

Analysis for Officials Granting Business License without Environmental Permits

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Abstract. Criminal sanctions for licensing officials operating without environmental permits. In fact, legal violations sometimes occur when commercial permits are issued without considering environmental licensing requirements, which can harm the environment and the surrounding community. This research uses a normative legal method with a legislative approach. Secondary legal materials are the Environmental Protection and Management Law No.32/2009, and secondary legal materials are obtained from literature reviews such as legal books, research by legal experts, and journals related to environmental permits. Conclusions are drawn using deductive reasoning.

Keywords: Business Permits, Criminal Sanctions, Environmental Permits

1 Introduction

Every company operating in Indonesia must have two types of licenses, namely a business license and an environmental permit. However, it is not uncommon for unlawful actions, such as the issuance of business licenses by administrators without area permits, to occur, which can have serious impacts on the environment and communities surrounding the company. The issuance of business and environmental permits is an important part of the business licensing process to protect the environment. However, in practice there are still officials who grant business licenses without environmental permits, which can cause harm to the environment and surrounding communities. This action is considered a violation of the law and can be considered a criminal offense [1]

For example, the case of environmental damage in Sidoarjo, East Java caused by oil and gas drilling that did not pay attention to environmental permits and resulted in the Lapindo mud disaster which damaged the environment and threatened the health of the surrounding community. To prevent the act of granting business licenses without regard to environmental requirements, effective and strict law enforcement is needed against officials involved in environmental criminal acts [2]. For example, a textile company obtained a business license from the local government to produce and process textile materials. However, after some time in operation, the surrounding community began to feel the negative impact of the waste produced by the company. After an investigation, it turned out that the company did not have the necessary environmental permits to handle the waste generated.

The results of the study show that officials who grant business licenses do not complete the requirements with area permits, so the company is not monitored and does not comply with environmental regulations. This caused a detrimental impact on the environment and surrounding communities. In this case, this case can be used as a relevant example to analyze the effectiveness of law enforcement related to criminal acts of granting business licenses by officials without being equipped with environmental permits.

The purpose of the study is to analyze for officials who give business permits without being equipped with environmental permits. This article is important because the issue of environmental permits is currently a quite crucial issue and requires special attention. Granting a business license without an environmental permit can endanger the environment and public health, as well as violate established legal rules. In addition, cases of abuse of authority by officials in granting business licenses without considering environmental aspects also often occur in Indonesia [3].

Previous research as a reference that has existed before and is interrelated with this research and becomes a benchmark as well as a basis for thinking for the author to provide answers to a problem from this research .

The first study was conducted by Herbet Ricardo Manalu and published in the journal of the University of North Sumatra with the title "Analysis of the criminal act of granting business licenses by officials without environmental permits". The conclusion of this study is that the issuance of an environmental permit is one of the mandatory requirements for applying for a commercial business license and officials who issue environmental permits can be subject to legal sanctions if they are not involved in AMDAL, UKL and UPL [4].

The second study conducted by Fachreza Akbar Hidayat and Ahmad Basuki with the title "Environmental permits and criminal consequences of licensing officials" formulates that administrators who do not comply with the methods and applications for area permits will be subject to sanctions in accordance with the determination of laws and regulations. Article 111 and 112 of UUPPLH listed the crime of imprisonment for a very long time of 3 years and compensation of very much IDR 3,000,000,000 if the administrator issues an area permit without referring to the AMDAL or UKL- UPL according to Article 37 paragraph(1) and Article 40(1). Not only that, any administrator who intentionally does not monitor the discipline of the guarantor of the responsibility of the effort as well as or or surgery to the regulations as well as the permit of the living area, as a result causing contamination or destruction of the living area as well as causing loss to people's lives, can be punished with the crime of imprisonment for a very long time of 1 year or compensation for a very large amount of Rp500,000,000.00 according to Article 71 as well as Article 72 [5].

What distinguishes my research from the previous research above is that the previous research focuses on criminal acts against officials who grant business licenses without environmental permits and for my research focuses on criminal sanctions for officials who grant business licenses without environmental permits.

2 Methods

The method in this research uses normative law. With the approach of invitation legislation (statute approach). The primary legal material used is the Law on Environmental Protection and Management No.32/2009. Meanwhile, secondary legal materials are obtained through literature research such as law books, studies conducted by legal experts, and legal journals related to environmental permits. Conclusions are drawn using the deductive reasoning method [6].

3 Results and Discussion

3.1 Business License Granting

In the application chart for the establishment permit as well as or or work permit, the OSS (*Online Single Submission*) body will issue the establishment permit based on the commitment to the business entity that needs the facilities to carry out its business as well as or or operations, but has not yet had or understood the required facilities. This operational licensing method includes the publication of position permits, water base position permits, area permits, and or building construction permits (IMB) based on the submitted commitments[7].

A more detailed determination of the area permit is regulated in the Government Regulation related to the area permit No. 27 or 2012. This ruling regulation explains that a living area permit is a provision that must be complied with in order to obtain an establishment permit as well as or effort permit. This regulation contains determinations regarding the way of environmental impact analysis(AMDAL), environmental management efforts(UKL), environmental monitoring efforts(UPL), as well as rules on the method of licensing living areas [8].

Thus, environmental permits play an important role in ensuring environmental protection before a business entity applies for a license or business permit. The environmental licensing process including AMDAL, UKL, UPL and AMDAL must be implemented in accordance with applicable regulations. [9].

3.2 Business Licensing in relation to the Job Creation Law

As part of the implementation of the PP on the implementation of risk-based business licensing 5/2021 (PP 5/2021) which is the implementing regulation of the Job Creation Law 11/2020, several significant changes have been made to comply with business licensing regulations. Previously, business licenses were submitted through an electronic business licensing system, namely OSS, the application for an integrated business license is done electronically through the OSS system system- RBA according to the official submission of the Minister of Investment/Head of Agency. Department of BKPM 1342/A.1/2021.OSS-RBA with is known as an abbreviation of *Online Application Risk-Based Approach*, namely as an electronically detected commercial licensing system. an integrated organization responsible for the implementation of risk-based business licenses according to Article 1 (21) of PP 5/2021.

Requests for establishment licenses through a one-stop integrated system have been implemented since 2018. OSS directs all licensing services and seeks to standardize OSS-RBA includes business licenses based on the level of business risk which is divided into 4 levels and also based on the scale of the business, namely micro, small and medium enterprises of the licensing apparatus at the central and regional levels, so as to create a simple, fast and integrated commercial licensing service. MSMEs as well as large companies. Serving OSS-RBA includes operational licensing and investment facilities. Business licensing includes risk-based licensing and applies to micro and small enterprises (MSEs) and includes business development, merger, consolidation, and business disposal of business licenses before and after the enactment of the Job Creation Perppu:

Table1 1. Before and After the Job Creation Regulation

No.	Before the Job Creation Perppu	No.	After the Job Creation Perppu
1	Complex Permit System: The business licensing process in Indonesia before the Job Creation Perppu tended to be complex and time-consuming. Many documents and requirements had to be physically submitted.	1	Integration and Digitalization of Business Permits: The Job Creation Perppu integrates and digitizes the business permit process. This is intended to facilitate and accelerate the licensing process.
2	Many separate licenses: There are various permits for businesses such as Tanda Daftar Usaha (TDP), Surat izin usaha dagang (SIUP), Surat izin usaha jasa konstruksi (SIUJK) and others issued by organizations in a body.	2	One Door System: The Job Creation Perppu introduces the concept of a "one-stop system" which aims to unify various licensing processes under one platform or institution. The aim is to improve efficiency and speed up the licensing process.
3	License Time Limit: Business licenses often have a specific time limit and need to be renewed periodically.	3	Business License Valid Forever: The Job Creation Perppu introduces a business license system that is valid forever, except in certain cases regulated by law.
4	Involvement of Many Agencies: There are many agencies involved in the business licensing process, which often confuses and slows down the process.	4	Principle of Regional Autonomy: The Job Creation Perppu gives greater authority to local governments to issue business licenses, taking into account existing regulations.
		5	Ease of Foreign Investment: The Job Creation Perppu aims to ease the process of foreign investment in Indonesia by providing certain incentives and facilities.

The government and parliament have passed (Law on Job Creation 11/2020), although the law still has many counter responses from the public. Law 11/2020 categorizes and amends a number of existing laws into one document. controversy over articles that address environmental issues. opinions from the public and environmental activists, the Job Creation Law does not prioritize environmental sustainability and does not guarantee the preservation of nature. The Company Establishment Law deletes, amends, and establishes new regulations related to commercial business licenses that were previously regulated in Law 32/2009 (PPLH Law). One of the points emphasized is the requirement for an environmental impact assessment (AMDAL).

Table 2. Ciptaker Law Related to EIA Provisions

No.	In the Ciptaker Law, there are about four changes related to EIA provisions
1	Regarding the use of EIA based on the Ciptaker Law, EIA made by certified parties (EIA compilers) will be the basis for environmental assessment in carrying out certain businesses and/or activities. The environmental assessment is conducted by a team formed by a central government agency. This group includes representatives from the central government, local government, and certified experts. Based on this recommendation, the central or local government will make a decision regarding the suitability of the environment and the decision will be used as a condition for granting a business license. This is different from the provisions of the previous PPLH Law, where the EIA was the basis for determining decisions regarding environmental suitability for carrying out business activities and/or operations. However, before the EIA is used as a basis, the EIA document stipulated in the PPLH Law must first be evaluated by the EIA Assessment Committee formed by the Minister, Governor, or Regent/Mayor under their authority. If the EIA recommendation does not exist, the environmental permit will not be issued.
2	The provision of Article 25 letter c of the Ciptaker Law amends the EIA document based on suggestions, responses and input from the community. In the PPLH Law, the content of the existing document is related to the suggestions, feedback and input from the community directly affected and related to the business plan/operation, while in the Ciptaker Law, suggestions, feedback and input do not necessarily come from the community from the people involved.

- 3 The Ciptaker Law and PPLH Law regulate public participation in the preparation of EIA. However, the provisions of the Ciptaker Law limit the definition of corporations. Based on the Job Creation Law, the community is directly affected; environmental observers; and/or parties affected by all forms of EIA process decisions, whereas in the PPLH Law, the community also includes stakeholders.
- 4 Changing the EIA protest mechanism, the PPLH Law provides an opportunity for parties who object to EIA documents to file objections or sue, but the Ciptaker Law does not provide a mechanism to reject EIA. The Ciptaker Law removes provisions related to the EIA review committee stipulated in Articles 29, 30, and 31 of the PPLH Law. The absence of an objection mechanism has caused debate in the community because ensuring environmental sustainability is considered very important, especially ensuring that EIA documents are not prepared carelessly or merely as a formality.

There is also something else that is in line with the EIA rules and has caused controversy, namely the removal of provisions related to the obligation to implement environmental permits. In the Ciptaker Law, environmental permits are not expressly regulated. However, to obtain an operating license, the applicant must obtain an environmental suitability determination. The nomenclature and content of environmental permits in the PPLH Law are replaced with environmental permits in the Ciptaker Law. Article 22 (35) of UU Ciptaker describes environmental approval as a decision on environmental feasibility or a statement of environmental management capability that has been approved by the central or regional government. The amendment of UUCiptaker that changes the provisions of the PPLH Law, especially related to EIA and environmental permits, is considered by some parties to reduce vigilance and could threaten the preservation of nature. Some are worried that with this change, "fake" EIAs can be easily issued because the issuance process has no public oversight. In fact, public participation is very important in the issuance of EIA to ensure environmental sustainability. For active permit processing through OSS, a Population Identification Number (NIK) is required and must be entered when creating a user ID. If a legal entity, the 212 validation process at KEMENKUMHAM through AHU Online must be completed before accessing OSS.

Meanwhile, for business entities in the form of perum, perumda, state legal entities, public service agencies, or broadcasting institutions, it is necessary to prepare a legal basis for the establishment of the business legal entity. After obtaining a user ID, it can process business licenses that contain requirements for starting a business, such as location, environmental, and construction permits, as well as system licenses, managing business activities at the central and regional levels. OSS facilitates the processing of various business licenses safely, quickly and in real time. OSS also helps business stakeholders report and resolve licensing issues in one platform, and stores licensing data in one National Business Identity (NIB).

3.3 Environmental Permit and Business License

An environmental permit is a license granted to individuals or business entities to carry out activities or projects that have the potential to impact the environment. This permit is a requirement that must be met before obtaining a business license [10]. The purpose of an environmental permit is to protect and manage the environment and protect people's rights related to a healthy and sustainable environment. Environmental permits are granted after an environmental impact evaluation is conducted to assess the potential risks and impacts that may be caused by the activity or project. If the activity or project does not meet the requirements set out in the environmental impact evaluation, then the environmental permit will not be granted and the activity cannot be implemented.

Meanwhile, business licenses are granted by the government to individuals or business entities to carry out certain business activities. Business licenses are granted based on applicable rules and regulations, and go through a rigorous process to ensure business activities are legal and safe. Business license requirements may vary depending on the type of business and location of the business. For example, to obtain a restaurant license, a business owner must fulfill conditions such as a health permit and an environmental permit. Criminal sanctions may be imposed if a business activity is conducted without the appropriate license. Therefore, it is important for business owners to ensure that they have a complete business license and comply with applicable regulations, including environmental permits [11].

3.4 Granting of Business License in relation to Law of the Republic of Indonesia Number 32 of 2009 on Environmental Protection and Management

Environmental permits serve as a government tool to monitor and regulate environmental management activities. The aim is to maintain the environment, for the benefit of present and future generations. Even in the 1945 Constitution it is emphasized that every citizen has the right to a good and clean environment. [12].

The purpose of this permit is to monitor and control environmental sustainability, although in the process of implementing this permit, it can sometimes affect people's business rights and their right to a good and healthy environment. In the UUPLH, permits are considered a tool used to monitor, protect and manage the environment in Indonesia. As a monitoring tool, it also has an important role in determining the success of preserving environmental functions for the survival of humans and their ecosystems [11].

3.5 Granting Business License related to environmental permit regulation 27/2012

Based on Article 1 (1) of the Environmental Permit Regulation No. 27/2012, it is stated that "Environmental Permit is a permit given to every person conducting a business and/or activity that requires an AMDAL or UKL-UPL in the context of environmental protection and management, which is a prerequisite for obtaining a Business License and/or Business." PP No. 27/2012 regulates 2 instruments of environmental protection and management, namely AMDAL and UKL- UPL, and other instruments of protection and management of living areas. material and living area permits into this PP is possible because AMDAL or UKL- UPL and living area permits are considered as one unit [14]. A living area permit is a provision needed to obtain an establishment and/or business license issued by a technical institution that has the right to conduct business.

From the field of law, PP 27/2012 regulates the method and requirements for the categorization of AMDAL as follows. This regulation was issued based on Law No. 32/ 2009, specifically Article 33 and Article 41. PP No. 27/2012 regulates 2 instruments of environmental protection and management, AMDAL and UKL- UPL, and area permits. The integration of the contents of AMDAL and environmental permits in this PP is attempted because these two tools are considered as one [3]. In PP no. 27/2012, the relationship between area permits and supervision as well as legal enforcement is clearly regulated. Article 71 of GR no. 27/2012 regulates the implementation of sanctions to area permit holders who violate their obligations in accordance with the decision of Article 53.

Overall, PP 27/2012 aims to protect and manage the environment, while the specific objectives are to provide a clear legal basis for the application of environmental licensing instruments and make some improvements in the application of AMDAL and UKL-UPL (environmental assessment) tools in Indonesia.

4 Conclusion

The author concludes that environmental permits are given to individuals or business entities before they obtain a business license. This permit aims to protect the environment from negative impacts that may result from activities or projects that have the potential to damage the environment. Environmental permits act as a means to supervise and regulate environmental management activities, in line with the Environmental Protection and Management Law No. 32/2009. The right of every citizen to a good and healthy environment has been guaranteed in the 1945 Constitution.

5 Acknowledgments

All praise and to God Almighty. I would like to thank my parents who provide support to the author and the parties who have helped the author in completing this article with the title analysis for officials who grant business licenses without environmental permits. I would also like to express my gratitude to Universitas Muhammadiyah Sidoarjo.

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