

Analysis of Changes in Criminal Threats in Regulations on Environmental Protection and Management

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Abstract

Currently, Indonesia is grappling with serious environmental issues exacerbated by a lack of public awareness and law enforcement. Law enforcement is crucial in addressing environmental problems, necessitating the use of coercive legal instruments such as criminal sanctions. The primary legal framework governing environmental protection and management in Indonesia is Law Number 32 of 2009 concerning Environmental Protection and Management and several amendments to Law Number 6 of 2023 concerning the Ratification of Government Regulation Number 2 of 2022 concerning Job Creation. This article focuses on the changes in criminal sanctions and how these changes occurred by comparing the two aforementioned laws and analyzing them. The results indicate that five articles concerning criminal sanctions have been amended or repealed. This is because four out of the five articles have been simplified for administrative purposes and to avoid



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legal ambiguities, while one of the five articles cannot be determined due to changes resulting in legal nullity.

KEYWORDS *Criminal Law, Environmental Law, Changes in Law*

Introduction

Environmental protection and management have emerged as pressing global imperatives in the face of escalating ecological crises.¹ Within the Indonesian context, a nation renowned for its natural beauty and biodiversity, the preservation of environmental integrity holds paramount importance. However, the pursuit of sustainable environmental stewardship is often hindered by myriad challenges, ranging from inadequate law enforcement to evolving socio-economic dynamics.²

At the intersection of law and environmental governance lies the instrumental role of criminal sanctions in deterring and penalizing environmental transgressions.³ The efficacy and adaptability of legal frameworks in addressing these threats are continuously tested by the evolving landscape of environmental degradation and societal demands.

This analysis endeavors to explore the nuanced changes in criminal threats within the regulatory framework governing environmental

¹ Adger, W. Neil, et al. "Advancing a political ecology of global environmental discourses." *Development and Change* 32.4 (2001): 681-715; Babikian, John. "Climate Control: Unraveling its Societal Impact and Urgent Imperatives for Change." *International Journal of Advanced Engineering Technologies and Innovations* 1.1 (2018): 1-15.

² Meilasari-Sugiana, Astrid. *Community dynamics in natural resource governance: building adaptive management capacity towards ecological sustainability*. Diss. The University of Melbourne, 2010; White, Rob. *Crimes against nature: Environmental criminology and ecological justice*. Willan, 2013.

³ Bishop, Patrick. "Criminal law as a preventative tool of environmental regulation: compliance versus deterrence." *Northern Ireland Legal Quarterly* 60.3 (2009): 279-304; Swanson, Timothy, ed. *Introduction to the Law and Economics of Environmental Policy: Issues in Institutional Design*. Vol. 20. Elsevier, 2002; Naibaho, Nathalina, et al. "Criministrative Law: Developments and Challenges In Indonesia." *Indonesia Law Review* 11.1 (2021): 1-14.

protection and management in Indonesia. Specifically, attention is directed towards delineating the amendments introduced in key legislative instruments, notably Law Number 32 of 2009 concerning Environmental Protection and Management, and subsequent revisions stemming from Law Number 6 of 2023, which ratified Government Regulation Number 2 of 2022 concerning Job Creation.⁴

By scrutinizing these legislative modifications, this study seeks to unravel the underlying motivations, evaluate their effectiveness in curbing environmental transgressions, and discern their broader implications for environmental governance in Indonesia. Through a comprehensive examination of these changes, we aim to provide valuable insights for policymakers, legal practitioners, environmental advocates, and stakeholders invested in fostering sustainable environmental management practices.

In navigating the complex terrain of environmental regulation, understanding the intricacies of criminal threats is essential for fostering compliance, enhancing enforcement mechanisms, and ultimately safeguarding Indonesia's natural heritage for present and future generations.

Furthermore, in the contemporary condition, Indonesia is facing serious problems related to pollution and environmental damage. This problem is an urgent issue because it has an impact on the survival of the Indonesian population and the next generation of the nation. The widespread use of natural resources and the environment has worsened the quality of the environment. Various environmental damages such as disturbed marine ecosystems, forest fires that damage the lungs of the

⁴ Djayaputra, Gunawan. "Analysis of Natural Resources Management in Indonesia: Environmental Law Perspective." *International Journal* 3.1 (2021); Sembiring, Raynaldo, Isna Fatimah, and Grita Anindarini Widyarningsih. "Indonesia's omnibus bill on job creation: a setback for environmental law?." *Chinese Journal of Environmental Law* 4.1 (2020): 97-109; Cahyani, Kartika Nur. "Environmental Impact Analysis in Indonesia Post-Job Creation Law: A Sociological Jurisprudence Approach." *Journal of Law and Legal Reform* 2.3 (2021): 439-448.

nation and the world, as well as deforestation for development that causes floods and landslides are increasing.⁵

Efforts to deal with environmental problems in Indonesia are still very minimal, both in terms of science and public awareness. In terms of knowledge, we must understand the commonly used ways of utilizing Indonesia's nature. However, in terms of public awareness, the mindset that only thinks about personal or momentary interests is still very strong and awareness of the importance of environmental sustainability is still very low.⁶

Law enforcement is essential in addressing environmental issues. Law enforcement is a process to apply legal norms as a code of conduct in legal relations in public and state life. Law enforcement also aims to realize justice, so that the law can become a reality. Without law enforcement, the law becomes only a powerless formulation of the text.⁷

A clear example of the minimal handling of environmental problems in Indonesia is law enforcement against forest fires in West Kalimantan province. Although almost every year occurs and Indonesia already has laws that regulate the threats that must be given to perpetrators, but no action has been taken to criminalize them. This can happen because it is difficult to prove actions with criminal threats.⁸

⁵ Nugraha, Arvin Asta, I. Gusti Ayu Ketut Rachmi Handayani, and Fatma Ulfatun Najicha. "Peran Hukum Lingkungan Dalam Mencegah Kerusakan Dan Pencemaran Lingkungan Hidup." *Jurnal Hukum To-Ra: Hukum Untuk Mengatur Dan Melindungi Masyarakat* 7.2 (2021): 283-298; Nugraha, Arvin Asta, I. Gusti Ayu Ketut Rachmi Handayani, and Fatma Ulfatun Najicha. "Prinsip Partisipasi Dalam Pengadaan Tanah Untuk Kepentingan Umum Terkait Tata Kelola Lingkungan." *Jurnal Hukum De'rechtsstaat* 7.2 (2021): 185-198.

⁶ Sahala, Aryanto Renaldi, and Fatma Ulfatun Najicha. "Penerapan Asas Pencemar Membayar." *Jurnal Hukum to-ra: Hukum Untuk Mengatur dan Melindungi Masyarakat* 8.2 (2022): 209-216.

⁷ Laily, Farah Nur. "Penegakan hukum lingkungan sebagai upaya mengatasi permasalahan lingkungan hidup di indonesia." *Wacana Paramarta: Jurnal Ilmu Hukum* 21.2 (2022): 17-26.

⁸ Saputro, Johanna Griselda Joy, I. Gusti Ayu Ketut Rachmi Handayani, and Fatma Ulfatun Najicha. "Analisis Upaya Penegakan Hukum Dan Pengawasan Mengenai Kebakaran Hutan Di Kalimantan Barat." *Jurnal Manajemen Bencana (JMB)* 7.1 (2021).

Currently, the main provisions governing the environment are Law Number 32 of 2009 concerning Environmental Protection and Management. The law was amended by Law Number 6 of 2023 concerning the Stipulation of Government Regulation Number 2 of 2022 concerning Job Creation into Law. One of the backgrounds of the promulgation of Law Number 32 of 2009 is that the declining quality of the environment has threatened the survival of humans and other living things so that environmental protection and management are needed.

This implicitly says that the environment is very important, therefore its enforcement needs to be done so that nothing else can damage the environment. However, the written background in the law will not be enough to guarantee its implementation and compliance properly, so a stronger and coercive instrument is needed. Criminal threats are the most appropriate instrument, but must be followed by qualified law enforcers with integrity in order to run

In essence, environmental law is one of the scopes of administrative law. In practice, however, there are often arrangements related to administration that almost certainly have criminal interference. For example, in terms of taxes and customs. So, it is not surprising that there is a criminal threat in environmental settings.

As a form of effort to enforce environmental law in Indonesia, since the first law regulating the environment regulated in Law Number 4 of 1982 concerning the Basic Provisions of Environmental Management has been listed regarding criminal threats regulated in Article 22. Furthermore, in 1997 the law was repealed with the promulgation of Law Number 23 of 1997 concerning Environmental Management. In this law, in addition to more criminal threats, there are also ways of criminal enforcement or in other words criminal procedures involving filing a lawsuit to investigation. The criminal provisions of this law are contained in articles 41 to 48.

The law was repealed in 2009 with the promulgation of Law Number 32 of 2009 concerning Environmental Protection and Management. This law is the same as the previous law with criminal threats and criminal enforcement. In terms of criminal enforcement, this law adds the means of proof provided for in Articles 94 to 96. While criminal threats in this

law are regulated in Articles 98 to Article 120.⁹ Over time, in 2020 this law was included in the law that was amended by Law Number 11 of 2020 concerning Job Creation. Focusing on environmental criminal threats, with the 2020 Job Creation Law (Omnibus Law), several articles have been amended and deleted.

But in November 2021, the Constitutional Court declared the law conditionally unconstitutional. To avoid the law from taking effect, in December 2022 the government took the path to make a Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation which contains the same content as Law Number 11 of 2020 concerning Job Creation. Then the Perppu was passed by the House of Representatives in 2023 which made it into Law Number 6 of 2023 concerning the Establishment of Government Regulation Number 2 of 2022 concerning Job Creation into Law.

This article focuses on Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 6 of 2023 concerning the Stipulation of Government Regulation Number 2 of 2022 concerning Job Creation into Law which discusses what are the changes in criminal punishment arrangements and how these changes can occur.

This article uses normative research methods by taking a positive legal approach to laws and regulations and comparing them with the latest laws and regulations. The source of data used in this article was obtained from laws and regulations, journals, the internet, and other sources related to this study.

Changes in Criminal Threats in Environmental Protection and Management Arrangements

As previously indicated, the legal framework addressing criminal threats within the realm of environmental protection and management is delineated in Law Number 32 of 2009. Specifically, Articles 98 through Article 120 of this legislation encompass provisions pertaining to criminal

⁹ Zega, Yuliana Silvy Rosadi. "Tanggung Jawab Hukum Terhadap Kerusakan Lingkungan dalam Kasus Lumpur Lapindo Menurut Undang-Undang Nomor 11 Tahun 2020 (UU Ciptaker)." *Indonesian State Law Review (ISLRev)* 3.2 (2021): 89-102.

sanctions. However, with the enactment of Law Number 6 of 2023 concerning the Ratification of Government Regulation Number 2 of 2022 on Job Creation, amendments have been introduced to five articles concerning criminal threats. These alterations are meticulously detailed in Table 1.

TABLE 1 Changes in Law (Law No. 32 of 2009 and Law No. 6 of 2023)

Article	Law Number 32 of 2009	Law Number 6 of 2023
102	Any person who carries out B3 waste management without a permit as referred to in Article 59 paragraph (4), shall be punished with a prison sentence of not less than 1 (one) year and a maximum of 3 (three) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp3,000,000,000.00 (three billion rupiah).	Deleted
109	Any person who conducts business and/or activities without having an environmental permit as referred to in Article 36 paragraph (1), shall be punished with a prison sentence of not less than 1 (one) year and a maximum of 3 (three) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp3,000,000,000.00 (three billion rupiah).	Any Person who conducts business and/or activities without having: <ol style="list-style-type: none"> Business Licensing or approval from the Central Government, or Regional Government as referred to in Article 24 paragraph (5), Article 34 paragraph (3), or Pasa1 59 paragraph (4); approval from the Central Government or Regional Government as referred to in Article 20 paragraph (3) point b; or approval from the Central Government as referred to in Article 61 paragraph (1) which results in casualties/damage to health, safety, and/or the Environment, shall be punished with imprisonment

Article	Law Number 32 of 2009	Law Number 6 of 2023
		for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp3,000,000,000.00 (three billion rupiah).
110	Any person who prepares an AMDAL without having a certificate of competence for the compiler of the AMDAL as referred to in Article 69 paragraph (1) letter i, shall be punished with a maximum imprisonment of 3 (three) years and a maximum fine of Rp3,000,000,000.00 (three billion rupiah).	Deleted
111	Environmental permit officials who issue environmental permits without being equipped with an AMDAL or UKL-UPL as referred to in Article 37 paragraph (1) shall be punished with a maximum imprisonment of 3 (three) years and a maximum fine of Rp3,000,000,000.00 (three billion rupiah). Business and/or activity licensing officials who issue business and/or activity licenses without being equipped with environmental permits as referred to in Article 40 paragraph (1) shall be punished with a maximum imprisonment of 3 (three) years and a maximum fine of Rp3,000,000,000.00 (three billion rupiah).	Environmental Approval officials who issue Environmental Approvals as referred to in Article 24 paragraph (a) and Article 34 paragraph (3) without being equipped with Amdal or UKL-UPL shall be punished with a maximum imprisonment of 3 (three) years and a maximum fine of Rp3,000,000,000.00 (three billion rupiah).
112	Any authorized official who deliberately fails to supervise the	Any authorized official who deliberately does not supervise the

Article	Law Number 32 of 2009	Law Number 6 of 2023
	compliance of the person in charge of the business and/or activity with the laws and regulations and environmental permits as referred to in Article 71 and Article 72, which results in pollution and/or environmental damage resulting in the loss of human life, shall be punished with a maximum imprisonment of 1 (one) year or a maximum fine of Rp500,000,000, 00 (five hundred million rupiah).	compliance of the person in charge of a business and/or activity with laws and regulations and Business Permits or approval from the Central Government or Local Government as referred to in Article 72 which results in Environmental Pollution and/or Environmental Damage resulting in the loss of human life shall be punished with a maximum imprisonment of 1 (one) year or a fine a maximum of IDR 500,000,000.00 (five hundred million rupiah).

The enactment of Law Number 6 of 2023, which ratifies Government Regulation Number 2 of 2022 on Job Creation, marks a significant juncture in Indonesia's legal landscape, particularly concerning environmental governance. This legislation aimed to streamline regulatory processes and stimulate economic growth by fostering a more conducive business environment. However, in the process of this legislative overhaul, amendments were introduced to existing laws, including those pertaining to environmental protection and management.

Specifically, within the purview of environmental legislation, five articles related to criminal threats underwent modification. These alterations were likely driven by a variety of factors, including the need to harmonize environmental regulations with broader economic policies, address shortcomings or ambiguities in existing laws, and enhance the effectiveness of enforcement mechanisms.

While the exact nature of these amendments would require a detailed examination of the legislative texts, it can be inferred that they sought to recalibrate the legal framework governing criminal sanctions for environmental transgressions. This may involve revising the scope or

severity of penalties, clarifying legal ambiguities, or introducing new provisions to address emerging environmental challenges.¹⁰

The implications of these changes are manifold. On one hand, they may signify a concerted effort to strengthen environmental governance and ensure greater accountability for environmental violations. On the other hand, there may be concerns about potential trade-offs between environmental protection and economic development, particularly if the amendments are perceived to weaken environmental safeguards in favor of business interests.¹¹

Ultimately, a comprehensive analysis of the amendments introduced by Law Number 6 of 2023 is essential to understanding their implications for environmental protection and management in Indonesia. Such an analysis would involve examining the rationale behind the amendments, their alignment with broader policy objectives, and their potential implications for environmental sustainability and regulatory compliance.¹²

The Impact of Changes in Criminal Threats on the Enforcement of Environmental Protection and Management Provisions

1. Article 102

Article 102 of Law Number 32 of 2009 regulates the prohibition of people without permission from carrying out B3 waste management. Article 59 says the permit is obtained from the Minister, Governor or

¹⁰ Nur, Muhammad Ilham, et al. "Persetujuan Lingkungan Dalam Undang-Undang Cipta Kerja Dan Dampak Dari UU Ciptaker Bagi Lingkungan." *Jurnal Syntax Admiration* 2.12 (2021): 2352-2366.

¹¹ Amania, Nila. "Problematika undang-undang cipta kerja sektor lingkungan hidup." *Syariat: Jurnal Studi Al-Qur'an dan Hukum* 6.02 (2020): 209-220.

¹² Rahman, Abdul. "Ekonomi, Hukum dan Lingkungan Dalam Undang-Undang Cipta Kerja." *Lex Renaissance* 7.2 (2022): 310-324; Siregar, Try Mulya Naposo, and Zico Junius Fernando. "Strict Liability yang Tersembunyi: Lingkungan Hidup dan Kejahatan Lingkungan Hidup." *Jurnal Hukum Pidana dan Kriminologi* 2.2 (2021): 1-13; Hamdani, Fathul, et al. "Persoalan Lingkungan Hidup dalam UU Cipta Kerja dan Arah Perbaikannya Pasca Putusan MK Nomor 91/PUU-XVIII/2020." *Indonesia Berdaya* 3.4 (2022): 977-986.

Bupati/Mayor. However, in Law 6 of 2023, Article 102 was removed because the requirements for B3 waste management in Article 59 were changed with the condition that they have a business permit only. So, the regulation now no longer has permits to manage B3 waste because if you have obtained a business permit, you can automatically manage B3 waste.

Criminal threats in Article 102 of Law Number 32 of 2009 The removal of criminal threats arises because of efforts to enforce that parties who want to carry out B3 waste management must obtain a B3 waste management permit first even though they already have a business license. The abolition of Article 102 in Law Number 6 of 2023 is the result of changes that occurred in Article 59 of Law Number 6 of 2023 as an effort to simplify the administrative process related to permits to carry out B3 waste management.

If Article 102 is not removed, it will cause confusion over B3 waste management permits. For example, Article 102 is not deleted while Article 59 remains unchanged, Article 59 says that to carry out B3 waste management must have a business license, while Article 102 says that people who carry out waste management without having a B3 waste management permit can be criminalized. That way it will cause uncertainty, therefore Article 102 must indeed be deleted.

2. Article 109

Article 109 of Law Number 32 of 2009 regulates criminal threats against people who conduct business that does not have an environmental permit. Article 36 states that environmental permits are issued based on environmental feasibility decisions based on the assessment of the Amdal Assessment Commission, Ministers, Governors, or regents/mayors based on Article 31. However, in Law Number 6 of 2023, Article 109 is changed to a criminal threat against people who do business without having a business license, approval from the Central Government or Regional Government. Just like the previous article, the amendment of Article 109 is due to factors of change to other articles concerned.

In Law Number 32 of 2009, Article 36 regulates that every business has an environmental permit, while Article 31 regulates those who issue environmental permits, namely the Amdal Assessment

Commission, Ministers, Governors, Regents / Mayors. While Article 109 threatens people who run businesses but do not have environmental permits. With the abolition of Articles 31 and 36 in Law Number 6 of 2023, the criminal threats contained in Article 109 must be removed or changed in substance. Because if Article 109 is not deleted or not changed, the existence of Article 109 will only cause ambiguity, causing less legal certainty.

In this case, permits for businesses in Law 6 of 2023 no longer require environmental permits issued by the Amdal Assessment Commission, Ministers, Governors, Regents/Mayors. Therefore, the substance of Article 109 turns into a criminal threat against people who do business without having a business license, Central Government approval, or Regional Government approval.

3. Article 110

Article 110 of Law Number 32 of 2009 regulates criminal threats against people who compile an AMDAL without having an AMDAL consistency certificate. This criminal threat arises because there is a prohibition on people to do this which is written in Article 69 paragraph (1) letter i. However, in Law Number 6 of 2023, Article 110 is deleted, even though Article 69 paragraph (1) letter i of Law Number 6 of 2023 does not remove the prohibition of people from preparing without having AMDAL compiler certification.

The abolition of Article 110 makes the existence of Article 69 paragraph (1) letter i barren, meaning that the prohibition written in the article cannot be enforced because there is no criminal threat. Without law enforcement against the regulated prohibition, the law, especially Article 69 paragraph (1) letter i is only a textual formulation. By eliminating criminal threats against people who prepare AMDAL without having AMDAL compiler certification, it allows people to prepare AMDAL even though they do not have AMDAL compiler certification because even though it is prohibited but there is no criminal threat that can ensnare the person. So, the abolition of Article 110 can be said to be an inappropriate step and raises a lot of potential legal uncertainty.

4. Article 111

Article 111 of Law Number 32 of 2009 regulates criminal threats against officials who grant environmental permits without AMDAL or UKL-UPL and against officials who grant business permits without environmental permits. This criminal threat arises because Article 37 paragraph (1) of Law Number 32 of 2009 states that officials are required to reject applications for environmental permits that are not equipped with AMDAL or UKL-UPL and Article 40 paragraph (1) of Law Number 32 of 2009 states that to obtain a business license, they must first have an environmental permit.

In Law Number 6 of 2023, Article 111 is changed to a criminal threat against officials who give Environmental Approvals without being equipped with an AMDAL or UKL-UPL. So, in the change, criminal threats about officials granting business licenses without environmental permits were removed. The phrase "Environmental Approval" in Law Number 6 of 2023 is different from "environmental permit" in Law Number 32 of 2009, because the environmental permit regulated in Article 40 paragraph (1) of Law Number 32 of 2009 has been deleted and in Law Number 6 of 2023 only recognizes Environmental Approval regulated in Article 24 paragraph (4) and Article 34 paragraph (3).

So, the change to the criminal threat contained in Article 111 is the result of simplification of the administrative process which previously to obtain a business permit there must be an environmental permit and to obtain an environmental permit there must be an AMDAL or UKL-UPL. From this, it can be seen that Law Number 6 of 2023 which regulates Environmental Protection and Management no longer recognizes business licenses and environmental permits.

5. Article 112

Article 112 of Law Number 32 of 2009 regulates criminal threats against authorized officials who deliberately do not supervise the compliance of the person in charge of laws and regulations and business licenses. The criminal threat in Article 112 arises because of the obligation of authorized officials to supervise the compliance of business actors with

the laws and regulations regulated in Article 71 and the obligation of authorized officials to supervise the compliance of business actors with environmental permits regulated in Article 72.

In Law Number 6 of 2023, Article 112 is changed to a criminal threat against authorized officials who deliberately do not supervise the compliance of the person in charge of laws and regulations and Business Licensing or the approval of the Central/Regional Government. Changes to Article 112 are under the supervision of Business Permits or the approval of the Central/Regional Government which originally supervised environmental permits. This change occurred because of changes in Article 72. That is because Article 112 is an instrument of law enforcement against violations of Article 72.

Conclusion

The provisions for criminal threats in Law Number 32 of 2009 concerning Environmental Protection and Management have several changes due to the promulgation of Law Number 6 of 2023 concerning the Stipulation of Government Regulation Number 2 of 2022 concerning Job Creation into Law. Criminal threats amended due to the promulgation of Law Number 6 of 2023 are contained in Articles 102, 109, 110, 111 and 112. Article 102 was deleted due to changes to Article 59 relating to simplification of administration and to avoid legal uncertainty. Article 109 was amended due to the abolition of Articles 31 and 36 as an administrative simplification, and if not amended it would create legal uncertainty. Article 110 is deleted for no definite reason, even though Article 69 paragraph (1) letter i as the basis for article 110 has no change. So, with the abolition of Article 110 makes Article 69 paragraph (1) letter i barren. Article 111 was amended because Article 40 was removed as an administrative simplification. Article 112 was amended due to changes to Article 72 as a basis for criminal threats. The amendment of Article 112 is also due to the simplification of the administrative process.

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