

## Issuance of Environmental Approvals Based on the Precautionary Principle: A Legal Study

**Nuril Firdausiah\***

University of Jember, Indonesia

**Iwan Rachmad Soetijono**

University of Jember, Indonesia

**Galuh Puspaningrum**

University of Jember, Indonesia

\*Corresponding Author's Email: [usinuril@gmail.com](mailto:usinuril@gmail.com)

Article	Abstract
<p><b>How to cite:</b> Nuril Firdausiah, et al, <b>'Issuance of Environmental Approvals Based on the Precautionary Principle: A Legal Study'</b> ((2025) Vol. 6 No. 2 Rechtenstudent Journal Sharia Faculty of KH Achmad Siddiq Jember State Islamic University.</p> <p><b>DOI:</b> 10.35719/rch.v6i2.362</p> <p><b>Article History:</b> Submitted: 14/04/2025 Reviewed: 17/06/2025 Revised: 10/07/2025 Accepted: 24/08/2025</p> <p><b>ISSN:</b> <b>2723-0406 (printed)</b> <b>E-ISSN:</b> <b>2775-5304 (online)</b></p>	<p>On October 5 2020 the government and the people's representative council passed a new law, namely Law Number 11 of 2020 concerning Job Creation which raises pros and cons. These changes are based on simplifying licensing. Which changes the nomenclature of environmental permits to environmental approval. Permits are clearly a state administration decision as regulated in Law Number 30 of 2014 concerning Government Administration, whereas normative approval does not have an explicit meaning as a state administration decision. Furthermore, the change in norms is also accompanied by the elimination of the community's right to responsibility towards the government as the permit giver which was originally stipulated in Article 38 of Law Number 32 of 2009 concerning environmental protection and management. Environmental permit violations that occur do not have any impact on the business permit. The government only provides punishment in the form of a warning to violators.</p> <p><b>Keywords:</b> <i>Legal, Environmental Approval, Precautionary Principle.</i></p> <p><b>Abstrak</b> Pada 5 Oktober 2020 pemerintah dan dewan perwakilan rakyat mengesahkan sebuah Undang-Undang baru yakni Undang-Undang Nomor 11 Tahun 2020 Tentang Cipta Kerja yang menimbulkan pro kontra. Perubahan tersebut didasarkan untuk penyederhanaan perizinan. Yang mana perubahan nomenklatur izin lingkungan menjadi persetujuan lingkungan. Izin secara jelas sebagai suatu keputusan administrasi negara sebagaimana di atur dalam Undang-Undang Nomor 30 tahun 2014 tentang Administrasi Pemerintahan, sedangkan persetujuan secara normatif tidak memiliki makna yang tegas sebagai suatu keputusan administrasi negara. Lebih lanjut, perubahan norma tersebut juga disertai dengan penghapusan hak tanggung gugat masyarakat terhadap pemerintah selaku pemberi izin yang semula ditentukan dalam Pasal 38 Undang-Undang Nomor 32 Tahun 2009 tentang perlindungan dan pengelolaan lingkungan hidup. Pelanggaran izin lingkungan yang terjadi tidak memberikan akibat apapun pada izin usaha. Pemerintah hanya memberikan hukuman berupa teguran kepada para pelanggar.</p> <p><b>Kata Kunci:</b> <i>Hukum, Persetujuan Lingkungan, Prinsip Kehati-hatian.</i></p>

### Introduction

The implementation of licensing instruments is based on the development needs of the community in the economic sector, whether through investment, infrastructure, business, and so on. These permits are used by the government to control existing activities in the community

for business activities. This aims to regulate order, so that in the future it can help the community penetrate the market and integrate business fields with other fields, such as the environmental sector. In this case, the integration of business activities with the environment through licensing instruments is carried out within the framework of sustainable development activities, to maintain environmental sustainability to prevent damage or pollution as a result of existing business activities.<sup>1</sup>

In implementing this business licensing process, the government must be grounded in the concept of good governance. This includes ensuring certainty, a sense of justice, transparency of information, accountability for its implementation by the state, and the principle of benefit to the community.<sup>2</sup> This is reflected in the basic principles of Law Number 32 of 2009 concerning Environmental Protection and Management, ensuring that natural resource management does not significantly impact environmental destruction and pollution.<sup>3</sup>

However, over time, the government and the Indonesian House of Representatives (DPRD) reformulated a new environmental law and enacted it into a definitive law, Law Number 11 of 2020 concerning Job Creation (hereinafter referred to as the Job Creation Law). This Job Creation Law, a new model of law in the Indonesian legal system, was formulated using the omnibus law method, a concept that incorporates multiple laws into a single new law. The Job Creation Law was originally intended to facilitate doing business and broaden investment opportunities in Indonesia by simplifying the licensing bureaucracy. This minimizes the lengthy and costly licensing application process, making it more effective and efficient.

Unfortunately, the law has sparked controversy within the community and drawn public scrutiny. This incident certainly arose for a reason. The initial problem stemmed from a change in nomenclature from "environmental permits regulated in the Environmental Management and Management Law to environmental approvals regulated in the Job Creation Law." This is despite the fact that environmental permits are understood to be a crucial element in efforts to control activities/businesses to prevent detrimental impacts on the environment.<sup>4</sup>

The procedures and requirements for issuing an environmental permit are stipulated in the Environmental Management and Management Law (PPLH). These regulations are crucial because they provide individuals or legal entities with a general overview of what must be met when applying for an environmental permit. However, the Job Creation Law simplifies the licensing process by integrating environmental permits into Business Licensing.<sup>5</sup>

These changes to environmental approvals have implications for the procedures and implementation of the permit itself. This is due, in part, to the simplification of the Environmental Impact Assessment (EIA) mechanism. The replacement of the EIA assessment commission under the PPLH Law with the central government's environmental feasibility test

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<sup>1</sup> Evi Purnama Wati, "Perlindungan Dan Pengelolaan Lingkungan Hidup Dalam Pembangunan Yang Berkelanjutan", *Bina Hukum Lingkungan*, Vol. 3, No. 1, tahun 2018, h. 120

<sup>2</sup> Ade Risna Sari, "The Impact of Good Governance on the Quality of Public Management Decision Making" *Journal of Contemporary Administration and Management (ADMAN)* Vol. 1 No. 2, (2023), 39. DOI: <https://doi.org/10.61100/adman.v1i2.21>.

<sup>3</sup> Risno Mina, et.al, "Communities for Environmental Protection: Fostering Responsibility and Sustainability" *Journal of Judicial Review*, Vol. 26 No. 2 (2024): 229. <https://doi.org/10.37253/jjr.v26i2.9617>.

<sup>4</sup> Andri Gunawan Wibisana, "Pengelolaan Lingkungan Melalui Izin Terintegrasi Dan Berantai: Sebuah Perbandingan Atas Perizinan Lingkungan Di Berbagai Negara", *Jurnal Hukum Dan Pembangunan* Vol. 48 No. 2 Tahun 2018, 10

<sup>5</sup> Asrawati Purnama Satryanegara, "Change of Environmental Permit to Environmental Approval in Law Number 11 of 2020 Concerning Work Copyright" *Budapest International Research and Critics Institute-Journal*, Vol. 5 No. 3, (2022), 21588. DOI: <https://doi.org/10.33258/birci.v5i3.6174>.

team also narrows the scope for oversight, particularly before issuing recommendations for natural resource management.<sup>6</sup> The Job Creation Law has transformed environmental permits into environmental approvals and eliminated the EIA Commission, which was previously authorized to assess EIAs. This has resulted in the elimination of the mandatory EIA function for most business activities. Furthermore, the environmental approval mechanism limits public access to information related to the principle of transparency originally enshrined in the environmental permit mechanism. Implementation of development that ignores the Amdal process has the potential to result in environmental damage, both in the short and long term.<sup>7</sup>

Based on the explanation in the background, it can be seen that the regulations and concepts of environmental feasibility decisions in the field of business licensing in the form of environmental approvals are different from environmental permits. The Job Creation Law does not regulate any provisions for the cancellation of environmental approvals that are legally flawed, erroneous, misused, as well as incorrect and/or falsified data, documents, and/or information, whose issuance does not meet the requirements, or the person responsible for the business and/or activity does not fulfill the obligations stipulated in the Amdal document. Violations of environmental permits that occur do not have any consequences for the business permit.

## **Research Method**

Research methods are scientific ways to obtain data for specific purposes and uses.<sup>8</sup> This study employs a normative juridical approach (legal research). Juridical research focuses on understanding the implementation of legal norms or legal principles within positive law, specifically regarding "The Shifting Meaning of State Losses in State-Owned Enterprises Based on the Business Judgment Rule Principle."

The type of legal research used to address the problem is doctrinal research. Doctrinal research is the study of law and legal concepts.<sup>9</sup> Based on this type of research, it provides information and explanations regarding the legal issues being addressed through an analysis of regulations related to the topic under discussion, namely the perspective of state administrative law on environmental approvals within the precautionary principle.

## **Results and Discussion**

### **Comparison of Environmental Permit and Environmental Approval**

Licensing in the concept of state administrative law is a legal instrument issued by the government, both central and regional, as a form of implementing power in managing natural resources.<sup>10</sup> Based on this, the state, through its government, holds a higher position than the

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<sup>6</sup> Suprato, "Environmental Impact Assessment (EIA) in Indonesian Law: Implementation and Effectiveness" *Journal of Advanced Research in Social Sciences and Humanities*, Vol. 8 No. 2 (2023), 52. DOI:[10.26500/JARSSH-08-2023-0201](https://doi.org/10.26500/JARSSH-08-2023-0201).

<sup>7</sup> Tim Redaksi Walhi, "walhi kritik soal amdal pada UU Ciptaker" [https://repository.unsri.ac.id/71462/3/RAMA\\_74201\\_02011281823169\\_0011116302\\_0007088005\\_01\\_front\\_ref.p df](https://repository.unsri.ac.id/71462/3/RAMA_74201_02011281823169_0011116302_0007088005_01_front_ref.p df), CNN Indonesia, di akses pada tanggal 27 juni 2023, pukul 20.02 WIB.

<sup>8</sup> Sugiyono, *Metode Penelitian Kuantitatif Kualitatif* (Bandung: Alfabeta, 2019), 2.

<sup>9</sup> Uul Fathur Rahmah, "The Effect of Political Configuration on Legal Products: A Critical Study of Responsive Legal Concepts and Orthodox Conservative Law" *Rechtenstudent Journal* Vol. 4 No. 2 (2023), 137. <https://doi.org/10.35719/rch.v4i2.266>.

<sup>10</sup> Explanation of Law Number 5 of 1960 concerning Basic Provisions on Agrarian Principles. See also Constitutional Court Decision Number 21-22/PUU-V/2007 concerning the judicial review of Law Number 25 of 2007 concerning Investment.

implementers of activities or businesses that utilize natural resources. On the other hand, permits are also interpreted as approval from authorized agencies.<sup>11</sup> The removal of provisions regarding environmental permits from the Job Creation Law, in the amendment to the Environmental Management and Management Law, has not escaped public attention. One of the differences and impacts of the removal of the nomenclature for environmental permits from environmental approvals is the removal of the nomenclature for environmental permits.

#### 1. Environmental Permits in the Environmental Management Law

Before making a comparison, the concept of environmental permit regulation in the PPLH Law will be explained as follows:

##### a. Definition of environmental permit

In Article 1 number 35 of the PPLH Law, an environmental permit is granted to every person who carries out a business and/or activity that requires an Amdal or UKL-UPL in the context of environmental protection and management as a prerequisite for obtaining a business and/or activity permit.<sup>12</sup> This definition does not explain the meaning of the permit itself, but what is emphasized in this definition is that an environmental permit is a prerequisite for obtaining a permit for a business or activity that falls into the category of business and/or activities that require an Amdal or UKL/UPL.

##### b. Issuance of Environmental Permits

An environmental permit is a requirement for a business and/or activity permit that requires an Amdal or UKL/UPL, which is issued based on an environmental feasibility decision as stipulated in Article 31 of the PPLH Law. An environmental permit is issued by the Minister authorized for environmental protection and management, the governor, or the regent/mayor in accordance with their authority.<sup>13</sup>

##### c. Cancellation and Revocation of environmental permits

Cancellation of an environmental permit can be canceled if, Firstly there is a legal flaw, error, misuse, inaccuracy and/or falsification of document data or information, Secondly the permit is issued without fulfilling the requirements in the decision of the environmental compliance commission or UKL/UPL recommendations, Thirdly the obligations in the Amdal document are not fulfilled. In addition, an environmental permit can also be canceled through a decision of the state administrative court.

##### d. Consequences of issuing an environmental permit

Article 55 of the Environmental Management Law provides an obligation for environmental permit holders to provide guarantee funds for the restoration of environmental functions.<sup>14</sup>

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<sup>11</sup> Dewi Puspita Arini, "Pelaksanaan Izin Pertambangan Batu Kapur di Gunung Sadeng Jember Perspektif Hukum Lingkungan" *Rechtenstudent Journal*, Vol. 2 No. 2 (2024), <https://doi.org/10.35719/rch.v2i2.62>.

<sup>12</sup> Article 1 Number 35 of Law Number 32 of 2009 on Environmental Protection and Management LN No. 140 of 2009 TLN No. 5059

<sup>13</sup> Hery Agus Susanto & Daniel Susilo, "Legal Supervision and Enforcement in Environmental Law Under the law Number 32 Year 2009 on Environmental and Protection Management" *Yurisdiksi*, Vol. 10 No. 1 (2017), 4.

<sup>14</sup> Article 55 of Law Number 32 of 2009 on Environmental Protection and Management LN No. 140 of 2009 TLN No. 5059

e. Transparency

Information Officials are required to use every application and decision on environmental permits through or carried out in a manner that is easily known by the public.

f. Supervision

In Article 72 of the Environmental Management Law, the Minister, governor, or regent/mayor must supervise the compliance of those responsible for businesses and/or activities with environmental permits in accordance with their authority. This supervision obligation has criminal legal consequences as per Article 112 of the Environmental Management Law for any authorized official who intentionally fails to supervise compliance, including with environmental permits, and which results in environmental pollution and/or damage and results in the loss of human life, shall be subject to a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 500,000,000.00 (five hundred million rupiah).<sup>15</sup>

g. Sanctions for violations of environmental permits

There are two types of sanctions for violations of environmental permits regulated in the Environmental Management Law, namely administrative sanctions and criminal sanctions. The provisions that include environmental permits in administrative sanctions can be seen in Article 76 of the Environmental Management Law. This article emphasizes that administrative sanctions are applied by the minister in charge of the environment, the governor, or the regent/mayor to the person responsible for the business and/or activity if a violation of the environmental permit is found during supervision. The administrative sanctions referred to can be in the form of: Written warnings, government coercion, freezing of environmental permits, and revocation of environmental permits.<sup>16</sup>

The freezing or revocation of an environmental permit is carried out if the person responsible for the business and/or activity fails to comply with government coercion, as further stipulated in Minister of Environment Regulation Number 2 of 2013 concerning Guidelines for the Implementation of Administrative Sanctions in the Field of Environmental Protection and Management (Permen LH Administrative Sanctions PPLH).

Criminal sanctions directly related to environmental permits are contained in Article 101 of Permen LH on Administrative Sanctions PPLH, which imposes sanctions on anyone involved in the release and/or distribution of genetically engineered products into the environment. Articles 111 and 112 of Permen LH on Administrative Sanctions PPLH impose sanctions on officials issuing environmental permits and supervisors for compliance with environmental permit implementation.

Permits are one of the most widely used legal instruments in administrative law. J.B.J.M ten Berge, as quoted by Ridwan HR, states that permits are often used as a means to control the behavior of citizens.<sup>17</sup> Philipus M. Hadjon classifies permits in administrative law as state administrative decisions intended to determine prohibitions and command provisions. According to him, in principle, laws prohibit certain actions or certain interrelated actions. Such

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<sup>15</sup> Article 112 of Law Number 32 of 2009 on Environmental Protection and Management LN No. 140 of 2009 TLN No. 5059

<sup>16</sup> Article 76 of Law Number 32 of 2009 on Environmental Protection and Management LN No. 140 of 2009 TLN No. 5059

<sup>17</sup> Ridwan HR, *Hukum Administrasi Negara*, (Depok: Rajawali Pers, 2018), 199

prohibitions are not intended to be absolute; rather, licensing instruments are used to act and control society, particularly by linking regulations related to permits.<sup>18</sup>

In the environmental sector, several environmental law experts place the position of permits with approval, such as Anthony Ogus, as quoted by Andri G Wibisana, that the greatest form of government intervention is prior approval, or permits. In this context, individuals are essentially prohibited from carrying out activities unless they have obtained permission or approval from the government. To be able to obtain a permit or government approval, individuals are required to fulfill various requirements, which usually include the requirement to comply with various obligations and standards.<sup>19</sup>

Conceptually, Andri G Wibisana correlates permits as an instrument of government intervention and the theory of public good, which he believes is closely related to the ideals and functions of the state in the welfare state doctrine. Furthermore, he believes that permits as an instrument of government intervention are essential on the one hand as a protector of property rights, but on the other hand, the state also functions to ensure the welfare and protection of its people. Thus, the state or government has a significant role and authority to intervene in many businesses/activities related to natural resources or branches of production that control the livelihoods of many people.<sup>20</sup>

However, the permission assumed as free/discretionary authority when faced with the concept of administrative law, no matter how free an authority is, it is always intended to pay attention to and manage government duties in a certain field. This means that the authority may not be used for purposes and objectives other than those intended and the purpose for which the authority was granted to the administrative official. Considering that if an authority is used for personal interests or interests outside those determined by the purpose for which the authority was granted, it means that the administrative official can be classified as having violated the prohibition on abuse of authority (*detournement de pouvoir*)<sup>21</sup>

In relation to this, in using discretionary authority, Sjahran Basah tried to give an ultimatum that the government in carrying out its activities, especially in realizing the goals of the state through development, does not mean that the government can act arbitrarily, but rather that the attitude of the action must be accountable.<sup>22</sup> Furthermore, he believes that although government intervention is a necessity in the concept of a welfare state, accountability for every government action is also a necessity in a state based on the rule of law that upholds the values of truth and justice. Therefore, it can be argued that the concept of a state based on the rule of law indicates an equilibrium between rights and obligations. Enrico Simanjuntak operationally links the authority of government administrative officials with accountability

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<sup>18</sup> Philipus M Hadjon, et.al, *Pengantar Hukum Administrasi Indonesia*, (Yogyakarta: Gadjadarda University Press, 2015), 120

<sup>19</sup> Andri Gunawan Wibisana, "Pengelolaan Lingkungan Melalui Izin Terintegritasi dan Berantai: Sebuah Perbandingan Atas Perizinan Lingkungan di Berbagai Negara," *Jurnal Hukum dan Pembangunan*, 223-224, no.2 (2018), <http://www.jhp.ui.ac.id/index.php/home/article/view/1662/148>

<sup>20</sup> Andri G. Wibisana, "Campur Tangan Pemerintah dalam Pengelolaan Lingkungan: Sebuah Penelusuran Teoritis Berdasarkan Analisis Ekonomi dan Hukum," *Jurnal Hukum dan Pembangunan*, Vol.47 No.2, Tahun 2017, 158

<sup>21</sup> Indroharto, *Usaha memahami Undang-Undang tentang Peradilan Tata Usaha Negara*, (Jakarta: Pustaka Sinar Harapan, 2019), 183

<sup>22</sup> Opcit.,

mechanisms in administrative law. According to him, in the concept of public law, the use of authority and/or power is closely related to legal accountability.<sup>23</sup>

## 2. Environmental Approvals in the Job Creation Law

The concept of environmental approval is not outlined in the Academic Draft of the Job Creation Law. In fact, environmental approval in the Job Creation Law replaces the concept of environmental permits mentioned and regulated in the Environmental Management and Management Law. Specifically, Environmental Approval is the title of Chapter 3 of the Job Creation Law.<sup>24</sup> This naturally creates the perception that environmental approval is a crucial legal instrument in the implementation of job creation.

The Job Creation Law defines five types of approval: (1) environmental approval as a prerequisite for business licensing; (2) central/regional government approval for hazardous and toxic waste management; (3) business licensing as a form of approval for hazardous and toxic waste management (utilization as a primary activity); (4) central government approval for dumping; and (5) technical approval as part of environmental approval for liquid waste disposal.<sup>25</sup>

### a. Definition of Environmental Approval

In the amendment to Article 1 of the PPLH Law in the Job Creation Law, Environmental Approval is defined as an Environmental Feasibility Decision or Statement of Commitment to Environmental Management that has received approval from the Government or Regional Government.<sup>26</sup> Based on this definition, it can be understood that Environmental Approval can be interpreted as a feasibility decision or can also be interpreted as a statement of commitment to environmental management with the condition of obtaining approval from the Central Government or Regional Government in accordance with their authority.

### b. Environmental Approval

An Environmental Feasibility Decision. The definition of an Environmental Feasibility Decision is not found in the Amendment to the Environmental Management Law in the Job Creation Law. This is found in the PP PPLH, Article 1 number 7, which states that an Environmental Feasibility Decision is a decision stating the Environmental Feasibility of a Business and/or Activity plan that must be accompanied by an Environmental Impact Analysis (EIA).<sup>27</sup>

The existence of an Environmental Impact Analysis (EIA) as an instrument for preventing environmental pollution and destruction in the Job Creation Law reduces concerns about the loss of preventive measures to prevent environmental pollution and destruction. Article 24 of the Environmental Management and Management Law, as amended in the Job Creation Law, stipulates that the Environmental Feasibility Decision is determined by the Central Government or Regional Government based on the results

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<sup>23</sup> Enrico Simanjuntak, *Hukum Acara Peradilan Tata Usaha Negara; Transformasi dan Refleksi*, (Jakarta: Sinar Grafika), 2018, 4-5.

<sup>24</sup> Rachman, Cipta Indralestari, and Endra Wijaya. "Persetujuan Lingkungan dalam Perspektif Hukum Administrasi Negara." *Jurnal Legal Reasoning* 6.1 (2023):. 48

<sup>25</sup> Andri G. Wibisana, *Persetujuan Pemerintah dan Penegakan Hukum Administrasi*, Universitas Indonesia, <https://leip.or.id.>, diakses pada 15 Juli 2024

<sup>26</sup> Article 1 of Law Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to become Law LN.No.41 of 2023 TLN No.6856

<sup>27</sup> Article 1 number 7 of Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management LN No.32 of 2021 TLN No.6634

of an environmental feasibility test based on an EIA document prepared by the business/activity actor.<sup>28</sup> It is further emphasized in Article 49 paragraph 3 of the PP PPLH that the Environmental Feasibility Decree is, firstly, a form of environmental approval; and secondly, a prerequisite for issuing business permits or government approval.<sup>29</sup>

The technical approval must contain at least the following: First, technical standards for environmental quality standards, hazardous waste management, and/or traffic impact analysis. Second, human resource competency standards related to environmental quality standards, hazardous waste management, and traffic impact analysis; and environmental management systems. Third, requirements for the person in charge of the business and/or activity to fulfill the commitment. Technical approval before operation is related to the scope of the Technical Approval; It is also necessary to fulfill the obligations of the person in charge of the Business and/or Activity, which consist of Compliance with the RKL-RPL document, Complying with the provisions of laws and regulations, Fulfilling obligations in the Technical Approval after verification of compliance with environmental quality standards, hazardous waste management, and/or traffic impact analysis.

c. Issuance of environmental approval

Requirements for environmental approval are not regulated in the Job Creation Law, but rather in the Government Regulation on Environmental Management and Management. Article 3 states that Environmental Approval is mandatory for every business and/or activity that has a significant or non-significant impact on the environment.<sup>30</sup> This document is provided to Business Actors or Government Agencies. Environmental Approval is a prerequisite for issuing Business Permits or Government Approvals.

d. Cancellation and revocation of environmental approval

The Job Creation Law does not regulate the cancellation or revocation of environmental approval, but this can be found in the PP PPLH. Article 3 paragraph (5) of the PP PPLH stipulates that Environmental Approval ends simultaneously with the end of the Business Permit or Government Approval.<sup>31</sup> Upon the expiration of a business permit and no changes to the Business and/or Activities, the extension of the Business Permit may be based on the existing Environmental Approval. The intended termination of the Environmental Approval must be proven by the person responsible for the Business and/or Activities having carried out Environmental management in the post-operational stage.

e. Consequences of issuing environmental approval

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<sup>28</sup> Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to become Law LN.No.41 of 2023 TLN No.6856

<sup>29</sup> Article 49 paragraph 3 of Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management LN No.32 of 2021 TLN No.6634

<sup>30</sup> Article 3 of Law (UU) Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation to become Law LN.No.41 of 2023 TLN No.6856

<sup>31</sup> Article 3 paragraph 5 of Government Regulation Number 22 of 2021 on the Implementation of Environmental Protection and Management LN No.32 of 2021 TLN No.6634

As with the consequences arising from the existence of an environmental permit in Article 55 of the PPLH Law, the consequences that must be fulfilled by the holder of an environmental permit are that they must provide guarantee funds for the restoration of environmental functions.<sup>32</sup> The difference is, in this provision the Central Government has the authority to appoint banks and determine third parties to carry out environmental function restoration using guarantee funds.

f. Information transparency

Information transparency applies to one form of environmental approval as amended by Article 39 of the Job Creation Law, namely the Environmental Feasibility Decision.<sup>33</sup> The Environmental Feasibility Decision is announced to the public through an electronic system and/or other means determined by the Central Government.<sup>34</sup> As a reminder, what is meant by an Environmental Feasibility Decision is a decision that states the Environmental feasibility of a Business and/or Activity plan that must be accompanied by an Amdal, whereas other forms of approval, namely a statement of Commitment to Environmental Management, are also important for the public to know because they are related to Environmental management standards and Environmental monitoring from the person responsible for the Business and/or Activity.

g. Supervision

The amendments to the Environmental Management Law in the Job Creation Law do not regulate the supervision of environmental approvals as in the amendments to Article 71, Article 72 and Article 73. The provisions in Article 71 paragraph (1) state the authority of the Central Government and Regional Governments to supervise the compliance of those responsible for businesses and/or activities with the provisions stipulated in laws and regulations in the field of environmental protection and management.<sup>35</sup> Article 72 of the amendment does not mention supervision of environmental approvals, but rather supervision of compliance of those responsible for businesses and/or activities with business permits or approvals from the Central Government or Regional Government based on norms, standards and criteria set by the Central Government.<sup>36</sup> Article 73 regulates second line inspection, that if the Regional Government does not carry out supervision as it should, then it can be taken over by the Minister in charge of environment and forestry.<sup>37</sup>

h. Sanctions for violations

Similar to supervision, the Job Creation Law does not regulate sanctions for violations of environmental approvals. Sanctions are imposed for violations of Business

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<sup>32</sup> Article 55 of Law Number 32 of 2009 on Environmental Protection and Management LN No. 140 of 2009 TLN No. 5059

<sup>33</sup> Article 39 of Law (UU) Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 on Job Creation to become Law LN.No.41 of 2023 TLN No.6856

<sup>34</sup> Azhara, Melisa Ayu, and Siti Ruhama Mardhatillah. "Partisipasi Publik dalam Penyusunan Dokumen Analisis Dampak Lingkungan Pasca Berlakunya Undang-Undang/Perppu Cipta Kerja." *Jurnal Hukum Ius Quia Iustum* 30.2 (2023), 260.

<sup>35</sup> Article 71 of Law Number 32 of 2009 on Environmental Protection and Management LN No. 140 of 2009 TLN No. 5059

<sup>36</sup> Article 72 of Law Number 32 of 2009 on Environmental Protection and Management LN No. 140 of 2009 TLN No. 5059

<sup>37</sup> Article 73 of Law Number 32 of 2009 on Environmental Protection and Management LN No. 140 of 2009 TLN No. 5059

Licensing and Government Approvals, or regional government approvals, as stipulated in Articles 82A, 82B, and 82C. The absence of administrative sanctions for violations of environmental approvals contrasts with the amendment to Article 111 concerning criminal sanctions. Article 111 stipulates that an environmental approval official who issues an environmental approval without an AMDAL or UKL-UPL shall be subject to a maximum imprisonment of 3 (three) years and a maximum fine of Rp3,000,000,000.00 (three billion rupiah).<sup>38</sup>

### Issuance of Environmental Approvals Based on the Precautionary Principle

The Preventative principle and Precautionary principle are principles that were initially adopted in the declaration and then adopted in various conventions as a form of embodiment of the principle of sustainable development.<sup>39</sup> This principle is a development in national and international policies aimed at protecting humans and the environment from serious and irreversible harm. The precautionary principle emphasizes how to prevent environmental degradation due to pollution. Furthermore, this principle also regulates the prevention of environmental damage.<sup>40</sup>

The precautionary principle became an important principle and was adopted in various policies after being included in the 1992 Rio Declaration which was produced at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, Brazil on 3-14 June 1992. Principle 15 of the 1992 Rio Declaration states that:

*"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation"*<sup>41</sup>

The precautionary principle demonstrates the need for caution in policymaking. Activities that have the potential to cause serious and irreversible impacts are what, under this principle, must be prevented. In this case, a lack of scientific certainty cannot be used as a reason to delay preventive measures.

The precautionary principle is reflected in various environmental regulations in many countries, including Indonesia. Several key points regarding the precautionary principle in environmental legal permitting are: First, prevention. If there is a potential for serious or irreversible damage to the environment, preventive measures must be taken, even if there is no complete scientific evidence of the risk. Second, burden of proof. The precautionary principle shifts the burden of proof to the party wishing to undertake the activity, where the permit applicant must demonstrate that their planned activity will not harm the environment.

Third, Risk Assessment. Before a permit is granted, the authority must ensure that a risk assessment of environmental impacts has been conducted. If environmental risks or impacts are

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<sup>38</sup> Article 111 of Law (UU) Number 6 of 2023 on the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation to become Law LN.No.41 of 2023 TLN No.6856

<sup>39</sup> Adristy, Dinda Bethari, Rr Ani Wijayati, And Paltiada Saragi. "Realisasi Corporate Social Responsibility Dalam Perspektif Hukum Lingkungan." *Jurnal Hukum To-Ra: Hukum Untuk Mengatur Dan Melindungi Masyarakat* 8.Special Issue (2022): 230

<sup>40</sup> Wibisana, M.R.A.G. Law and Economic Analysis of the Precautionary Principle. Desertasi Doktor Maastricht University, Maastricht, 2008, 9

<sup>41</sup> David Freestone. 1994. The Road from Rio: International Environmental Law after the Earth Summit. *Journal of Environmental Law*, 6.

identified, a mitigation plan is required. Fourth, Transparency and Public Participation. The precautionary principle also involves public participation, where the public is given the opportunity to raise objections or input regarding the potential environmental impacts of the activities to be permitted. Fifth, Periodic Review. This principle requires periodic permit reviews, especially if new information or technology emerges that could reduce environmental risks or impacts.<sup>42</sup>

From a state administrative law perspective, environmental approval is a crucial instrument for protecting the environment from the negative impacts of human activities. However, several underlying issues often hinder its implementation. These include: First, Compliance with Environmental Regulations and Standards. Although environmental regulations and conservation standards have been established, their implementation is often ineffective. Some parties or companies tend to ignore legal procedures, and environmental permits are issued without thorough analysis or adequate transparency. Furthermore, business actors sometimes neglect feasibility studies or environmental impact analyses (Amdal), which should be mandatory requirements for obtaining permits.

Second, Limited Oversight Capacity. The government often faces limitations in human resources and technology to oversee the implementation of environmental permits in the field. This limitation results in weak monitoring and control of activities that have already obtained permits. When violations are discovered, law enforcement mechanisms are often insufficient or slow, allowing environmental damage to occur before action is taken. Third, Political Intervention and Conflicts of Interest. The environmental approval process can be influenced by economic and political interests. Intervention by certain parties in the permit granting process can result in an unfair approval process or insufficient attention to potential environmental risks. Conflicts of interest between business interests and environmental protection are a significant challenge in implementing the precautionary principle.

Fourth, Lack of Public Participation and Transparency. One of the fundamental principles of state administrative law is transparency and public participation, particularly in decisions that impact the environment. However, in many cases, the public does not have full access to information or adequate opportunities to participate in the environmental approval process. This can compromise the quality of decisions and result in underestimation of environmental impacts. Fifth, Inconsistent Policies and Regulations. In some countries, environmental policies frequently change or are inconsistent due to changes in government regulations and policies. This creates legal uncertainty for businesses and the public, particularly in meeting the requirements necessary to obtain environmental approvals.

Sixth, Lack of Understanding of the Precautionary Principle. The precautionary principle is a crucial principle in environmental law that emphasizes prevention of potential environmental damage. However, understanding of this principle remains limited among businesses and even state officials. As a result, the implementation of the precautionary principle in environmental approvals is often neglected or becomes a mere formality. Seventh, Weak Law Enforcement. Law enforcement in cases of environmental permit violations or non-compliance with environmental requirements remains weak in many countries. Sanctions

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<sup>42</sup> Wibisana, G. Andri, *Three Principles of environmental law: The Polluter-Pays Principle, The Principle of Prevention, and the Precautionary Principle*, dalam Michael & Nicole Niessen (udited) *environmental law in Development, Lesson from the Indonesia Experince*, Cheltenham UK-Nothampon, MA, USA: Edward Elgar Publishing, Inc, 2006, 41

against violations are often ineffective, whether in terms of fines, revocation of permits, or criminal charges, so they do not have a deterrent effect on perpetrators of violations.<sup>43</sup>

These issues all point to a gap between environmental protection policies in state administrative law and their implementation on the ground. As a result, environmental permits, which are supposed to protect the environment, have the potential to become "administrative formalities" with no real impact on environmental conservation.

The precautionary principle in the context of environmental law is closely related to the Environmental Impact Analysis (AMDAL) process.<sup>44</sup> This principle emphasizes the prevention and management of environmental risks from the outset, particularly in situations of scientific uncertainty. This can be implemented through an Environmental Impact Assessment (EIA) to identify the potential negative impacts of a project or activity on the environment.

Within the EIA procedure, the precautionary principle guides policymakers to exercise greater caution, considering potentially significant environmental risks before granting approval. This means that if there is a potential for serious or irreversible damage, an EIA can be used to evaluate the impact and establish mitigation measures. This principle also ensures that approval is only granted if there is evidence that environmental impacts can be adequately managed. Furthermore, the precautionary principle, through an EIA, supports community involvement in environmental impact assessment. The EIA process provides communities and other stakeholders with the opportunity to provide input regarding potential project impacts, enabling the precautionary principle to be applied more transparently and responsibly.

In Indonesia, the precautionary principle in environmental licensing is regulated in Law No. 32 of 2009 concerning Environmental Protection and Management, where environmental permits are only granted after a complete and comprehensive environmental impact analysis (AMDAL).

## Conclusion

The discussion above leads to the following conclusions:

First, The shift from environmental permits to environmental approvals within the Job Creation Law demonstrates a paradigm shift from environmental protection to a focus on ease of doing business. The elimination of the direct challenge mechanism for environmental approvals restricts public participation in environmental oversight. While administrative challenges remain, the elimination of the automatic cancellation of business permits when environmental approvals are revoked demonstrates the weakness of the precautionary principle in current regulations.

Second, The absence of specific sanctions for environmental agreement violations demonstrates weaknesses in environmental law enforcement. Administrative sanctions now focus on business permit violations in general, rather than specific environmental violations. Although punitive administrative fines have been introduced, these do not fully address the need for sanctions that reflect environmental responsibility in a proportional manner and are based on the precautionary principle, a key pillar of environmental protection.

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<sup>43</sup> Ibid.,

<sup>44</sup> Syahrin, Alvi. Seminar Nasional mengenai "Perlindungan dan Pengelolaan Lingkungan Hidup Untuk Pembangunan Berkelanjutan"

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