Environmental permit in the pandemic time of Covid-19

Prastiyo Triwibowo, Alvi Syahrin, Suhaidi and Ningrum Natasya Sirait
Faculty of Law, Universitas Sumatera Utara, Medan, Sumatera Utara, Indonesia,

Email: prastiyo.triwibowo@gmail.com

Abstract. During the COVID-19 pandemic, the role of all state officials and the public is urgently needed in preventing pollution and environmental damage. One of the instruments in an effort to prevent environmental pollution and damage is an environmental permit, as stipulated in Article 1 number 35 Law Number 32 of 2009 concerning Environmental Protection and Management which is further regulated in Government Regulation Number 27 of 2012 concerning Environmental Permits. With the existence of this Law, it is mandatory for business actors who are obliged to do EIA and UKL-UPL must also have an environmental permit. The enactment of environmental permits in accordance with Government Regulation Number 27 of 2012 equates environmental documents as environmental permits. As one of the problems in this research is how the legal arrangements for business actors and/or activities related to environmental permits. The research method used in this thesis is normative juridical research. This research was conducted to examine previous studies on legal principles regarding criminal charges related to environmental permits. Based on the description above, it can be concluded that the legal arrangements related to environmental permits are contained in Article 1 number 35 UUPPLH and Article 1 PP. No. 27 of 2012 concerning Environmental Permits is a permit that is given to every person who carries out a business and/or mandatory Amdal or UKL-UPL activities in the framework of environmental protection and management as a prerequisite for obtaining a business and/or activity license

I. Introduction

Psychologically in crisis situations, the human brain tends to work using fast thinking models that are influenced by survival instincts. This model is needed to get out quickly from a predicament, but risky. Fast thinking is reductionist, jump straight to conclusions. Crisis situations still require contemplative efforts, in order to carefully dissect the cause of the problem. That way, the right solution is found. This fast-thinking model looks dominant when COVID-19 explodes, becoming a pandemic. The first response announced by the authorities, namely our government, which should protect the health of citizens is denial of the plague. In its development, when this condition was inevitable, the authorities tried to negotiate it by maintaining as much as possible the business as usual scenario. The corona virus outbreak [COVID-19] is viewed solely from a biomedical perspective, namely as a disease. That way, the answer is how to prevent the spread and find an antivirus.

Lockdown and physical distancing are the most common responses taken by governments in many countries facing the COVID-19 pandemic situation. This method is considered not only effective in preventing wider transmission of corona, but also has an indirect impact by reducing human activities. Including, economic activities which have been the source of various environmental problems. This situation is as shown in several countries, such as China, Italy and America. With economic activity slowing down, the air is cleaner, water pollution is reduced, and wildlife reproduces without human interference.

The improvement in environmental conditions gave rise to the 'blessing in disguise' narrative. However, environmental improvements this short term could lead our humanity to slip toward eco-fascism. The view that sees the Earth will be better if humans suffer, or even if humans become...
extinct. Conversely, if we agree that humans are the active agents of altering the Earth system and bringing us to the Anthropocene epic, then humans should also have the responsibility to fix it. Without having to wait for extinction.

During this emergency response period, what happened was a freezing of environmental laws. The Environmental Protection Agency [EPA] in the US, for example, is delaying enforcement of environmental laws. In addition, prevention instruments in the form of amdal are also set aside in building a special hospital for COVID-19. Plastic waste, medical waste, detergent pollution, and water consumption are predicted to increase. The precautionary principle is also overlooked in the mass disinfectant spraying policy, even though we do not yet know what impact it will have on human health and the environment.

In fact, during the COVID-19 pandemic, the role of all state officials and society was urgently needed. However, the government still chose to discuss the Omnibus Law on the Job Creation Law which had a huge impact on society. This situation drew a lot of protests from the public, but the government ignored it. If this happens, the government will experience negligence in regulating environmental protection and management which can have serious impacts on society without exception and this is also against the Sustainable Development Goals. Professor of the Faculty of Forestry of IPB, Prof. Hariadi Kartodihardjo, assessed that the Job Creation Bill weakens environmental protection as regulated by Law No. 32 of 2009. For example, Environmental Management Efforts and Environmental Monitoring Efforts (UKL-UPL) are not explicitly regulated in the Job Creation Bill. In Law No. 32 of 2009, UKL-UPL is said to be part of the operational process of activities.

Moreover, it is supported by President Jokowi's inauguration speech which mentions the government's five priorities during his second term (2019-2024), namely human resource development, infrastructure development, simplification of regulations, simplification of the bureaucracy, and economic transformation. One of the ways that will be taken to realize the third priority is to compile an omnibus law which is described by the President as a law that simultaneously revises dozens of laws. However, in practice, nowadays there are many rogue business actors who still violate the law and do not pay attention to environmental pollution that occurs. Therefore, the passing of the Cipta Karya Omnibus Law has the potential to conflict with Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia. This article emphasizes that the economy in Indonesia must be implemented in a sustainable and environmentally friendly manner.

In accordance with Chapter IX of Law of the Republic of Indonesia Number 32 of 2009 concerning the Duties and Authorities of the Government and Regional Governments in Article 63 which regulates the duties and authorities of the Central/Ministry, Provincial and Regency/City Governments. One level of regional government in particular is the issuance of environmental permits. Based on the authority, the granting of environmental permits is adjusted to the location of the business and / or activity [1]. This means that if a business and / or activity covers locations in more than 2 provincial areas, then the issuance of these permits or permits is requested to the ministry (national scale). If the business and / or activity is only in one province but involves two or more districts / cities, then the licensor or permit manager is at the provincial level. And if the business and /or activity only covers the area of one regency/city, the agency authorized to issue environmental permits is the district / city level regional government.

In implementing government activities, such as providing services to the community (public service). One form of public service to the community by the government is the granting of permits that can only be obtained from the government as state administrator to run businesses in the community. The concrete form of government policy is licensing. The granting of this permit is intended to control the community in relation to various lives the community, for example in the management of environmental permits which require the environmental feasibility of a business and / or environmental study document activity. In accordance with the principles, it is hoped that the implementation of businesses and / or activities that are environmentally sound. In line with this at the Medan City Government level, licensing services related to environmental permits were only implemented after the issuance of Medan Mayor Regulation Number 13 of 2013 concerning Environmental Permits on 6 May 2013 [2].

In detail, it is stated in the attachment to this Mayor Regulation that the format of environmental permits issued based on submission of AMDAL by business actors and / or activities according to
attachment I is issued through a Mayor Decree signed by the mayor. Meanwhile, environmental permits submitted by business actors and/or activities based on UKL-UPL are issued through a Mayor's Decree signed by the Head of the Environmental Agency on behalf of the Mayor of Medan as listed in Attachment II to this Mayor Regulation. This Waikota Regulation has come into effect since it was promulgated by continuing to provide Transitional Provisions that: documents existing before Government Regulation Number 27 of 2012 concerning Environmental Permits are equated with environmental permits; permits that were granted prior to the entry into force of this Mayor Regulation are still valid until the date the permit is validated; businesses and/or activities whose business license validity period has expired, must first have an environmental permit before extending the business license.

This means that the existence of the 2009 Law on Environmental Protection and Management obliges business actors who are required to carry out AMDAL and UKL-UPL to have environmental permits. The enactment of environmental permits in accordance with Government Regulation Number 27 of 2012 equates environmental documents before this government regulation with environmental permits and after this Government Regulation must be in the form of an environmental permit. At the Medan City Government level as a publishing agency [3]

2. Research methods

The type of research used in this paper is normative legal research using the statutory approach method and a conceptual approach. This research also involves an empirical dimension in proportion or what is known as socio-legal [4]. The aim is to be able to provide an explanation of the legal phenomenon which is interpreted factually, where social factors can be explained with legal assistance, as well as legal principles that can be explained with the help of social facts. The analysis of legal materials uses qualitative juridical analysis methods and the results of the analysis are presented in descriptive analytical methods. Processing and analyzing data were carried out using a qualitative approach method emphasizing the direct participatory observation side of the research. Thus it can be revealed the phenomena that occur and the things behind them which will ultimately produce a clear, directed and comprehensive picture of the problem that becomes the object of research.

3. Discussion

The world is currently affected by the new coronavirus disease (Covid-19). The World Health Organization (WHO) is coordinating global efforts to manage the impact and declaring Covid-19 a global pandemic on March 11, 2020. The scale of the impact is unacceptable, and research suggests that it may take more than a decade for the world to recover, socially and economically and may significantly disrupt progress on the 2030 Agenda for Sustainable Development (SDGs). On March 27, G20 countries pledged US $ 5 trillion to fight the global economy against Covid-19, while the United Nations (UN) launched the Global Humanitarian Response Plan for Covid-19 [5].

The pandemic started in Wuhan City, Hubei Province, China and has brought many new challenges to public health in various countries. The world has experienced a global public health crisis in the last 20 years caused by new viral infections, such as HIV, Influenza A virus subtype H1N1, Influenza A virus subtype H5N1, SARS-CoV1, MERS-CoV, and Ebola. However, the epidemiological novelty of Covid-19, caused by the coronavirus astrain (SARS-CoV2), reveals our lack of preparedness given its sudden and rapid spread that many governments around the world are unprepared for.

On March 26, WHO issued six priority strategies, which will be carried out by the government to contain the pandemic. The strategies are as follows: Expand, train and deploy health workers; Implement a system to find suspected cases; Increase test production and increase availability; Identify facilities that can be converted into coronavirus health centers; Develop a plan for case quarantine; and Refocus on government measures to suppress the virus.

Reducing and delaying the peak of the epidemic is important. Uncontrolled action would lead to a rapid increase in the number of cases, peak earlier and require more capacity of the health care system
to respond, while stringent control measures implemented earlier would help reduce the number of cases, delay peak achievement and need to be much lower health care system capacity. Indonesia is the fourth most populous country in the world, and as such is expected to suffer greatly and over a longer period of time, when compared to other less populous countries (ADB, 2020). When the SARS-CoV2 novel coronavirus hit China the most in months December 2019 – February 2020, Indonesia reported no cases of transmission at all.

In the midst of the COVID-19 health emergency situation which caused weak and reduced investment activities resulting in a decline in the value of shares and businesses from private companies which caused them to make a lot of budget cuts, especially matters of environmental restoration, even to the point that some companies went out of business or went bankrupt. Moreover, at this time there was no special regulation regarding environmental restoration during the Covid-19 period. Therefore, the state, government, and all stakeholders are obliged to protect and manage the environment in implementing sustainable development [6].

In the context of environmental management based on Law Number 32 Year 2009 concerning Environmental Protection and Management (hereinafter referred to as UUPPLH), environmental law enforcement can be carried out in two ways, namely preventively and repressively. Preventive environmental law enforcement is carried out through supervision, while repressive law enforcement is carried out through the application of administrative sanctions. Supervision and application of administrative sanctions are aimed at achieving community compliance with the legal norms of the administrative environment.

Material crime emphasizes the consequences of an action and requires evidence that there is an effect in this case environmental pollution and / or damage. Meanwhile, formal crimes emphasize actions and do not require consequences, if they have violated the formulation of criminal provisions (provisions of laws and regulations) it can be declared a criminal act and therefore the perpetrator can be sentenced. In a formal crime, it can be used to strengthen the material criminal system if the material crime does not reach the target for the perpetrator who commits a crime with ecological impacts, meaning that a formal crime can be used as a perpetrator of an environmental crime where the evidence is there. hard to find. evidence of causality. These formal crimes do not require consequences (environmental pollution and / or destruction), so there is no need to prove the cause and effect of environmental crimes.

The provisions of Article 109 of the UUPPLH constitute a formal criminal act, meaning that a criminal act that demands the consequences of the act, the criminal act is declared to have been committed if a person carries out a business and / or activity without an environmental permit. Meanwhile, the provisions of Article 111 UUPPLH constitute a formal crime, namely a crime that does not require consequences. Furthermore, the provisions of Article 112 of the UUPPLH state that a Supervisory Officer who is declared to have committed a criminal act if he does not carry out his obligations in accordance with his / her authority shall supervise the compliance of the person in charge of a business and / or activity with the provisions stipulated in an environmental permit which results in environmental pollution and / or damage that is detrimental to life [7].

The UUPPLH requires the application of criminal law enforcement for certain formal violations as a last resort, after administrative law is deemed a failure or the violation is committed more than once. The criminal law provisions in the UUPPLH are more complete when compared to the UULH and UUPPLH. Because the UULH only regulates material offenses. Meanwhile, the UUPPLH in addition to regulating material crimes also regulates formal offenses. Meanwhile, the UUPPLH provides a more detailed explanation of the violations committed. Environmental permit issuing officials who issue permits are not equipped with AMDAL, UKL, UPL or supervisory officers who do not carry out proper supervision so that efforts to pollute and / or damage the environment, also provide false information, eliminate or destroy information needed for supervision and law enforcement can also be criminalized. In UUPPLH based on Article 109 UUPPLH, criminal sanctions that can be imposed on a person who commits a criminal act in the form of imprisonment and a fine are added to the criminal or action as regulated in Article 119 UUPPLH. The criminal pattern in the UUPPLH as regulated in the provisions of Chapter XV of the Criminal Provisions in Article 97 of the UUPPLH to Article 120 of the UUPPLH contains criminal sanctions and sanctions for action [8].
4. Conclusion
During the Pandemic-19 period prior to the issuance of the Omnibus Law of the Work Creation Law, legal arrangements related to environmental permits were contained in Law of the Republic of Indonesia Number 32 of 2009 concerning PPLH and Government Regulation of the Republic of Indonesia Number 27 of 2012 concerning Environmental Permits and their implementing regulations containing permits that given to everyone. During the Covid-19 pandemic, the criminalization of business actors and / or activities without environmental permits has brought the perpetrators to court so that they are found guilty of doing business without environmental permits. The defendant is subject to criminal responsibility and punishment for his actions against the law.

References
[1] J.E V and Saija, 2014 Regional Government Authorities in Granting Environmental Permits Sasi J. 20, 1.
[2] Dpmptsp, 2020, Adapted from the permit recap of Medan City DPMPTSP, https://dpmptsp.pemkomedan.go.id/website/index.php?mod=home&opt=rekap_perizinan&tanggal1=2012-02-23&tanggal2=. .
[3] waspada.co.id, 2020, Polrestabes medan s Provid posko pelayanan, https://waspada.co.id/medan/polrestabes-medan-s Provid-posko-pelayanan-umkm. .
[4] Soekanto and Soerjono, 1968 Introduction to Legal Research Jakarta: UI Press.
[5] Mukhlish, 2016 Environmental Administrative Law Concepts in Achieving Sustainable Development J. Const. 7, 2 p. 067–098.
[6] Norouzi N and Ataei E, 2021 Covid-19 Crisis and Environmental Law: Opportunities and Challenges. Hasanuddin Law Rev. 7, 1 p. 46–60.
[7] Reksodiputro Abdurrahman and Mardjono, 1985 Enforcement of Environmental Sanctions through Criminal Sanctions Instruments, Jakarta: Faculty of Sanctions.
[8] Arifin and Syamsul, 2021 Sanctions on Environmental Protection and Management in Indonesia Jakarta, Indonesia: PT. Sofmedia.