws related to the legal issues under study based on the hierarchy of legislation, and the conceptual approach, which was carried out by referring to legal principles or doctrines to analysis the

problem of norms—contained in Act 11/2020. The analysis results in the form of an argument to solve the issue at hand (Marzuki, 2016). Criminal law research is not only focused on criminal law regulations. Still, it can include research on concepts, theoretical aspects, criminal court decisions, law enforcement institutions and related institutions, and criminal law problems that arise.

Result and Discussion

To absorb the most comprehensive possible Indonesian workforce amid increasingly competitive competition and the demands of economic globalization, the government made a breakthrough through Act 11/2020, in which there are many regulatory aspects related to convenience, protection, and empowerment of cooperatives and micro, small businesses, and medium improving the investment ecosystem, and accelerating national strategic projects, including improving the protection and welfare of workers. Another aspect highlighted in Act 11/2020 is related to environmental approval to make it easier for everyone to do company permits.

Impact of the Elimination of Criminal Sanctions on Environmental Protection and Management

Criminal sanctions are emergency laws. Since criminal sanctions are emergency sanctions, criminal sanctions have the power of *ultimum remedium*, which are only used if it is suspected that other legal sanctions are ineffective in overcoming crimes. The nature of the *ultimum remedium* is a characteristic of the current criminal law and is the most effective sanction to hold criminal offenders accountable (Zaidan, 2014).

Strictly speaking, criminal sanctions have been formulated in Article 10 of the Criminal Code (KUHP), namely (Masril, 2014):

- a) Principal Crime, consists of:
 1. Death Penalty;
 2. Imprisonment;
 3. Confinement;
 4. Money Fine.
- b) Additional Penalty, consist of:
 1. Revocation of Certain Rights;
 2. Confiscation of Certain Items;
 3. Announcement of the Judge's Decision

The main punishment is a body punishment. In contrast, the additional punishment complements the main sentence, meaning that the preceding sentence can be punished with or without additional punishment, whereas additional penalties must follow the basic penalty. In other words, it is impossible to impose

additional penalties without a basic penalty; on the other hand, the principal punishment is not always followed by additional punishment. The judge can determine the type of sentence to be handed down (Safitri, 2016). Crime is an absolute consequence that must be a retaliation for the person who commits a crime. Imposing criminal sanctions does not aim to achieve a practical purpose but rather to correct criminals. The main purpose of criminal sanctions is to satisfy the claims of justice (Hutagaol, 2015).

Regarding the convenience for everyone to be able to carry out a license for their business, Act 11/2020 removes several articles that contain criminal sanctions such as Article 102 (waste management without a permit), Article 110 (preparation of Legality of Environmental Impact Analysis without competence), Article 111 (issuance of business permits without equipped with an environmental permit), Article 112 (Minister, governor or regent/mayor at the place where the company development is carried out is related to the environment that does not carry out supervision). Implementing policies related to the things that caused these articles to be deleted is always concerned with the imposition of criminal sanctions for the perpetrators. For example, there are some companies that violate environmental regulations, but some of them can still carry out their business activities as usual (Astriani & Adharani, 2017).

In criminal law theory, usually the reasons that can abolish punishment are distinguished, including (Ardina, 2019):

1. Justification reasons, namely reasons that eliminate the unlawful nature of an act, so that what the defendant does becomes an appropriate and correct act.
2. Reasons for forgiveness, namely reasons that eliminate the guilt of the defendant. The act committed by the defendant was still against the law, so it was still a criminal act, but he was not convicted, because there was no mistake.
3. Reason for eliminating prosecution, here the problem is neither justification nor excuse, so there is no thought about the nature of the act or the nature of the person who did the act, but the government considers that on the basis of utility or benefit to society, prosecution should not be held.

Criminal law also makes other distinctions, in line with the distinction between being able to convict an act and its maker, the imprisonment of a crime can involve the agent or its maker, so that it can be further differentiated into (Izaak, 2016):

1. The justification reason (s to eliminate the unlawful nature of an act, even though this act has met the formulation of the offense in the law. If his actions are not against the law, then there will be no punishment. The

Criminal Code states the reasons for justification include: Article 49 paragraph (1) regarding forced defense, Article 50 (statutory regulation), and Article 51 Paragraph (1) (office order).

2. Reason for forgiveness or excuse for erasing mistakes is related to the personal of the maker, in the sense that this person cannot be reproached (according to law) in other words he is innocent or cannot be held responsible, even though his actions are against the law. So, here is a reason that eliminates the mistakes of the maker, so that there can be no punishment. The Criminal Code states the reasons for forgiveness, among others: Article 44 (incapable of being responsible), Article 49 Paragraph (2) (emergency defense), Article 51 Paragraph (2) (in good faith carry out invalid office orders).

Apart from that, in Act 11/2020, in the chapter on environmental approval, for example, if there are administrative sanctions that have not been fulfilled by the company concerned, then they cannot be convicted. This is contrary to Law No.32 of 2009 concerning Environmental Protection and Management, which must be decided first by the government and enter the criminal realm and only then be subject to administrative sanctions. Thus, it is clear that the easing of the ease of approval for permits is said to be too much, and which is feared that it will damage the environment itself, and the people around the area will feel the impact.

Another concern arises, if this Article is abolished and the authority of Licensing and Legality of Environmental Impact Analysis lies with the central government, the potential for other crimes to arise will be even more significant. He also recalled that there were several criticisms that Licensing and Legality of Environmental Impact Analysis stated that was often used as an area for corruption in the natural resources sector (Cahyono et al., 2015). For example, the case occurred with the Mayor of Cilegoan, Tubagus Imam Ariyadi. He was found guilty and sentenced to 6 (six) years in prison and a fine of Rp. 250,000,000, - with a subsidiary of 3 (three) months imprisonment by the Panel of Judges at the Serang Corruption Court for corruption in the issuance of Amdal permits (Tim CNN, 2018).

Some of the conditions above show that with the existence of a regulation that regulates this positively, empirically, there are still crimes that cause extraordinary losses to state finances and the area of the community living, which should not have happened because it had been prevented in such a way. Through preventive measures by enacting favorable laws. This crime is an extraordinary crime because it has a significant and multi-dimensional impact on the social, cultural, ecological, economic, and political sectors, which should not be forgiven by the government (Prahassacitta, 2016).

If there is no further improvement to Act 11/2020 that has already been in effect, then things that have happened to this kind of evil deed will likely happen again. With the elimination of the right for anyone to challenge the complex state administrative decisions (from now on referred to as the "KTUN"), and the elimination of criminal sanctions, which are the last medicine for criminals, it can be said that Indonesia has experienced a setback in its law enforcement. Especially, if the dressings that are abolished in that article are carried out arbitrarily without any control by an expert.

The elimination of crucial articles related to Amdal permits and filing a lawsuit against problematic KTUN clearly illustrates that legalization of other criminal crimes apart from the two crimes described above will very likely occur. Of course, what is written in the Act 11/2020 is a big mistake if it is in the framework of facilitating permits, but the emergence of other crimes detrimental to the state and society exists.

Impact of Strict Liability Elimination on Environmental Protection and Management

The theory of legal responsibility, according to Hans Kelsen, is that a person is legally responsible for a person who is responsible for a specific act or that he is responsible for a particular act; the subject means that he is responsible for a sanction due to a contradictory act (Sitepu, 2020). The principle of responsibility in law can be divided into 4 (four), namely (Umboh, 2018):

1. The Liability Based on Fault

This principle is the most common and applies in criminal and civil law. The Civil Code adheres to this principle in Articles 1365, Articles 1366, and Articles 1367. This principle states that a person can only be held accountable legally if there is an element of wrongdoing. This principle is acceptable because it is considered fair for the person who made a mistake to compensate the victim.

2. Presumption of Liability Principle

This principle requires that the defendant is always held responsible until he can prove his innocence. Thus, the burden of proof is entirely on the defendant. If the defendant cannot prove a mistake, compensation will not be given. This principle uses a reverse proof system, where this principle is often used in consumer protection, transportation, and in criminal acts of corruption.

3. Principle Presumption of Nonliability Pricing

This principle is only known in a minimal scope of consumer transactions, and the restrictions are carried out in this way because, in common sense, it can be justified. An example is the law of transportation. Damage or loss of hand or cabin baggage, which is

usually controlled by the passenger (in this case as a consumer), is part of the responsibility of the passenger himself. In this case, the transporter (moving as a business actor) cannot be held accountable.

4. The Principle of Strict Liability

The principle of absolute responsibility is often identified with the principle of absolute responsibility. Some say absolute responsibility is a principle that determines error, not a determining factor. On the other hand, absolute responsibility is without error, and there are no exceptions.

Strict liability is a theory that sets aside the element of error or elements of state mind statutorily required in order to convict a particular defendant of a particular crime in criminal responsibility. This theory has the view that in criminal liability, it is sufficient to prove that the perpetrator of the crime has committed an act or *actus reus*, which is a prohibited act (Candra, 2013). The use of strict liability is contained in Act 32/2009 which also includes articles regarding strict liability amended in Act 11/2020.

Article 88 Law Number 32 of 2009 concerning Environmental Protection and Management reads: "Every person whose actions, business, and/or activities use B3, produce and/or manage B3 waste, and/or who pose a serious threat to the environment are responsible for the losses incurred. Occurs without the need to prove the element of error ". In the explanation of the article, the meaning of "absolute responsibility" or strict liability is that the element of error does not need to be proven by the plaintiff as a basis for compensation payments (Riswanti et al., 2013).

The use of strict liability in environmental regulations is intended to immediately follow up on damage to the environment caused by corporations by providing criminal and administrative penalties for the destroyer so that the effects of the damage can be handled immediately or not experience an expansion of damage. The concept of strict liability is straightforward. To those who have suffered from the impact of environmental damage, they can file a lawsuit with this concept, and the plaintiffs do not need to prove in such a way whether the corporation has violated the law so that the environment becomes damaged or not.

Unfortunately, in Act 11/2020, the provisions of Article 88 in Act 32/2009 are amended so that it reads: "Every 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, are responsible absolutely for losses that occur from the business and / or activities". Changing the sound of this article in Act 11/2020, resulting in leeway for corporations to be able to do more without the need for fear if what is done causes damage to the environment and for those who are affected if

filing a lawsuit there will be a little difficulty because it is necessary to prove the result of the actions of the corporation.

Even the existence of strict liability in environmental regulations, in its implementation, still encounters various obstacles. According to notes from the Indonesian Center for Environment Law, there are still difficulties in winning criminal cases related to pollution committed by corporations, as well as the inconsistency of the government in issuing permits to corporations related to their business activities, where there is the exploitation of small islands and coastal areas. Carried out by the corporation concerned (Fajri Chikmawati, 2019). The existence of these obstacles is it's difficult for environmental law to uphold justice. There is a complex process, although actually, in positive law, it has been made easier.

If those that have been facilitated are still having difficulties, how will law enforcement be due to changes in the article regarding absolute responsibility in Act 11/2020, which results in strict liability becoming a liability based on fault. Of course, this will make it even more difficult for those affected to hold accountable for the damage and weaken access to justice for the community.

Conclusion

Responsibility for environmental crimes in Act 11/2020 will result in several things: 1) The emergence of potential crimes in the implementation of employment in Indonesia; 2) The potential for government arbitrariness in issuing state administrative decisions because the regulation regarding administrative lawsuits against the government regarding complex state administrative decisions is abolished; 3) Weakening access to justice for the affected community, due to difficulties in carrying out liability based on fault which previously had convenience due to the principle strict liability. It needs direct review by the president as the highest state institution, given the importance of the amended and deleted articles. Apart from that, what must be taken is the urgent need to make government regulations instead of laws to fix problematic substances. So that this can delay the enactment of problematic articles and give the legislators time to correct the problematic articles for the realization of legal ideals: certainty, justice, and benefits for the Indonesian people.***

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