

SUSTAINABLE DEVELOPMENT CONCEPT IN THE ASPECT OF SUB-LAND AND ON-LAND AREA LICENSING UNDER JOB CREATION ACT

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Abstract

The use of sub-land and on-land area is an interesting phenomenon considering the regulation has not yet been accommodate in all areas of Indonesia. The promulgation of Law No. 11, 2020 concerning Job Creation brings summer breeze for business actors in utilizing the sub-land and on-land area. However, with the regulation of utilization of area in the Job Creation Act, it can be deemed as a radical change because the omission of environmental license as the requirement to do business. Research findings concluded that the implication of the amendment of the Environmental Impact Analysis (AMDAL), Environmental Management Measures (UKL) and Environmental Monitoring Measures (UPL) of environmental license requirements for the construction of sub-land and on-land area post enactment of Job Creation Act is contradictive with the spirit of sustainable development. The concept of sub-land and on-land area license meets the safety aspect and sustainable development can be seen through 3 (three) schemes, i.e., 1) Do Nothing Scheme which is governmental policy in issuing the utilization license for sub-land and on-land area should refer back to the old regulation as stipulated in Law No. 32, 2009 concerning Environmental Protection and Management. 2) the Follow the Draft Scheme of which the House of Representatives and the government adopt the whole course of change that are the contents of the Job Creation Act jo. Governmental Regulation No. 18, 2021. 3) Revise It Scheme is a middle way solution offering division of power based on the input-process-output work cycle. The management at the input phase (policy and standardization) and the output (license issue) lies with the central government, while the process is assigned to the Autonomy Region so with the collaboration among parties, in this case the Regional Government, Central Government and experts, the principle of balance that definitely is leading to the fulfillment of safety, security, and sustainable development aspects.

Keywords: Licensing, Area, Sustainable

INTRODUCTION

The increase of demand on land for the development purposes has escalated the pressure on the land resources in Indonesia. Especially in urban area, the intensity of demands and needs of land for various interest is so increasing that the land is getting more difficult to procure. Beside the utilization of story building, the utilization of sub-land and on-land area is an alternative of the fulfillment of the need for public interest, such as the construction of subway and on-land transportation such as MRT, fly over toll road, stores, warehouses, parking area, and others. Therefore, the impact of the change is more realistic in urban area comparing to in rural area. In cities where population is more densed and the affordability of land is getting more limited.

The used of sub-land and on-land area is a quite interesting phenomenon because even though the use of the sub-land is more common in recent decades, especially in cities such as the

construction of MRT (subway) in Jakarta and other use such as in Surabaya, Semarang where population is increasing along with the more complex needs and economic activities while strategic location is getting more limited.¹ The small number of land is due to urbanization in major cities requiring better facilities of housing for either individual or other business interest.

In addition, the improvement of inter-state relation in this era to fulfill the needs has created the interdependency.² This development is marked with some international collaboration done by individual from different countries and the economic rationalism in some areas establishing influence. Therefore, countries run their economic activities to improve the countries' welfare under mutual respect. Stipulations in the Law No. 11, 2020 concerning Job Creation Act can be regarded as revolutionary because it omits the environmental license as the requirement to conduct business. For some parties, this omission of license triggers problems crucial for the future of the environment. Deputy Director of Programme Development of Indonesian Centre for Environmental Law (ICEL), Isna Fatimah argued that the omission of the requirement can make the law enforcement difficult to handle environmental cases involving business actors.³

This problem of the omission is raised due to the function of the license is to prevent environmental pollution. By omitting the license, it raised some concerns that it will also omit the authority of the government, either central or regional to control the impact and the damage of the environment. However, in government perspective, the Job Creation Act regulates only the facility to get environmental license in which the environmental license is integrated into the Business License to simplify the license system and to strengthen the law enforcement.⁴ Thus, it shows clearly that it needs further objective study on the impact of the change in the application of license for the business activity, especially for the construction of infrastructure in housing and settlement sectors specifically the construction of sub-land and on-land area.

If seen from the needs for sub-land and on-land area, the needs are responded by the government with the enactment of Governmental Regulation No. 18, 2021 concerning the Right to Manage, Right of the Land, Apartment Unit, and Land Registration. Under this governmental regulation, on-land area is an area lies on the surface of the land used for certain activities which the ownership, domination, usage and utilization are separated from the domination, ownership, usage, and utilization of the land. While sub-land is an area under the surface of the land used for specific activities which the domination, ownership, usage, and utilization are separated from the domination, ownership, and utilization of the land.

Governmental Regulation No. 18, 2021 does not explain further about the implementation of the construction of sub-land and on-land area that meets the aspect of safety and security of the construction. In the concept of sustainable development, the safety and security aspect of the construction is the priority. To support those aspects of the construction required by the government and imposed upon the parties who intent construct the area sub-land or on land through license instrument. However, as we know that Job Creation Act reduce the construction license instrument to be more conscise and simple. It is done by the government to shorten and simplify the process and is expected to increase the investment in Indonesia.

Job Creation Act also omit the Construction License. It is expected to support a conducive investment climate because investor no longer have to deal with a long and complicated process of license. The construction service company can directly build after getting the Building Construction Agreement (PBG). The Job Creation Act changes the requirement of Environmental Impact Analysis (AMDAL), the Environmental Management Measures (UKL) and Environmental Monitoring Measures (UPL) in environmental license.

In addition, there is a concept of business license regulated in the Governmental Regulation No. 5, 2021 concerning the Implementation of Risk-Based Business License. In the regulation, it is explained that business license is the legality given to the business actor to start and run their activities. The enactment of Governmental Regulation No. 5, 2021, at the same time, revokes the stipulations in the Governmental Regulation No. 24, 2018 concerning the Electronic Integrated Service of Business License. The major change of this regulation is in the context of license based on the risk resulted. As the limitation of the risk is the potential of injury or loss from the mishap or the combination between the possibility and the impact of the danger. This means that the Governmental Regulation No. 5, 2021 expects the impact of a business activity and/or danger possibility so that when the potential or the possibility of the danger is detected, some action can be taken. The risk-based business license is a business license based on the level of the risk in its activity.

This research will discuss about the implication of the change of the AMDAL, UKL and UPL requirements in the environmental license of the construction of the infrastructure especially the construction activities of sub-way and on-land infrastructures post-enactment of the Job Creation Act. It is vital for the safety and sustainable aspects of development should become the main priority in the construction of sub-land and on-land area.

RESEARCH METHODS

This research is a legal research with normative or doctrinal type of research. The normative method is used to produce new arguments, theory and concept for the practitioner in dealing with such problem. Method of approach used in this research is juridical normative approach stressing on the secondary data supported with field data in the form of interview with the sources from the Ministry of General Work and Housing.

The research is focused on how to produce the concept of license of on-land and sub-land area under the Job Creation Act meeting the aspect of safety and sustainable. Data collecting is done through library research to study the secondary data including primary, secondary, and tertiary legal materials. Data collecting technique is supported with the field study through interview with related parties. Method of data analysis obtained from the library study is by collecting and analyzing the data through normative-qualitative way which is compiled systematically.

RESULT AND DISCUSSION

A. Implication of the change in AMDAL, UKL, UPL requirements of Environmental License upon the construction of on-land and sub-land infrastructure post-enactment of the Job Creation Act

One of the concrete instruments of the environmental management is the license. Sjachran Basah argued that license as a government's conduct of Administration Law is a one side that applies the in-concreto regulation based on the requirement and procedure stipulated in the applied law.⁵ A license is government's tool that is juridical preventive and is used as instrument of administration to control people's conduct. Since the character of a license is preventive, the license instrument cannot be separated with the order and obligation for the holder of the license to comply with.⁶ In addition, the function of license is repressive meaning that a license can function as an instrument to overcome the environmental problem caused by human activities that is attached to the ground of the license. Therefore, a business that gets environmental license is burdened with the obligation to handle environmental pollution or damage impacted from its business activities.

License is government's ruling in State Administration Law. As a ruling, license is legal action taken by the government based on its public power to allow, under the law, individual or legal entity to do an activity.⁷ the instrument of license is necessary for the government to concrete its authority. This action is done through the enactment of the State Ruling. In the Law No. 32, 2009 concerning the Environmental Protection and Management, there are 2 (two) types of licenses. First, environmental license is a license given to any individual running a business and/or any activity with the obligation to do AMDAL, or UKL-UPL in order to protect and to manage the environment as the pre-requisite in getting the business license and/or activity (Article 1 figure 35). Second, business license and/or any activity is a license issued by technical agency to do business and /or activity (Article 1 figure 26).

Environmental license is a requirement for obtaining business and/or activity license. To get a business and/or activity license, an individual or legal entity, firstly should deal with and get the environmental license. While the environmental license is obtained after the fulfillment of the requirements and undergoing the administrative procedure. Based on the abovementioned, business or activity license cannot be issued if environmental license is not submitted. In addition, to get the environmental license, the applicant should go through certain procedure and fill in the requirement. In Article 123 of Law No. 32, 2009 it is stated that:

“Any license in the field of environmental management issued by the minister, governor, or regent/mayor according to the authority should be integrated into an environmental license maximum 1 (one) year at the latest since the enactment of this law”.

The explanation of Article 123 stated that “the license in this stipulation, for instance, the management license of hazardous waste, dumping license of waste water into the sea, and dumping license of waste water to water resources.”

Before the enactment of Law No. 32, 2009, environmental license is not recognized as one system. The implementing regulation, Law No. 4, 1982 and Law No. 23, 1997 regulated the management license of hazardous waste, dumping license of waste water into the sea, and dumping license of waste water to water resources including the Hinder Ordonantie. Even though those licenses were related to the business or activity license, the mechanism of the license was separated with the business or activity license. However, under the Law No. 32, 2009, the integration of those licenses into Environmental License, the Environmental License is regulated as the requirement for the business or activity license.

Business and/or activity plan that is mandatory to run the AMDAL is listed in the Ministerial Regulation of the Environment No. 5, 2012 concerning Type of Business Plan and/or Activity Plan with AMDAL mandatory. While business and/or activity plan that have to run the UKL-UPL and SPPL is determined by the governor or the regent/mayor according to their authority through the governor or regent/mayor regulation. In determining the business and/or activity plan mandatory to have UKL-UPL or SPPL, governor or regent/mayor could refer to the law or technical guidance enacted by the Ministry/Governmental Organ Non-Ministry such as the Ministerial Regulation of General Work No. 10/PRT/M/2008 on the Provision of the Type of Business and/or Activity Plan of General Work with Measures of the Environmental Management and Environmental Monitoring Measures.

In general, there are several stages to get the environmental license, such as the followings:

1. Screening
2. Announcement
3. Disposition and evaluation of Reference
4. Disposition and evaluation of AMDAL and RKL and RPL
5. Approval of environmental feasibility
6. Application and Issue of Environmental License

Environmental license is a license given to any individual running a business and/or any activity with the obligation to do AMDAL, or UKL-UPL in order to protect and to manage the environment as the pre-requisite in getting the business license and/or activity. The application of environmental license is done parallel with the application of the evaluation of AMDAL, RKL-RPL by the Minister, Governor, and/or Regent/Mayor based on their authority.

For the business and/or activity plan that is not mandatory to run AMDAL but to run UKL, UPL, the application process of environmental license is as follows:

1. The applicant applies the evaluation of the form/draft of UKL-UPL document to the minister, governor, and or regent/mayor respectively c.q. the Provincial or Municipal Environmental Office in situ the business and/or activity plan.
2. At this stage, the applicant also applies for the environmental license to the minister, governor, and or regent/mayor as their authority. For some parts of the area are applied to the Integrated Permission Agency and Investement of the regency/municipality.

3. The team of examiners of UKL-UPL from the regency/municipal Environmental Office conducts administrative examination upon the draft of UKL-UPL documents. If the documents are disapproved, the Secretariat hand over the document back to the applicant for completion;
4. When the administrative requirements are completed, the team holds coordination meeting to discuss about the evaluation of the UKL-UPL documents in which the applicant, technical team, some institutions and experts, if needed, are attending;
5. The applicant is obliged to fix the documents based on the minute of meeting;
6. If the document of UKL-UPL has completed and submitted to the secretariat of the team of examiners, the Secretariat will compose a recommendation letter of UKL-UPL addressed to the Head of Environmental Office of the Regency/Municipality as the Head of Examiners Team of UKL-UPL;
7. The period needed since the application of UKL-UPL examination (administratively) up to the issue of recommendation letter of UKL-UPL is maximum 14 (fourteen) working days outside the fixing time by the applicant/document.

The UKL-UPL recommendation letter is one of the requirements to apply for the environmental license. The Environmental Office announces the plan of the application of the environmental license by the applicant in the allocated site of the business and/or activity. Through the process of announcement, community can write suggestions, opinion, and response (SPT) to the applicant, minister, governor, or regent/mayor respectively. The suggestion, opinion and the response from the community upon the business and/or activity plan as the consideration for the UKL-UPL recommendation and environmental license. Then, the regencial/municipal Environmental Office announces the environmental license issued.

One of the purposes of the promulgation of Law No. 11, 2020 concerning Job Creation is to increase the ease of doing business in Indonesia which is far left behind other countries. One of the efforts taken by the government is by cutting out some licenses, one of which is environmental license with the mandatory to complete the AMDAL, UKL, and UPL documents. However, the stipulation is in fact contradictive with the spirit of sustainable development and environmental protection. This action is also potential to breach Article 28 H verse (1) of 1945 Constitution that mandates the state to ensure the protection of the constitutional right of the nation for a clean and healthy environment.⁸ One of the crucial issues post-enactments of Job Creation Act is the authority related to AMDAL and UKL/UPL as the process and realization of environmental license document as well. The change offered in the Act is the adjustment of the fulfillment of risk-based approach commitment (RBA) and the change in the authority related to the environmental approval.

The simplification and centralization is closely related to the clause of authority held by the central government in issuing SKKL (commitment fulfillment). The change in the pattern and nomenclature is adjusted with the spread of the impact (externality) of the business activity. This crucial issue in the process of the fulfillment of commitment for the environmental license

is the change in the autonomy region's authority. The spirit brought by the Job Creation Act shows the intention to draw the authority of the central government. It influences most of the omitted authority of the autonomy regional government and ignores the control range, externality scale, and locality attached to every business activity.

The cluster of business licensing in the Job Creation Act consists of some new norms and the change of the norms in the Law No. 32, 2009 concerning Environmental Protection and Management. Article 23 verse (1) of Law No. 32, 2009 adopts the risk-based approach in the environmental license lies in as an integral part of the business licensing. Other main thing shown in the Article 23 verse (3) to verse (6) related to AMDAL with the implication on the change of authority and technical provisions.

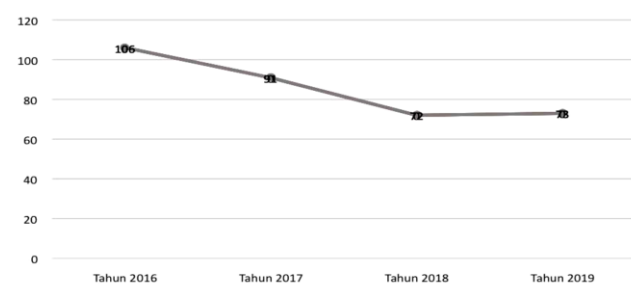
In Job Creation Act, the environmental license stipulated in the Law No. 32, 2009 makes changes in its nomenclature and the level of authorized administration. On the side of the nomenclature, the environmental license is changed into KKL (Environmental Feasibility Ruling). In addition, on the side of the status or its position, the environmental license as the essential license is now only the requirement of the commitment fulfillment for the issue of business licensing. These changes do not influence the process for basically the ruling of the environmental feasibility plays the role like an environmental license and should be met in starting a business activity. The process in the environmental feasibility ruling is not a single process and is always interconnected with the previous process (site license) and the proceeded process (construction license). The process of application and environmental approval cannot be done if the approval of KKPR (site license) has not completed. In managing AMDAL, there is requirement of conformity with the spatial plan. The environmental license becomes the determiner whether a building can be constructed of which the environmental license influences the approval of building construction (IMB)

Recent actual practice refers to Environmental Act and Regional Administration Act, the environmental approval is issued by the Regional Administration. While the Job Creation Act stipulates the change of locus of authority to the central government. The change of the administration level of the authority seriously impacts the autonomy perspective so much to the technical side. Other dimension of problem is public participation in environmental approval (AMDAL). The Job Creation Act narrows the participation of parties involved in the approval of AMDAL. Ideally, determining the criteria of impacted society considers the spread of the impact (eksternality) directly (related sectors and range of area) or indirectly. This participation should be started from the transparency of the information and access since the announcement as the initial process of public participation in the AMDAL completion.

The existence of AMDAL Evaluation Commission as the AMDAL evaluator is also omitting and is replaced with certified third parties. The utilization of certified professionals is seen as the effort taken by the government to create the management of business licensing process based on the quality ensured by the professional with related expertise. However, the challenge is the number of certified experts in some regions is limited. Data of Environment and Forestry Professional Certification Agency shows that the certification holder in Indonesia is about 1602, and only 39 is certified by the Housing and Industrial Environmental Management

Professional Certification Agency (LSP TLIP). The implementation of environmental licensing process should prioritize the principle of accountability. Other than the licensing/approval/registration instrument, the monitoring measures of the environment and the law enforcement is the key of the environmental protection related to the space utilization for the business activity. If the environmental risk is not strictly mitigated, the sustainability of development overall is at stake. In this context, locus of the management and authority of the licensing is based on the externality principle (the impact-based management) will ease the control of licensing. Central government designs the national standardization, approval management and environmental licensing and monitoring to re-assigned to the regional administration. From the abovementioned, it can be concluded that one of the concerns impacted in the Job Creation Act is omitting the environmental licensing requiring AMDAL and UKP-UPL as mandatory. One of the reasons of the omission of the environmental license to be the pre-requisite in getting the business license is the effort taken by the government to simplify the process as part of the effort to increase the index of the ease of doing business. It is based on the trend occurs in Indonesia during 2016-2019. The index did not change significantly

Figure 1: Index of Ease of Doing Business



Source: from various sources

From the above graphic, it is shown that a significant increase occurred during 4 recent years (from 106 to 73), however in two recent years the ease of doing business inclined to be stagnant and even decreased (72 to 73). However, does the omission of environmental license become the solution to handle problems of bureaucracy to increase the index of the ease of doing business? It, basically, can be seen by comparing the position of AMDAL in the fulfillment of the requirements in getting business license in some countries with high index of the ease of doing business based on the survey done by World Bank. Based on the 2019 ranks, following is the list of countries with high rank related with the ease of doing business:⁹

1. New Zealand;
2. Singapore;
3. Hong Kong;
4. Denmark;
5. South Korea; and
6. USA.

If referring to cases in the rank of 1-6 above, the root of the problem is not the environmental license with AMDAL and UKL-UPL. Even 5 of 6 countries with high score of the ease of doing business lies at the position of 50 big healthiest countries of the world. This means that the development done should not sacrifice the environment. It is in accordance with the concept of sustainable development which put the healthy environment as an integral part of the development as claimed by Thomas Hone:¹⁰

“The Sustainable Development Goals (SDGs) are now steering the global development agenda and are key drivers of international action on social and environmental determinants of health. The 17 goals cover poverty reduction, hunger, health, education, inequalities, sanitation, energy, social justice, the environment, and climate change.”

Therefore, the implication of the change in the requirement of AMDAL, UKL and UPL for the environmental license for the construction of sub-land and on-land infrastructure post-promulgation on Job Creation Act is contradictive with the vision and mission of the sustainable development.

As the comparison, by considering the similarity of the legal system and the administration, Indonesia should follow South Korea whose system is not contradict Indonesian system. Therefore, it is not impossible for Indonesia to have a comprehensive level of management as good as South Korea and be success as the healthiest country in the world in applying strict regulation related to business license known as a one-size-fits-all approach to all large-scale construction projects. Regulation applied in South Korea has different characteristic in each area.

If we study further about the process of drafting the Job Creation Act, the paradigm came up is that in order to promote the growth of economy, other aspect is ignored. We cannot deny that economy plays important role in the life of nation, however with zero sum, it shows a simplifying way of thinking. It is similar with the way of “pembangunanism” in the Soeharto administration promoting economic growth by scarifying other state aspects.

By lying the central point on the economic development, investor deemed as the main business actor. As the agent of development, they get privilege with facilities and incentives provided through regulation (see the investment facility). With only economic approach, the country that should have ensured that the targets of the economic growth have been fulfilled, ignores the need and aspiration of other social groups. Business actors is limited as those who own capital, not groups supporting the economy (such as male and female workers or the community surrounding the business). Even the contribution of these groups is marginalized and considered insignificant (see the discussion in labor aspect).

The strong of economic approach in the Job Creation Act is reflected in the perspective of the laws using the profit and loss approach. Based on the Economic Analysis of Law, the quality of the law in a country is evaluated from how far the law can support efficiency.¹¹ Law is no longer viewed from its ability to secure justice and social and environmental protection therefore the protection is then directed using the risk-based approach. It is in line with licensing policy post-enactments of the Job Creation Act which mandating the risk-based

approach specifically stipulated in Governmental Regulation No. 5, 2021 on the Risk Based Business Licensing Management. However, this policy is yet to stipulate the sustainable development aspect.

Economics Analysis of Law is the application of economic principles as rational options to analyze legal problem.¹² The theory comes from the school of utilitarianism prioritizing the principle of utilization,¹³ developed by Jeremy Bentham (1748-1832) and John Stuart Mill (1806-1873). Just like economy, legal system is about rational conduct. Law intends to influence behavior through sanction, such as imprisonment or compensation. The coercive aspect of the law assumes that people understand the consequences.¹⁴ Furthermore, how those micro-economic concepts are applied on legal system including in the drafting of the law.

The economic analysis of the law notion began in USA applying Common Law System in which judge holds a significant role in deciding what is to be the law.¹⁵ The economic analysis determines choice in scarcity. In the scarcity of economy, it is assumed that individual or society will or should maximize things they want to achieve by doing as best as possible with limited sources. In the relation with the positive analysis of law, the analyst will ask question of if law applies, what prediction of economic impact we can make. People will react to the incentive or disincentive of the law. Normative analysis which conventionally defined as welfare economics would ask whether the law promulgated or the change of law done will influence the way people achieve what they want. In this relation, two concepts of efficiency become important: Pareto Efficiency (Italian economy expert and Kaldor Hicks efficiency (from UK). Pareto efficiency will ask whether the law or the change of the law will make someone better without making other people worse.¹⁶

On the other hand, Kaldor-Hicks efficiency will ask a question on whether the law or the change of law will result in adequate profit for those suffer the loss from the policy or the change of the law. The last approach is cost-benefit analysis.¹⁷

Economic analysis of law stresses on the cost-benefit ratio that sometimes by some people is considered as unable to bring justice. The concentration of the economic expert focusing on the efficiency does not consider the need of justice. It is rebutted by those who are the scholars of economic analysis of law approach. First, it is not true that economy expert does not consider justice. In determining the normative claim on the sharing of earning and welfare, an individual has to have political philosophy rather than the economic consideration. Second, economy provide the frame in what discussion on justice can be done. The experts of economy have shown that if the conditions for a satisfying competitive market, the result obtained is Pareto efficiency. Similarly, any result of Pareto efficiency can be developed from distribution of assets creating a competitive condition.¹⁸ Third, living norms existed at the same time from a peaceful order. The artificial control by the law over the spontaneous order is not appropriate. Those who adopt this school do not believe that incentive can control law and economy.¹⁹

The concept of economic analysis of law includes 1) Transactions cost economy evaluating the efficiency of law that mostly related to the private law. 2) New economy institution. In this context, institution does not mean organization such as company, government or bank.

Institution means human conduct including format regulation, informal customary, tradition and social rules. 3) Public Choice Theory, related to the democratic decision-making process using the micro economic method and the trade. Public Choice Theory typically studies about how the coalition of majority owner is formed and the vote traded in the house of representative and the ownership, and the symptom of rent seeking. At first, the Bill of Job Creation Act consisted of 11 cluster that then changed into 10 cluster post-hearing with the House of Representatives. However, it is unclear what we are trying to build in the future from the theme of the cluster. For instance, the licensing, what is the licensing concept to be achieved? Moreover, in this cluster, there are many related to the forestry, environment, land, etc. meaning that it is not only about blue print of the area whose license is to be detailed, but also the how state views the impacted sectors? Since the Act is not einmaleigh, but rather it should be able to portray in forward looking fashion on what is expected in the future and does the other cluster. Thus, the government should immediately revise the policy in the Job Creation Act and its derivation which in concept has used the economics analysis of law approach without omitting the aspect of sustainable development.

B. Concept Of License Of On-Land And Sub-Land Area Under The Job Creation Act Meeting The Aspects Of Safety And Sustainable

The concept of license of on-land and sub-land area meeting the aspects of safety and sustainable development based on the findings includes 3 (three) schemes that can be used by government and the House of Representatives in making a sustainable decision of the license aspect of the sub-land and on-land construction, such as:

1. Do-Nothing Scheme

Based on this scheme, to meet the aspects of safety and sustainable development, the utilization of the sub-land or on-land can be given after the issue of environmental license by the Head of the Region. The objective is none other than first the applicant has to complete the document on environment such as AMDAL, UKL and UPL before the issue of the environmental license, therefore the safety and the security of the environment is assured and protected from the construction of a business. Thus, government policy, according to this scheme, in giving a license to utilize area should refer back to the previous law as stipulated in the Law No. 39, 2009 on the Environmental Protection and Management. The whole process of the application of environmental license is in government domain. From the perspective of decentralization, this process is positive for the handling of the risk is measurable from the sides of externalization and control range. It is more accountable and responsive and the integration of the license and the monitoring as one. However, the weakness is when there is local variation and bad management in the regional end. This requires a solid national standardization and strict monitoring by the central government.

2. Follow-The-Draft Scheme

In this scheme, the House of Representatives and the government adopt the whole courses of change in the Job Creation Act which regulates the Environmental Feasibility Test conducted by the third parties (appointed by the government). In general, the whole management of

license is under the control of the central government starting from the completion of Commitment of Environmental Feasibility to Environmental Approval as parts of basic requirements to apply for the business license. This scheme makes the whole process is integrated and the environmental feasibility analysis becomes the technical dan scientific document studied by the experts.

The whole process of applying the business license is the central government's domain. Thus, there is no more authority held by the regional government in issuing the environmental license because the Environmental Feasibility Test (substitute of environmental license) is conducted by an institution appointed by the central government. We can say that with the promulgation of Job Creation Act, the authority to issue license of the utilization of sub-land or on-land area is centralized.

3. Revise-It Scheme

The third scheme proposed by the author is revise-it scheme that is a middle way suggestion offering the power division based on the work-cycle approach that is input-process-output. The management in the stage of input (policy and standardization) and output (license issue) is on the central management, while the stage of process is assigned to the autonomy region. The process starts from the announcement of running AMDAL to public and invites the public participation followed with the organization and monitoring AMDAL by certified professional for quality assurance. The result of the evaluation of AMDAL, then, is submitted to the regional government issuing the recommendation for the environmental approval and issuing the SKKL as the evidence of the fulfillment of commitment.

With the collaboration among parties, in this case are regional and central government, experts related to the process of license in utilization of sub-land and on-land area, the balance principle leading to the aspect of safety, security, and sustainable development can be achieved. However, there are certainly some weaknesses behind the use of this scheme, i.e., the process of license to utilize the sub-land and on-land area becomes long because of the involvement of some parties.

Risk-based licensing is not new for the world. United Kingdom applies this model by attaching the risk management to a business. It is argued by Philip Hampton in his report in 2005 titled: Reducing Administrative Burdens: effective inspection and enforcement. To evaluate and do the assessment, The Financial Services Authority is doing the on-site visits to the business. Australia applies risk-based licensing through Environment Protection Authority (EPA) upon the environmental risk. EPA issues licensing guidelines determining the level of risk and its recommendation for the use of license. However, EPA also applies some standard conditions mandatory to fulfill for any licensee, one of which is the annual report by the licensee in the case of environment threatening incidents.

There are two conditions set: the obligation to meet the standard conditions and to do further assessment related to the environmental risk. Therefore, Indonesia needs to apply the empirical evaluation-risk assessment as done by the UK to consider properly the character of the business and all external factors that may influence the risk of the business activity. In addition,

Indonesia should also adopt the standard-conditions scheme as Australia does. This scheme applies equality before the law for all applicants and aims to protect and minimize the risk of violation even for any business with the least risk.

CONCLUSION

One of the objectives of the promulgation of Law No. 11, 2020 concerning Job Creation Act is to increase the ease of doing business in Indonesia. The effort taken by the government to increase the ease of doing business is through the promulgation of Job Creation Act by omitting several licenses including the change in nomenclature from the environmental license into Environmental Feasibility Adjudication (KKL). In addition, from the side of status and position, the environmental license as a basic license is changed into the mere a requirement for the fulfillment of commitment for the issue business permit.

This change does not impact on the process because basically KKL plays a role like the environmental license and should be fulfilled when running a business. Therefore, some requirements in composing documents on environment (AMDAL, UKL and UPL) which previously is omitted post-promulgation of Job Creation Act such as the public participation is limited to those who are directly impacted by the business and/or activity plan; the evaluation process is no longer conducted by the AMDAL Evaluation Commission (KPA), however it is done by the certified experts, and the announcement should be done through electronic system determined by the central government. The construction process of sub-land and on-land infrastructure (RAT/RBT) post-enactment of Job Creation Act is stipulated in Article 74 until Article 83 of the Governmental Regulation No. 18, 2021 concerning the Right to Manage, Right of Land, Apartment Unit and Land Registration. Substantively, this law does not explain further about the implementation of the construction of RAT/RBT meeting the aspects of safety and security of the construction. Therefore, the implication of the changing of the AMDAL, UKL, and UPL requirement in environmental license toward the construction of RAT/RBT infrastructures is contradictive with the spirit of sustainable development.

Licensing concept of Sub-land and on-land area (RAT/RBT) that meets the aspect of safety and sustainable can be manifested in 3 (three) options of schemes i.e.: 1) Do Nothing scheme in which the governmental policy in licensing the utilization of RAT/RBT should refer back to the old law as stipulated in the Law No. 32, 2009 concerning Environmental Protection and Management; 2) Follow-The-Draft scheme: government and the House of Representatives adopt the whole course of change as in the Job Creation Act jo. Governmental Regulation No. 18, 2021. This scheme certainly makes all the process centralized and the environmental feasibility analysis becomes the technical and scientific document studied by the experts. 3) Revise-It Scheme is a middle-way solution offering the division of power based on the work-cycle of input-process-output. The management in the stage of input (policy and standardization) and output (license issue) is on the central management, while the stage of process is assigned to the autonomy region. The process starts from the announcement of running AMDAL to public and invites the public participation followed with the organization and monitoring AMDAL by certified professional for quality assurance. The result of the

evaluation of AMDAL, then, is submitted to the regional government issuing the recommendation for the environmental approval and issuing the SKKL as the evidence of the fulfillment of commitment. The scheme showed the collaboration among parties, in this case are regional and central government, experts related to the process of license in utilization of sub-land and on-land area, the balance principle leading to the aspect of safety, security, and sustainable development can be achieved. However, there are certainly some weaknesses behind the use of this scheme, i.e., the process of license to utilize the sub-land and on-land area becomes long because of the involvement of some parties.

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