

Government Responsibility for Oil Palm Plantation License That Causes Environmental Damage after the Entrepreneurship of the Copyration Law

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Abstract

Oil palm is one of the main commodities in Indonesia based on data from the Central Statistics Agency in 2020 there are 163 oil palm plantation companies. To obtain a plantation business permit, one must meet the requirements set out in Article 45 of the Plantation Law. The enactment of the Job Creation Law Number 11 of 2020, Article 45 is omitted, this has the potential to occur in spatial planning violations, environmental exploitation and has the potential to have an impact on environmental damage. With the enactment of the Job Creation Law which regulates business licenses, in this case, it aims to make it easier for business actors. Based on Government Regulation Number 5 of 2021 concerning Implementation of Risk-Based Business Licensing, the scale of business activities as evidenced by the business registration number (NIB) is divided into four categories, namely low, medium low, medium high and high risk. The granting of oil palm plantation permits is a type of high-risk business because it is related to the environment and the livelihoods of many people. The government can be held accountable by the community for environmental damage that occurs around oil palm plantations. This responsibility is one of the counterbalances in positioning the government's position because it is related to the permits granted. Government responsibility is an obligation for everything or a function to accept the burden as a result of actions taken alone or by other parties. This study uses three research methods, namely statute approach, conceptual approach and historical approach. This research can practically be used as a reference for companies and communities that need legal assistance related to environmental law enforcement, and theoretically can be used as a reference source for research.

Keywords

palm oil; licensing; and the environment



I. Introduction

The 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) states that a healthy and good environmental condition is a human right as well as a constitutional right for all Indonesian citizens. Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia states "Everyone has the right to live in physical and spiritual prosperity, to live and to have a good and healthy living environment and to have the right to health services". The government is obliged to protect and manage the environment so that the environment in Indonesia remains a source and support for people's lives and other living things. Based on Article 28J paragraph (1) in the 1945 Constitution of the Republic of Indonesia, it is stated that "Everyone is obliged to respect the human rights of others in

the orderly life of society, nation and state so that the issuance of permits is intended to organize activities in society so as not to reduce the rights of other people in order to make the organizers of the community. an orderly state in society". Marketing is a process of planning and execution, starting from the conception stage, pricing, promotion, to the distribution of goods, ideas and services, to make exchanges that satisfy the individual and his institutions (Dianto in Asmuni et al, 2020). According to Tjiptono in Marlizar (2020) marketing performance is a function that has the greatest contact with the external environment, even though the company only has limited control over the company's environment. In the world of marketing, consumers are assets that must be maintained and maintained their existence in order to remain consistent with the products we produce (Romdonny and Rosmadi, 2019).

Indonesia is an agricultural country that is rich in industrial and horticultural crops, the Indonesian population depends on agriculture or plantations. One type of plantation is oil palm. Several oil palm plantations are spread across Sumatra, Riau, Jambi, Kalimantan, Papua and Sulawesi. "These plants are one of the invaluable natural resources that are useful for consumption at home and abroad. Plantation businesses are activities that include planting, managing, and marketing products which can constitute an integrated business and encourage the development of secondary agribusiness and industries that assist the development of plantation businesses" (Ilmar, 2004). Palm oil is the largest commodity as a contributor because vegetable oil produced from palm oil has advantages over other crops. The development of oil palm plantations has an impact on the regional economy, one of which is the creation of jobs and job opportunities.

Article 1 paragraph (1) of Law Number 39 of 2014 concerning Plantations (hereinafter referred to as Law No. 39/2014) states "Plantation is all activities of managing natural resources, human resources, production facilities, tools and machines, cultivation, harvesting, processing and marketing related to plantation crops". Meanwhile, the explanation of Law 39/2014 paragraph (2) regarding Plantation is "Plantation plants are seasonal plants or annual plants of which types and management objectives are set for plantation business". The management of plantations is based on the principles of: (a) Sovereignty; (b) independence; (c) usefulness; (d) sustainability; (e) cohesiveness; (f) togetherness; (g) openness; (h) efficiency-fairness; (i) local wisdom; and (j) preservation of environmental functions.

Types of planting business include planting service business, plant planting business and crop processing business. Planting business is a series of pre-planting activities, planting, plant maintenance, sorting and sustainability. In order to obtain a permit in the planting business, one must meet the requirements stipulated in Article 45 of the "Plantation Law". Environmental Permit; b. Comply with the regional spatial plan; and in line with the planting plan. However, in Law Number 11 of 2020 concerning Job Creation, Article 45 is omitted, this has the potential to cause spatial planning violations and environmental exploitation. Article 48 of the Plantation Law states that a plantation permit for a district/city area is granted by the governor and a district/municipality area is granted by a district/mayor. However, in the Job Creation Law there is a change, namely the granting of permits from the Governor/Regent for cross-regional area, the terms and criteria are determined by the central government, therefore the Governor/Regent cannot act arbitrarily in the issuance of Provincial/Regency/City plantation permits. According to the book "Introduction to Administrative Law" by Philipus M. Hadjon, licensing is one of the decisions in the prohibition clause and the command clause. This prohibition is not absolute, but the community can be controlled by issuing permits, especially by linking regulations with these permits (Hadjon, 2002).

In cross-regency/municipal areas, plantation business permits are granted by the Governor, while in areas within a district/municipality are granted by the Regent/Mayor. Plantation companies that have obtained plantation business permits are required to provide continuous business progress reports to permit holders at least once every years. The plantations referred to in this paper are oil palm plantations that bring benefits to the community, so that the development of oil palm plantations will have an impact on the workforce working in the oil palm plantations. The autonomous regional government led by the regent as an integral part of the administration of government leads the administration of autonomous regional government affairs. DPRD is a regional people's representative body which is an integral part of the administration of regional government.

The oil palm plantation licensing process has a different set of permits, approvals, and decrees from both local and central governments. Broadly speaking, the licensing procedures are divided into 4 (four) namely: a) Release of forest areas; b) Location permit; c) Plantation business license; d) Right to use.

Permit to release forest area, all parties who use forest area must obtain a permit from the minister of forestry which is regulated in Government Regulation Number 23 of 2021 concerning Forest Management. Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA) provides an explanation regarding the right to cultivate (HGU) which is the right to cultivate land controlled by the state for a certain period of time. The HGU application for plantations is based on Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units and the Minister of Agrarian and Spatial Planning / Head of the National Land Agency.

Article 18 paragraph (1) of the 1945 Constitution of the Republic of Indonesia is divided into provinces consisting of regencies/cities which are stipulated by law. Government Affairs is a power that is under the authority of the President and its implementation is assisted by ministers and local government administrators to protect, provide services, and provide welfare to the community. Then there are Articles 18 (2) and (5) of the 1945 Constitution of the Republic of Indonesia, which authorize local governments to regulate and manage their own government according to the principle of self-government, and provide the widest possible coverage. autonomy to local government. Thus, the administration of local government must be Decentralization, Decentralization and Co-Administration. In Law Number 23 of 2014 concerning Regional Government, the authority given is not yet fully complete, but it still focuses on the central government, so coordination with local governments is still needed. According to Article 10 of the Law on Regional Government, government affairs are divided into absolute government affairs, concurrent government affairs, and general government affairs.

II. Review of Literature

2.1 Legal Research Methods Legal

The type of research used in this research is doctrinal research, namely research that provides/produces a systematic explanation of the legal rules related or relevant to the research title, analyzes the relationship between legal regulations, explains difficult areas and predict future developments (Marzuki, 2016). So, the Problem formulation riset are Government Responsibility for Oil Palm Plantation Permits That Cause Environmental Damage

Accountability comes from the word responsibility, which means the state of being obliged to bear everything. In the legal dictionary there are two terms of responsibility,

namely liability (the state of being liable) and responsibility (the state or fact of being responsible). Liability is a broad legal term, in which it implies that the liability covers almost every risk or responsibility and liability shows all the characteristics of the risk or responsibility.

The government's responsibility is the obligation of legal arrangement from the state or government officials or other officials who carry out government functions as a result of an objection, lawsuit, judicial review, submitted by individuals, communities, civil legal entities, either through litigation or non-litigation settlements for fulfillment in the form of : (a) payment of a sum of money (subsidy, compensation, allowance, etc.); (b) issue or cancel/revoke a decision or regulation, and; (c) other actions that are the fulfillment of their obligations, for example to carry out more effective and efficient supervision prevent danger to humans and the environment, protect citizens' property, manage and maintain public facilities and infrastructure, impose sanctions on a violation and etc (Erwiningsih, 2005).

According to Thomas E Secor, authority must be matched with responsibility. AW Bradley and KD Ewing mention that in a democracy, those who govern must be accountable to those who are governed (within a democracy, those who govern must be accountable, or responsible, to those whom they govern). This is justified by Belinfante that in a democratic state every position or official must be held accountable (Sudarsono, 2019). Responsibility in the exercise of authority includes 2 forms, namely first, internal responsibility, for example, the responsibility of the minister to the president or the head of the provincial service/agency to the governor. In this case, the minister or the head of the service/agency reports the implementation of their authority to the official who appointed them and they can be dismissed from their positions (Wuisang, 2021).

In the environmental management system, the state has power over all natural resources. The central government and local governments are authorized to regulate, control and develop all matters relating to environmental protection and management to ensure the maximum utilization of natural resources for the welfare and quality of life of the people, both present and future generations (Fahmi, 2011). Accountability is known theoretically in academia and legal literature, but its development has transformed into a juridical term and is officially contained in Law Number 30 of 2014 concerning Government Administration. / or a lower government official with responsibility and accountability shifts to the recipient of the delegation.

The principle of state responsibility as stated in Article 2 letter (a) UUPPLH "principle of responsibility" which in essence explains that:

- a. The state guarantees that the use of natural resources will provide the greatest benefit to the welfare and quality of life of the people, both present and future generations.
- b. The state guarantees the rights of citizens to a good and healthy environment.
- c. The state prevents the use of natural resources that cause pollution and/or damage to the environment.

The principle of government responsibility in its meaning is distinguished from the principle of responsible government. The government's responsibility is seen from the validity of government actions (bestuurhandeling) both from the legal validity (rechtmatigheid), the validity of the law (wetmatigheid) as well as in terms of the validity of the purpose or intent (doelmatigheid) and how the legal accountability is.

Not all government actions/deeds can be accepted by the public or legal entities, this is due to losses arising from actions or actions or policies taken by the government. Therefore, the government's legal actions can be sued (Aritonang, 2019). Prajudi

Atmosudirjo admits that the legal actions of state administration indeed cause the most problems for the community (Atmosudirjo. 1994). The loss is caused by the following:

1. The decision of the state administration organ is considered "incorrect" (onjuist);
2. The decision of the state administration organ is deemed to have violated the law (onwetmatige);
3. The decision of the state administration organ is considered "unwise" (ondoelmatige);
4. The decision of the state administration organ is considered a violation of the law (onrechmatige).

The expansion of legal norms in state administrative decisions (KTUN) has brought developments in relation to filing lawsuits against government actions in the form of legal standing or citizen law suits. Theory of action Prajudi Atmosudirjo According, state administration activities consist of juridical actions which means creating legal consequences and non-juridical ones, there are 4 (four) types of legal actions (rechtshandelingen) state administration. the present, namely: a) Determination (beschikking, administrative discretion); b) Plan (plan); c) The norms of description (concrete normgeving); d) Legislation of all (pseudo-wetgeving).

According to Martono, in general, responsibility can mean three kinds of accountability, responsibility, and liability (Martono, 2007). Responsibility in the sense of accountability is responsibility related to finance or trust, for example, an accountant must be able to account for his bookkeeping reports. Responsibility in the sense of public law, then responsibility in the sense of liability, namely legal responsibility according to civil law. The expansion of legal norms in state administrative decisions (KTUN) brings developments in relation to filing lawsuits for government actions in the form of legal standing or citizen law suit. PERMA Number 2 of 2019 concerning Guidelines for Dispute Resolution of Government Actions and the Authority to Adjudicate Unlawful Acts by Government Bodies and/or Officials has revolutionarily reconstructed the concept of public accountability that has been running so far. If the issuance of a permit is detrimental, the public can sue the official who issued the permit. This is the absolute responsibility of the government that can be carried out due to its actions in issuing permits that have a detrimental impact on the community.

III. Result and Discussion

Prior to 2018, digitalization in the licensing sector was intended to improve the quality of public services, increase active participation, and present news to the public more effectively (Holle, 2011). The enactment of OSS aims as a support that has a significant correlation in raising the rating of ease of licensing in Indonesia. With the issuance of Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services, President Ir. Joko Widodo encourages the implementation of electronically integrated business licensing or *online single submission* (OSS) by local governments, but this rule has been revoked in connection with the enactment of the Job Creation Law No. 11 of 2020 along with Government Regulations concerning the Implementation of Risk-Based Business Licensing Government Regulation No. 5 of 2021 which aims to simplify licensing procedures according to the level of risk. OSS Institution on behalf of the minister/head of the institution; Head of the Provincial Investment and One Stop Integrated Services Agency (DPMPTSP) on behalf of the governor; district/city on behalf of the regent/mayor that the application of the OSS system is intended to simplify the process of issuing permits. With these provisions, like it or not, local governments must provide business licensing services with the OSS system.

Government Regulation Number 5 of 2021 Article 7 states:

1. Risk-based business licensing is based on determining the level of risk and assessing the scale of business activities including MSMEs and/or large businesses.
2. The determination of the risk level as referred to in Paragraph (1) refers to the results based on the risk analysis.
3. The risk analysis as referred to in paragraph (2) must be carried out in an accountable, transparent manner, and prioritizing the precautionary principle based on data and/or professional judgment.
4. The level of risk referred to in paragraph (2) determines the type of business license.

Based on Government Regulation Number 5 of 2021 concerning Implementation of Risk-Based Business Licensing (hereinafter referred to as PP 5/2021), the scale of business activities as evidenced by the NIB (Business Identification Number) is divided into four categories, namely, low risk, medium low, medium high and high. Licensing in oil palm plantations can also be seen from the impact on the activities carried out, with the following scale:

Table 1. Permit Risk Scale Based on PP 5/2021:

PP 5/2021	Risk Scale
Article 12 Government Regulation of the Republic of Indonesia Number 5 of 2021	Low risk, NIB as identity and Indonesian National Standard (SNI) as a statement of halal guarantee
Article 13 Government Regulation of the Republic of Indonesia Number 5 of 2021	Medium low risk, permits stipulated to obtain NIB and standard certificates as legality. Business licensing is the basis for business actors to carry out business preparation, operational and commercial activities, this must be fulfilled in order to carry out business activities
Article 14 Government Regulation of the Republic of Indonesia Number 5 of 2021	Medium high risk, NIB issued by authorized officials is carried out after business actors carry out statement through the OSS system. The issuance of this NIB is because the standard certificate has been fulfilled by the authorized official to the entrepreneur. In the implementation of this permit, norms, standards, procedures and criteria have been set.

	All procedures are supervised, so OSS can cancel standard certificates that have not been verified since the NIB was issued.
Article 15 Government Regulation of the Republic of Indonesia Number 5 of 2021	High risk, in activities that have a high risk, the things that must be considered are NIB and Permits. Before obtaining a permit, the NIB can be used as preparation for doing business. The business activities carried out also carry a high risk so that the issuance of standard certificates requires approval from the competent government.

Source: Government Regulation of the Republic of Indonesia Number 5 of 2021

Of the four scales of business activities written in PP Number 5 of 2021, NIB is required, for medium to high scale and high risk involving the central government because business activities have high risks. The granting of permits for oil palm activities is one type of business that is categorized as very high risk because it is related to the environment and the livelihoods of many people. The function of the permit is to prevent environmental problems and keep the community in a healthy environment. This is because all types of businesses, industries and plantations require permits to establish.

According to Suparto Wijoyo, "in the decision-making process regarding environmental management", for example in the context of a comprehensive environmental permit, the principle of "good environment governance" environmental licensing administration procedure must be used. In the dimension of "good environmental governance", one of the main principles of environmental management is the transparency of government openness "openbaarheid van bestuur" or the openness of the community participation dimension. The Central Government carries out an analysis by identifying business activities, assessing potential hazards, assessing hazard levels, determining risk levels and ranking business scales and determining types of business permits (Wijoyo, 2005).

Environmental licensing regulated in PP number 5 of 2021 applies to the environmental sector Article 39 paragraph (1) Business permits in the environmental and forestry sector are stipulated based on a risk analysis of business activities covering the following business activities: a) Waste water management; b) forest utilization; c) Management of hazardous and toxic waste; d) Seedling of forest plants; e) Utilization of environmental services in conservation areas; and f) Utilization of wild plants and animals.

Article 18 (1) of Law No.32/2009 concerning Environmental Protection and Management (hereinafter referred to as UUPPLH), namely: each business and/or activity that causes an impact on the environment is required to carry out an analysis related to environmental impacts in order to obtain a permit in carrying out its operations. and/or activities. The licensing mechanism cannot be separated from the authority of the official issuing the permit. The authority related to licensing cannot be separated from the concept of authority in Indonesia as a unitary state which is divided into the authority of the regional government and the central government. Law No. 30 of 2014 concerning the Implementation of Government (hereinafter referred to as Law No. 30/2014) regulates the

procedures for obtaining sources of power. Article 1 (22) states that attribution means the transfer of rights to government agencies and/or officials granting power to the 1945 Constitution of the Republic of Indonesia. Delegation according to Article 1 (23) of Law no. 30/2014 is the authority delegated to the agency/or government official under it whose duties and obligations are fully delegated to the delegated. Then Article 1 (24) of Law 30/2014 states the granting of authority as a higher government agency/or official to delegate to lower government agencies and/or officials.

As for the purpose of licensing, it depends on the concrete reality faced. However, in general, it can be stated as: a. Desire to direct (control) certain activities; b. Briefing, with the selection of people and activities, where the management must meet certain conditions; c. Desire to protect certain objects; d. Prevent harm to the environment; e. To share things that are few.

Environmental law is often referred to as a juridical instrument for any environmental management and protection (Sodik and Juniarso, 2009). Therefore, in every implementation of environmental law, the general principles of good governance must be taken into account. This principle aims to ensure that the implementation of applicable policies and regulations does not deviate from the objectives of environmental management and protection that have been set for the common good. Environmental law has evolved from time to time to be simple and contains civil aspects and with the increasing role of authority in the form of intervention in all aspects of life, the development of environmental law has shifted to the realm of administrative law which is adapted to the increasing role of the ruler in the form of interference in various aspects of life in Indonesia. society is increasingly complex (Rangkuti, 1996). Environmental damage is caused by pollution and environmental destruction, this is explained in Article 1 paragraph (14) UUPPLH, namely "Environmental pollution is the entry or inclusion of organisms, substances, energy and/or other components into the environment by human activities that exceed the environmental quality standards set. " Supervision of plantation activities to ensure enforcement and implementation of plantation operations is carried out by the central and regional governments in stages by involving the community (*inspraak*) according to their authority. Monitoring in the Plantation Law is the reporting of plantation entrepreneurs and/or monitoring and assessment of the implementation and results of plantation operations.

One of the ways to enforce environmental law can be preventive or repressive measures. Preventive enforcement refers to monitoring compliance with regulations and does not involve direct incidents that could raise suspicions of violating laws and regulations. A repressive administrative legal tool designed to enforce laws and regulations (Kartono, 2009). The environmental law enforcement system in Indonesia is known based on three legal aspects described in UUPPLH, namely civil law, criminal law and administrative law. There are differences in law enforcement for each, namely aspects of administrative law by administrative or government officials, aspects of civil law for parties who are harmed individually or in groups and even communities or the state itself in the name of the public interest while in criminal law, prosecution is monopolized by the state, and the tool is a prosecutor personified by the state (Hamzah, 2005).

Aspects of environmental law enforcement require maximum attention and action, especially in oil palm plantation businesses that pollute and destroy the environment, one of which is environmental restoration by companies that pollute the environment. UU no. 32 of 2009 concerning Environmental Protection and Management Article 54 regulates recovery which reads:

1) Everyone who pollutes and/or damages the environment is obliged to restore its

function.

- 2) Recovery of environmental functions as referred to in paragraph (1) shall be carried out in stages: a. cessation of pollution sources and cleaning of pollutant elements; b. remediation; c. rehabilitation; d. restoration; and/or e. other ways in accordance with the development of science and technology.
- 3) Further provisions in paragraph (2) regarding procedures for restoring environmental functions are regulated by government regulations.

Regarding the Elucidation of Article 54 paragraph (2) letter (b): "Remediation" is an effort to restore environmental pollution and improve environmental quality. Letter (c): "Rehabilitation" is a restoration effort to restore the functions, values and benefits of the environment including efforts to provide protection, prevent land damage, and improve ecosystems. Letter (d): "Restoration" is an effort to restore the environment to function as before Utilizing various legal provisions, both administrative law, civil law and criminal law in the hope of providing a deterrent effect and increasing awareness of all stakeholders on the importance of environmental protection and management for future life.

IV. Conclusion

Not all government actions and actions can be accepted by the community or legal entities, this is due to losses caused by a policy carried out by the government. Therefore, the community can file a lawsuit against legal actions carried out by the government. Theoretically, accountability in the academic world and legal literature, but in development it is transformed into a juridical term and is contained in Law Number 30 of 2014 concerning Government Administration.

The central government and local governments as well as agencies involved in the existence of oil palm plantations must synergize with each other in matters ranging from obtaining cultivation rights to companies, oil palm plantation permits, to monitoring and making periodic reports so that the environment around oil palm plantations is maintained and avoid damage.

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