

REVIEW ARTICLE

ENVIRONMENTAL IMPACT ANALYSIS IN INDONESIA POST-JOB CREATION LAW: A SOCIOLOGICAL JURISPRUDENCE APPROACH

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CITED AS

Cahyani, K. N. (2021). Environmental Impact Analysis in Indonesia Post-Job Creation Law: A Sociological Jurisprudence Approach. *Journal of Law and Legal Reform*, 2(3), 439-448. <https://doi.org/10.15294/jllr.v2i2.46616>

Submitted: December 11, 2020 Revised: February 11, 2021 Accepted: May 2, 2021

ABSTRACT

Law is a rule or means in the administration of the state, in order to achieve an orderly, safe and guaranteed life of people's rights, law is needed. According to positivism, law is an order from those who hold the highest power or hold sovereignty. Law is considered as a logical, fixed, and closed logical system. Sociological Jurisprudence theory argues that a good law must be a law that is in accordance with the law that lives in society. Sociological jurisprudence shows that there is a compromise between written law as the need of the legal community for the creation of legal certainty (legal positivism) and living law as a form of appreciation for the importance of society's role in the development of law formation and legal orientation.

Keywords: *Sociological Jurisprudence; AMDAL; Environmental Protection; Post-Job Creation Law; UU Cipta Kerja*

INTRODUCTION

Law and society are two inseparable aspects. Where there is society there is law. Aristotle stated that humans are *zoo politicon*, meaning that humans basically always want to hang out and gather with each other. So, humans are creatures who like to socialize. To achieve an orderly life, safe and guaranteed the rights of the community, law is needed (Kansil, 1979). According to positivism, law is an order from those who hold the highest power or hold sovereignty. Law is considered as a logical, fixed, and closed logical system (Saifullah, 2007).

The flow of legal positivism, namely the pure law theory, views that the concept of applying the law must be clean from non-juridical elements such as sociological, political, historical and ethical. The rule of law is always positive (written) law (Nasution, 2000). From the sociological element, it means that Hans Kelsen's teachings do not provide a place for customary law that lives and develops in society. Meanwhile, from the ethical element, Hans Kelsen's conception of law does not provide a place for the application of natural law. Ethics provides an assessment of the good or bad of an action (Rasjidi, et. al., 2001).

The enactment of the law in the community is no longer aimed at achieving justice but legal certainty. If the law is clean from non-juridical factors, then the law is nothing but static and does not see the legal reality in society. Whereas in society there may be differences between law in book and law in practice. This is certainly a problem in the application of law in society. This is in accordance with the view of Thomas Hobbes which states that if the law is imaged as an order, then the ruler can be imaged as a robber/rogue who forces his victims to obey his orders.

Law is a product of history, so that when times change, it can cause the values championed by law to be no longer in accordance with the times. Sociological jurisprudence theory directing his views on reality rather than the position and function of law in society. Legal reality is basically the will of the public, so it is not just law in terms of law in the book.

Sociological Jurisprudence theory argues that a good law must be a law that is in accordance with the law that lives in society. This theory clearly separates positive law from living law. Famous figures of this school include Eugen Ehrlich (1862-1922) an Austrian legal expert and sociologist, who argues that issues of law, at this time, are no longer a question of formal legality, of the interpretation of articles of legislation. the invitation properly, but rather moving towards using the law as a means to help shape the new or appropriate life order with the conditions at that time. In other words, the new positive law will apply effectively if it contains or is in harmony with the laws that live in society (Salman, 1993).

Today, Indonesia is a developing country that is building economic strength and infrastructure, this is of course accompanied by the development of human resources. One of the ways to build a strong economy is easy investment. Increase

the country's productivity, create jobs and increase gross domestic product and exports. The current government is very ambitious to increase the investment of foreign companies to invest in Indonesia.

In this case, the government took the initiative to form a law that supports the investment climate where it aims to develop the country and realize the Nawacita program. One of the laws that is currently being discussed is the work copyright law. The Job Creation Law regulates employment, employee leave rights, business permits, environmental permits and so on. It contains 1187 pages.

Environmental permits are one aspect that is quite highlighted in the Job Creation Act. An environmental permit which is then called AMDAL (Analysis of Environmental Impacts) or UKL/UPL is a mandatory requirement that is required before setting up a business or factory. In the Job Creation Law, it is very clear that the government wants to improve the investment climate, one of which is by making it easier to obtain Environmental Permits. In this case the opinion of Prof. Mahfud MD which states that: "*politics is the determinant of law because law is actually a political product that is full of interests and political configurations*" is very true. The preparation of the Job Creation Law requires the government's political interests in favor of large investors, in this case investors.

However, several studies have even confirmed that the Omnibus Law provides a new direction in the environmental sector that has the potential to accelerate environmental damage, starting from simplification of permits, licensing authority in the forestry sector, to corporate criminal liability for environmental destroyers (Amania, 2020; Siregar, 2020; Fatanen, 2021; Bangsawan, Budiono, & Damayanti, 2021; Saputra, 2021; Lubis, 2021; Rianda, 2021; Halomoan, 2021). Even further, according to Prakasa (2021) and Sembiring, Fatimah, & Widyaningsih (2020), this law poses a great potential for future ecological and environmental damage, which in the end, according to Tejomurti & Sukarmi (2020), the law contradicts the principle of legal justice that was initiated by John Rawls.

Therefore, the problems raised in this sociological jurisprudence paper are: (1) What are the views of sociological jurisprudence figures regarding the good law that applies in society? And (2) Is the job creation law in accordance with good legal rules that apply in society?

METHOD

This type of research is a qualitative legal research using a juridical-empirical approach (*non-doctrinal*), namely research on how to implement the law and problems in implementing the law.

UNDERSTANDING SOCIOLOGICAL JURISPRUDENCE THEORY

The views of sociological jurisprudence figures regarding the good law that applies in society. The foundations of the sociological jurisprudence theory are Roscoe Pound, Eugen Erlich, Benjamin Cardozo and others ([Rasjidi, et. al., 2001](#)). One of the figures of sociological jurisprudential theory is Erlich who states that law arises from a mere naturalization process. All phenomena of the world including laws are approached like natural objects and the relationship between these phenomena is considered natural as well. So, the law is a reality because it comes from reality in society. So according to Erlich, a good law is a law whose formation is in accordance with legal reality ([Rasjidi, et. al., 2001, p. 66](#)). Legal reality is basically the will of the public, so it is not just law in the sense of law in books.

Sociological jurisprudence shows that there is a compromise between written law as a necessity for the legal community for the creation of legal certainty (legal positivism) and living law as a form of appreciation for the importance of society's role in the development of law formation and legal orientation ([Nasution, 2000](#)).

Eerlich's theory takes society as the basic law-forming idea which states that all positive law is rooted in a fundamental law of society. Fundamental law means what governs all life together. So social solidarity is a fundamental law of society.

The theory of sociological jurisprudence holds to the opinion of the importance of both reason and experience. This view comes from Roscoe Poud. Only the law bears the test of reason from living on. Law is an experience that is governed and developed by reason, which is announced with authority by the bodies that make laws in society which are politically organized and assisted by the power of society ([Rasjidi, et. al., 2001, p. 67](#)). Good law is a law that lives in accordance with the law that lives in society ([Rasjidi, et. al., 2001, p. 66](#)).

Parson is a member of the modern sociological jurisprudence school by developing a multi-disciplinary approach in the broad sense of legal studies. This multinational approach is to avoid getting biased results in using social science theory in looking at legal aspects both in the process of making it and its application. This is done to answer the question of how the law can be obeyed by the community, by looking for a basis to accommodate on the one hand the will of the community and on the other hand to maintain legal certainty.

The law that is accepted by the community is the law that is felt to be fair by the community concerned. Therefore, the law must be the result of a certain community consensus. According to Roscoe Pound, the main task of law is social engineering by formulating and classifying the interests of society. According to the pound striking a balance between these interests will result in legal progress. The interests protected by law referred to by Roscoe Pound are:

1. Public interest
The public interest consists of the interest of the state as a legal entity in carrying out its duties to maintain the personality and nature of the state.
2. Individual interest
The interests of this interest are divided into two, namely interests in household relations and interests regarding property
3. Interests of personality
These interests are divided into several types, namely, the interests of protecting bodily integrity
4. Free will
5. Reputation
6. Individual personal circumstances
7. Freedom to choose and express opinions.

On the other hand, Eugen Ehrlich states that the law that is made must be in accordance with the law that lives in society. That was a statement Eugen Ehrlich said. Short sentences with deep meaning. Judges as one of the law enforcements officers, in making decisions must consider the laws that live in society, as stated in Article 5 of Law No. 48 of 2009 amendments to Law No. 4 of 2004 concerning Judicial Power, namely: Judges and Constitutional judges are obliged to explore, follow, and understand the legal values and sense of justice that live in society (Hujibers 2001).

According to Ehrlich in his book entitled "*grendlegung der sociological rechts (1913)*", said that society is a general idea that can be used to denote all social relations, namely family, village, social institutions, state, nation, economic system and legal system and so on. Ehrlich views all law as social law, but in the sense that all legal relations are characterized by socio-economic factors. The economic system used in production, distribution, and consumption is decisive for legal purposes (Hujibers, 2001, p. 20).

Ehrlich's theory which takes society as the basic idea of law formation says that all positive law is rooted in a fundamental law of society. The fundamental law is what governs the whole of life together. Living together in modern society is dominated by social solidarity. Social solidarity is a fundamental law of today's society.

The discovery of the law uses the view of the historical school that was pioneered by Carl Von Seigny, namely that judges need to also pay attention to the habits that live in society, because each nation has its own national spirit (*Volkgeist*) which is different for each place. Precedence law in Anglo Saxon countries is the result of an autonomous legal discovery as long as the formation of regulations and the application of regulations are carried out by judges based on their conscience but are also heteronomous because judges are bound to previous decisions (factors outside of the judge). Meanwhile, continental law as in Indonesia recognizes heteronomous legal findings as long as judges are bound to the law.

JOB CREATION ACT IN SOCIOLOGICAL JURISPRUDENCE AND THE IMPACT TO ENVIROMENTAL PROTECTION

The government is in a hurry to boost the law. Demos, public demonstrations did not make the government afraid to pass the law. In relation to EIA and UKL/UPL, lecturers as well as students and environmental activists have protested a lot against these policies. The ratification of the Job Creation Act seems to have a lot of political content because the government's alignment with investors who want to invest in Indonesia is too visible. Environmental experts criticize that the government should review environmental policies more, not only boosting the economy but eventually natural resources will be damaged or polluted.

In accordance with the contents of the job creation bill on AMDAL, the 10 points highlighted according to Professor of the Faculty of Forestry IPB Hariadi Kartodihardjo are changes from the previous regulation, namely Government Regulation number 27 of 2012 namely:

1. Environmental Management Efforts (UKL) and Environmental Monitoring Efforts (UPL) are no longer required as part of the decision-making process for business operation permits, as stated in Article 1 point 22.
2. Article 1 number 35 concerning industrial obligations to obtain environmental permits is removed and changed to environmental approvals.
3. Nine business criteria with significant impact were removed (article 1 point 35).
4. In the amendment to article 24, in addition to appointing certified institutions and/or experts, the government can conduct its own environmental feasibility test, which is based on an environmental impact analysis document (AMDAL), to determine environmental feasibility in issuing business permits.
5. In the preparation of the AMDAL, only those who are affected are allowed to be involved in the preparation of the AMDAL. There are no longer environmentalists and/or people who are affected, as stated in Article 26 before it was amended.
6. Removing articles 29, 30, 31 regarding the EIA Assessment Commission. For activities that are required to meet UKL-UPL standards, the central government immediately issues a Business License when there is a statement of the corporation's ability to manage the environment.
7. There is no longer any affirmation that environmental feasibility must be easily accessed by the public as stated in Article 39 of the UUPPLH.
8. Supervision and administrative sanctions are entirely carried out by the central government, such as changes to Chapter XII articles 72 to 75.

9. Types of administrative sanctions are abolished by amending article 76. Delegation to government regulations will only contain procedures for imposing such sanctions.
10. There is no gap or entrance for citizens to sue other institutions that damage the environment as stated in Article 93 of the UUPPLH, as a consequence of the abolition of environmental permits ([Forest Digest, 2020](#)).

The Job Creation Law does not regulate incentives at all like in Australia. Moreover, the obligation to disclose information regarding the company's compliance history, criteria for environmental carrying capacity in industrial locations, as well as disclosure of the results of the assessment of industrial compliance in carrying out environmental protection. Because empirically, the response of a business and risk to the environment is highly dependent on these factors. The main characteristic of the Job Creation Law is the lack of explanations, norms, or forms of direction for the contents of its derivative regulations. In other words, the law gives the central government very broad discretion to regulate it further. There are at least four implications that need to be considered if the job creation law is to apply risk-based permits for investment:

First, the availability of data to measure the impact of industrial activities on health, safety, environment, and natural resources. *Second*, data on the classification of the carrying capacity of the region in Indonesia which is a determining factor for environmental risk. Social and cultural aspects should be considered when making this classification. *Third*, make the impact of industrial activities on the environment a public matter. Therefore, publishing the evaluation of industrial activities is the government's obligation. *Fourth*, prudence in the application of risk-based business licenses, considering that this approach constructs the entire contents of the Job Creation Law ([Forest Digest, 2020](#)).

Positive law that is good and therefore effective, is positive law that is in accordance with living law which as the inner order of society reflects the values that live in it. In the Job Creation Act, it seems that the government does not protect the environment and natural resources. The environment and spatial planning should be given a strong legal umbrella so that later there will be no pollution that harms the people and the state. The laws that are made should be made by exploring, following and understanding the legal values that live in society.

CONCLUSION

Theory Sociological Jurisprudence argues that a good law must be a law that is in accordance with the law that lives in society. Positive law that is good and therefore effective is positive law that is in accordance with living law which as

the inner order of society reflects the values that live in it, positive law that applies in Indonesia should remain effective in dealing with changes and developments in the dynamics of society. live in society by exploring, following and understanding the legal values that live in society. In the aim of increasing the economy, the government should not sacrifice environmental aspects. AMDAL is a form of environmental protection. Industry is a source of waste and pollution which should be studied carefully. The environment and spatial planning should be given a strong legal umbrella so that later there will be no pollution that harms the people and the state.

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“The global industrial economy is the engine for massive environmental degradation and massive human (and nonhuman) impoverishment.”

Derrick Jensen

Endgame, Vol. 1: The Problem of
Civilization