



Strengthening the Legal Instrument for Environmental Funding as The Manifestation of Sustainable Development in Indonesian New Normal Era

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ABSTRACT

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The existence of Law No. 11 of 2020 concerning Job Creation (UU Cipta Kerja), especially in the environmental cluster, also contributes to weaken the legal framework for environmental regulation. Government Regulation No. 22 of 2021 concerning the Implementation of Environmental Protection and Management, even limits and focuses only on the arrangement of the guarantee fund for environmental recovery. Although at this time the status of the legislation was declared conditionally unconstitutional for two years until 2023 by the Constitutional Court, the existing regulation in it has legal implications which can lead to another separate polemic in the realm of environmental protection and management. This study aims to reveals the urgency of environmental funding and the need of strengthening the legal instrument as an effort of Indonesian Government to realize sustainable development during new normal era. This normative juridical research conducted to explain the importance of the legitimation of the legal framework for environmental funding instruments. This study shows that from a philosophical, normative and empirical point of view, it is important to have a strong legal framework for environmental financing arrangements. This research considers that it is important to carry out legal reconstruction of environmental funding instruments as a manifestation of sustainable development in the Indonesia's new normal era.



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Introduction

The 1945 Constitution of the Republic of Indonesia as the constitutional basis has required that the existence of the environment and natural resources are for the maximum benefit to the welfare of the people. The mandate is stated in Article 33 paragraph (3) of the 1945 Constitution that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Along the way, development in order to improve people's welfare is not always have positive side. Reality shows that development activities can cause various negative impacts (Herlina, 2017). The concept of unsustainable development will not only exacerbate existing environmental and social problems, but also be prone to trigger new and more complex environmental problems. These include forest, land, coastal and marine damage; water, soil and air

pollution; to the emergence of increasingly complex urban and social environmental problems (Hardjasoemnatri, 2002).

The Covid-19 pandemic can be used as new evidence of human actions that have damaged harmonious relations with nature and the environment. The reckless exploitation on natural resources does not only have implications for nature and the environment, but also on human life related to the spread of infectious diseases (Sanusi, 2020). The Covid-19 virus is a living thing, that host on another living animal, including bats and other suspected wild animal. Human actions against nature and the environment contribute to the existence of these Covid-19 host, eventually related to the spread of the Covid-19 virus. By destroying ecosystems and the habitats of other living things, humans create conditions that cause the spread of the Covid-19 virus to become increasingly massive. Every living thing has its own role in nature. If it intervenes carelessly, it will certainly have an impact on the harmonization of life between living things. Evidence shows that the relationship between the destruction of nature and the environment with the risk of spreading infections such as the Covid-19 virus has led experts to emphasize the importance of the concept of "common health" between living things (Aminah, 2017).

The Covid-19 pandemic has had a very significant impact for on all areas of human life as well as health, education, economics, social, even the environment and law (Elviandri et al., 2019). The Covid-19 pandemic in the environmental and legal fields needs to be addressed with a mindset and action pattern that integrates aspects of justice for humans and the environment. Efforts to realize sustainable development in the new normal era faced the challenges. Even more in this current condition with changes in numerous aspects of life that take place very quickly beyond expectations. Environmental protection as the basic capital of sustainable development is an important and strategic effort that must be carried out in Indonesia's new normal era. One particular effort that can be made to protect the preservation of environmental functions is through the mechanism of environmental economic instruments (Fahmi, 2011).

Article 42 paragraph (2) and Article 43 paragraph (2) of Law no. 32 of 2009 concerning Environmental Protection and Management (UUPPLH) states that one of the elements of environmental economic instruments is the aspect of environmental funding, which includes guarantee-funds for environmental restoration, funds for controlling pollution's damage, environmental restoration, and assistance for conservation (Siska et al., 2017). Environmental economic instruments in the aspect of environmental funding face various problems, particularly with regard to the assurance of the legal framework in regulating environmental economic instruments, especially aspects of environmental funding. The Government Regulation on economic instruments was only enacted in 2017, even though if it refers to Article 126 of the UUPPLH, the maximum time limit is one year.

Ratification of Law No. 11 of 2020 concerning Job Creation (UU Cipta Kerja), especially in environmental clusters during the Covid-19 pandemic, allegedly contributed to weakening the legal aspects of environmental protection and management. Government Regulation No. 22 of 2021 concerning the Implementation of Environmental Protection and Management as a "derivative" government regulation of the UU Cipta Kerja has been in the spotlight related to the substance of the regulation of environmental impact analysis

(AMDAL) and environmental permits. This Government Regulation removes several articles in the previous Government Regulation regarding economic instruments. In fact, the regulation become very limited, only focused on environmental restoration guarantee funds only. Although at this time Law no. 11 of 2020 concerning Job Creation was declared conditionally unconstitutional by the Constitutional Court, however, its status which is still in transition, should be carefully mitigated because it will create significant consequences for regulations in the environmental sector. An increasingly damaged environment ultimately will have complex impacts on human life, especially on the environmental health aspect which is currently suffering quality decline due to the Covid-19 pandemic.

This research is emphasizing to conduct an in-depth analysis of the importance of protecting and preserving the environment, which can be realized through the funding aspect. Therefore, this research is addressed at issues regarding reasons and considerations both philosophically, juridically, and empirically on the urgency of the certainty of the legal framework for environmental funding in the realization of sustainable development, especially during the new normal era Indonesia currently faced.

Methodology

Sources of data used in this study are secondary data sources which include primary, secondary, and tertiary legal materials collected by literature study. In addition to descriptive, analysis of research problems is also carried out prescriptively, using deductive methods. The general data on the legal framework for Environmental Funding in the Embodiment of Sustainable Development obtained are compiled systematically as a legal facts compilation to examine the urgency and ideal concepts in the context of the realization of sustainable development in Indonesian new normal era.

Results and Discussion

Environmental Funding Arrangements in Effort to Materialize Sustainable Development in Current Situation

Regulations regarding environmental funding as one of the economic instruments in environmental protection and management are found in several legal regulations in the form of laws, government regulations, presidential regulations to the minister of finance regulations. The following describes the arrangement of environmental funding in the regulation which are:

1. Law Number 32 of 2009 concerning Environmental Protection and Management

According to the provisions of Article 42 verse (1) and verse (2) of the UUPPLH, it is clearly stated that in order to preserve environmental functions, the government and local governments are obliged to develop and implement environmental economic instruments, which include three aspects, namely development planning and economic activities; environmental funding; and incentives and/or disincentives. The explanation of Article 42 verse (2) letter a emphasizes that what is meant by economic instruments in development planning are efforts to internalize environmental aspects into the planning and

implementation of development and economic activities. The definition of environmental funding in the Elucidation of Article 42 verse (2) letter b is a system and mechanism for collecting and managing funds used for financing efforts to protect and manage the environment. The funding in question comes from various sources, such as levies, grants, and others.

The regulation regarding environmental funding instruments is re-emphasized in Article 43 verse (2), which regulates environmental funding which includes: guarantee funds for environmental restoration, funds for controlling pollution and/or damage and environmental restoration, as well as assistance for conservation. Based on the Elucidation of Article 43 verse (2) letter a, the definition of a guarantee fund for environmental restoration is a fund prepared by a business entity and activity for the restoration of environmental quality damaged due to its activities. While the Elucidation of Article 43 verse (2) letter b, the definition of countermeasures funds are funds used to cope with pollution and environmental damage arising from a business and activity. Lastly, regarding the assistance funds, the funds from grants and donations are for the benefit of environmental conservation.

Development that prioritizes environmental aspects is not something that is easy to do, there needs to be support for funding aspects. Related to this, Article 45 verse (1) regulates the Environment-Based Budget. In this case, the Indonesian Government, the House of Representatives, Regional Government and the Regional House of Representatives are required to allocate an adequate budget to finance environmental protection and management activities; as well as environmentally-based development programs. In addition, Article 46 further explains the Environmental-Based Budget aimed to restore conditions.

2. Government Regulation Number 46 of 2017 concerning Environmental Economic Instruments

In Article 43 verse (4) UUPPLH it is explained that as referred to in Article 42 and Article 43 paragraph (1) to paragraph (3) regarding Environmental Economic Instruments, further provisions are regulated in a Government Regulation. Implementing rules regarding environmental economic instruments are regulated in PP No. 46 of 2017 concerning Environmental Economic Instruments.

According to this Government Regulation, what is meant by environmental economic instruments is a set of economic policies to encourage the Central Government, Regional Governments, or any person towards the preservation of environmental functions. Article 2 PP No. 46 of 2017 concerning Environmental Economic Instruments explains that Environmental Economic Instruments aims to:

- a. Ensure accountability and legal compliance in the implementation of environmental protection and management;
- b. Changing the mindset and behavior of stakeholders in economic development and activities;
- c. Strive for systematic, regular, structured, and measurable environmental funding management;

d. Build and encourage public and international trust in the management of environmental funding.

3. *Government Regulation Number 22 of 2021 concerning Implementation of Environmental Protection and Management*

This new Government Regulation (PP) is an implementing regulation of the Job Creation Law, one of which is related to the environment. With the issuance of the new PP, the enactment of PP No. 46 of 2017 concerning Environmental Economic Instruments was replaced with a newer regulation. Observing the arrangements in this new PP, it turns out that it still contains some of the old provisions in PP No. 46 of 2017. In addition, changes and deletions were also found in several articles.

In the latest Government Regulation, there is no specific discussion on economic instruments as regulated in PP No. 46 of 2017. There is only one discussion regarding environmental funding, namely the Guarantee Fund for Environmental Recovery. As a change from the previous regulation where it is clear that the rules regarding the Environmental Recovery Guarantee Fund in PP No. 46 of 2017 from Article 21-25 which is contained there are 5 articles that are changed and amended to become 8 articles, which are explained in Chapter VIII regarding Guarantee Funds for Environmental Recovery, starting from Article 471 and up to Article 479.

Article 471 verse (1) in PP No. 22 of 2021 explains that the guarantee fund for the restoration of environmental functions is used for activities, namely the prevention of environmental pollution, environmental damage, restoration of environmental functions and/or environmental damage arising from a business and/or activity. It is continued in verse (2) that the use of the guarantee fund for the restoration of environmental functions is carried out at the stages of pre-construction, construction, commissioning, operation and maintenance, and/or post-operation activities according to the stages listed in the Environmental Approval. In addition, in verse (4) that the restoration of environmental functions due to Environmental Pollution and/or Environmental Damage includes the following activities: a. cessation of pollution sources and cleaning of pollutant elements; b. remediation; c. rehabilitation; d. restoration; and/or e. other efforts in accordance with the development of science and technology.

In Chapter VIII, it is explained in more detail related to the funds that must be prepared by business actors in environmental restoration. Guarantee funds for the restoration of environmental functions are funds provided by the holders of Environmental Approval for the environmental quality restoration that is polluted and/or damaged due to their activities. The guarantee fund for the restoration of environmental functions is used, for example, for the activities of controlling Environmental Pollution and/or Environmental Damage, including dealing with environmental emergencies. Environmental emergency management is a series of activities carried out to overcome a dangerous situation that threatens human safety, which causes Environmental Pollution and/or Environmental Damage and requires immediate countermeasures to minimize the possibility of more severe Environmental Pollution and/or Environmental Damage.

Guarantee funds for the environmental functions restoration may the form as, for example, reclamation guarantee funds, post-mining guarantee funds, dangerous (B3) waste management insurance, or other nomenclature in accordance with the provisions of the relevant technical sector legislation. Guarantee funds for the restoration of environmental functions must be provided by the holders of the Environmental Approval as the implementation of the responsibilities and obligations of each holder of the Environmental Approval to control Environmental Pollution and/or Environmental Damage and implement the Polluters Pay Principle and implement the internalization of Environmental cost.

In essence, in PP No. UU No. 22 of 2021 concerning the Implementation of Environmental Protection and Management, specifically discussing on economic instruments in terms of the funding aspect, the rules make it very minimal, although Article 471-479 rules regarding guarantee funds which are part of the funding aspect in the environmental sector are regulated in more detail compared to previous Government Regulations.

4. Presidential Regulation Number 77 of 2018 concerning Environmental Fund Management

In order to implement the provisions of Article 30 verse (3) of Government Regulation Number 46 of 2017 concerning Environmental Economic Instruments, the government stipulated Presidential Regulation Number 77 of 2018 concerning Management of Environmental Funds. The stipulation of this Presidential Regulation is a form of follow up on the implementation of Environmental Fund Management.

In Article 1 Number 1 of this Presidential Regulation the definition of Environmental Fund Management is a system and mechanism used to fund environmental protection and management efforts. Activities carried out in the management of environmental funds can be done through fundraising; fund fertilization; and distribution of funds, each of which must be implemented based on the principle of transparency; efficient; effective; proportional; and accountable.

Article 3 also explains the scope of activities, namely in fundraising activities, it can be done through funds for controlling pollution and/or environmental damage and environmental restoration; and trust funds/conservation assistance. Meanwhile, fund accumulation activities are described in Article 5 which can be carried out through banking instruments; capital market instruments; and/or other financial instruments. Furthermore, in Article 6, the distribution of environmental funds is carried out in accordance with the agreement in the contract/agreement.

It should be underlined in this Presidential Regulation regarding the provisions in Article 7 verse (1) that the management of environmental funds is carried out through contracts/agreements. However, further explanation related to the contract/agreement is not directly detailed in the Presidential Regulation but only explains the contents of the contract/agreement. In addition, this Presidential Regulation also contains the establishment of non-echelon organizational units that are formed to carry out functions in the management of environmental funds by using environmental control patterns and implementing environmental fund management. As mandated by Article 8 of Presidential Regulation No. 77 of 2018 stipulates the formation of non-echelon organizations in the

management of environmental funds. In this context, the Minister of Finance is mandated to issue PMK No. 137/PMK.01/2019 concerning the Organization and Work Procedure of the Environmental Fund Management Agency. The Minister of Finance in this case establishes a non-echelon organizational unit that carries out the function of environmental fund management to optimize the management of all environmental funds including reforestation funds, as well as guarantee environmental protection and management programs.

5. *PMK No.137/PMK.01/2019 concerning the Position, Duties and Functions of the Environmental Fund Management Agency.*

This Regulation of the Minister of Finance regulates the position, duties and functions of the Environmental Fund Management Agency. The task of the Environmental Fund Management Agency is to carry out environmental fund management in the fields of forestry, energy and mineral resources, carbon trading, environmental services, industry, transportation, agriculture, marine and fisheries, and other fields related to the environment in accordance with the policies set by the Minister of Finance.

Regarding the organizational structure, Article 4 explains that it is divided into several structures led by several directors, namely: Director of Finance, General Affairs, and Information Systems; Director of Funds Collection and Development; Director of Fund Distribution; Director of Legal and Risk Management; and Internal Audit Unit.

In carrying out their duties and functions, the Environmental Fund Management Agency must prepare a business process map that describes effective and efficient working relationships between organizational units within the Environmental Fund Management Agency and related agencies. Thus, it can be underlined that the regulations in this PMK focus on the Organizational structure, authorities and work Procedures within the Environmental Fund Management Agency as the mandate and objectives contained in Presidential Regulation No. 77 of 2018 concerning Environmental Fund Management.

6. *Regulation of the President Director of the Environmental Fund Management Agency Number 05/BPDLH/2020 concerning Technical Guidelines on Environmental Fund Management Accounting Implementation at the Environmental Fund Management Agency.*

Whereas in implementing the provisions regarding the Procedure for the Management of Environmental Funds, the Main Director shall stipulate the Technical Guidelines for the Implementation of Accounting. In Article 2, it is explained that the scope of this Regulation of the President Director is related to technical guidelines in the implementation of accounting and financial reporting on the management of Environmental Funds at BPDLH. Where the management of these funds includes: fundraising; fund fertilization; and fund distribution. In Article 3; Article 6 and Article 7 explain that the types of transactions in the collection of funds and their recognition and measurement may include:

- a. Revenue from Government Investment Funds Sourced from the APBN, is recognized when received in the Managed Fund Account originating from the state general treasury account and is measured at the realized value received in the Managed Fund Account; or

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- b. Grant Receipts from Grant Providers and Donations are recognized when funds are received in the Managed Fund Account or Custodian/Trustee Bank and/or Commercial Bank account and are measured at the realized value received in the Managed Fund Account or Custodian/Trustee Bank and/or Commercial Bank account.

Regarding the types of transactions for accumulating funds and their recognition and measurement, Article 9 explains that the funds in these financial instruments are recognized when BPDH issues funds or other economic resources in order to obtain financial instruments, which means measured at the cost of acquisition. Meanwhile, regarding the types of fund distribution transactions as well as their recognition and measurement in Article 10, it is explained that environmental fund distribution transactions in the form of FDB (Revolving Fund Facility) sourced from the APBN are recognized at the time of cash transfers from the Managed Fund Account of the debtor's and/or channeling institution's account. Transactions in the form of claims for loans and/or Revolving Fund claims are measured at net realizable value. In the Technical Guidelines for the implementation of accounting and financial reporting on the management of Environmental Funds, BPDH generally keeps records relating to fundraising; fund fertilization; and distribution of funds through various transactions, both in revenue from Government Investment funds sourced from the APBN received by BPDH; and Acceptance of Grants from Grantors and Donations through management in accordance with Government Accounting standards.

The Urgency of the Legal Framework Certainty for Environmental Funding as The Manifestation of Sustainable Development in Indonesia's New Normal Era

Based on the provisions of Article 1 point 1 of Law Number 32 of 2009 concerning Environmental Protection and Management (later abbreviated as UUPPLH), what is meant by environmental protection and management is a systematic and integrated effort carried out to preserve environmental functions and prevent pollution and/or damage. environment which includes planning, utilization, control, maintenance, supervision, and law enforcement. This definition shows that efforts to preserve environmental functions in the context of sustainable development is not a simple matter. Integration between various sectors is needed, one of which is environmental funding support. Correlating with this context, the following considerations underlie the importance of ensuring the legal framework for environmental funding in the realization of sustainable development in Indonesia's new normal era, namely:

1. Implementation of state responsibility in realizing a good and healthy living environment

The concept of Welfare State adopted by Indonesia has implications for the responsibilities the state carries to its people. Realizing the welfare of citizens is an absolute obligation of the state. On the other hand, that the people have the right to be prospered by the state. "Prosperity of the people" is the responsibility of the state, while "prosperity" is the right of the people. As a logical consequence of these rights and obligations, the people in this case should be able to sue the state, when the state does not carry out its responsibilities properly.

The welfare state according to Bagir Manan places the state or government not only as a night watchman or in the aspect of security, but also has the responsibility to realize social welfare for its people. The conception of a modern legal state or a welfare state law contains three aspects, namely, politics, economics, law and socio-economics.³ The legal aspect in the conception of a welfare state law has implications for the state's responsibility in the field of law, namely by making regulations and policies in order to carry out the responsibility for the welfare of its citizens.

Discussing about the state responsibility during the Covid-19 pandemic is certainly a very complex issue. The Covid-19 pandemic faced by the Indonesian people has changed the order of life of the nation evenly in all fields. All sectors of government administration are experiencing the impact of the Covid-19 pandemic, and are required to adapt to the new normal era. One sector that is also affected by the Covid-19 pandemic and is required to adapt to the new normal era is the environmental protection and management sector. Especially related to the regulation of environmental funding as an economic instrument in environmental protection and management. The challenge is not easy for environmental funding management arrangements, especially when state finances are being prioritized in handling the Covid-19 pandemic. Nevertheless, the reality of the Covid-19 pandemic that occurred must be addressed wisely. Sustainable development with emphasis on the preservation of environmental functions must continue to be carried out, while taking into account the adaptation of the new normal era. Therefore, the existence of a sustainable, good and healthy environment will ultimately contribute to the life and welfare of the Indonesian people.

Based on the principle of state responsibility, the state is obliged to guarantee the utilization and preservation of natural resources so that they are of maximum benefit to the welfare and quality of life of present and future generations. The implementation of state responsibility is of course realized by the strengthening of the role of the state in providing a good and healthy living environment as a means for the Indonesian people to live.⁴ The preservation of environmental functions, among others, is the environment that is used for development. The occurrence of development that always intersects with the environment cannot be avoided, because development is one of the manifestations of governance and social welfare.⁵ The implementation of state responsibility in the legal field is by regulating aspects of environmental protection and management in the products of laws and regulations. Such a context is a logical implication of the existence of the 1945 Constitution of the Republic of Indonesia as a Green Constitution.

The environment is a natural resource that is categorized as matters relating to the livelihood of many people. As Article 33 verse (2) of the 1945 Constitution of the Republic of Indonesia states that all production branches which are important to the state and which affect the livelihood of the people are controlled by the state. Furthermore, Article 33 verse (3) emphasizes that the earth, water and natural resources contained therein are controlled by the state and used for the maximum benefit of the people's prosperity. According to Article 33 verse (4), in its implementation, the state is responsible and obliged to control the national economy which is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and by

maintaining a balance of progress and national economic unity. Therefore, in its implementation, the state, government and all stakeholders are obliged and responsible for the implementation of the realization of environmental protection and management in the implementation of sustainable development so that the Indonesian environment can remain a source of life for the Indonesian people and other living creatures.

If the 1945 Constitution of the Republic of Indonesia as a Green Constitution has already regulated the responsibility of the state in realizing a good and healthy living environment, then the formation of regulations, policies and forms of action taken by the government must comply with, refer to and be guided by the provisions regarding the environment in the State Constitution. The concept is an implication of the Green Constitution which is defined as Green Legislation. Every formation of regulations, policies and government actions must not have a conflict with environmental provisions as mandated by the 1945 Constitution of the Republic of Indonesia as the Green Constitution for Indonesia.

Likewise, when it is correlated with the issue of environmental funding as one of the economic instruments in environmental protection and management, it should be the responsibility of the state. The government in power has the obligation to formulate legal regulations and policies as well as to take all necessary actions in the context of implementing the provisions on environmental funding. Especially when it comes to the current condition of the Covid-19 pandemic in Indonesia, it is definitely an important issue to restore harmonious relations between humans and the environment. The prolonged Covid-19 pandemic situations cannot be separated from human behavior and treatment towards environment. Indonesia's environment which is currently not good and unhealthy certainly does not occur without a cause, but there is a causal interaction due to human behavior that does not "glorify" the environment. In the context of restoring the environment so that it is good and healthy as the right of every citizen, the state should be fully responsible.

2. The certainty of the legal framework for environmental funding is an important and strategic effort to protect the environmental functions sustainability

The underlying reason that the certainty of the legal framework for environmental funding is a strategic effort to protect the sustainability of environmental functions is because the law is a powerful tool that functions to regulate and protect. The legal character that is coercive and has strict sanctions is seen as effective in protecting the preservation of environmental functions as the basic capital of sustainable development. The parties related to environmental protection and management are forced and must comply with the legal rules that have been set regarding environmental funding. The certainty of the legal framework for environmental funding is expected to provide clarity on environmental financing arrangements. Without exception, it must be obeyed by all parties, especially for business actors whose activities have great and important risks for the environment and the natural resources contained therein.

UUPPLH was formed on the basis of the mandate of Article 28H verse (1) of the 1945 Constitution which states that a good and healthy environment is a human right of every citizen. Article 33 verse (4) of the 1945 Constitution also confirms that national economic

development is carried out based on the principle of sustainable development. UUPPLH has been enacted since 2009, but in its implementation, it turns out that quite a lot of implementing regulations from UUPPLH are not immediately established. One of them is related to the regulation of economic instruments in environmental protection and management.

Article 42 verse (1) states that in order to preserve environmental functions, the government and local governments are obliged to develop and implement environmental economic instruments. Meanwhile, according to Article 43 verse (4) UUPPLH states that further provisions regarding environmental economic instruments as referred to in Article 42 and Article 43 verse (1) to (3) are regulated by a Government Regulation.

Implementing regulations in the form of PP as mandated by the above provisions turned out to be only 7 years after UUPPLH came into effect. In contrary, Article 126 of the UUPPLH has provided for a time limit of no later than 1 year after the UUPPLH is enacted, there must be an implementing regulation. In addition, other quite fundamental issues are also found in the regulation of Article 46 of the UUPPLH, which states that in the context of restoring environmental conditions whose quality has been polluted and/or damaged at the time this Law is enacted, the Government and Regional Governments are required to allocate a budget for environmental restoration. The provisions of Article 46 of the UUPPLH do not provide detailed information on the amount of funds allocated for the restoration of an environment that is damaged or disturbed, or even polluted. Its application is only in the form of a case-by-case emergency budget.

The implementing regulation issued by the government related to the mandate of Article 42 verse (1) and Article 43 verse (4) as described above is PP Number 46 of 2017 concerning Environmental Economic Instruments. In terms of age, this PP can be said to be very "young" of approximately three years. In fact, PPs related to economic instruments should have been stipulated no later than 2010 after the promulgation of UUPPLH. Therefore, it is considered that this PP is still not optimal enough in its application and has not contributed enough to environmental protection efforts.

It was revealed that the PP which should have been enacted at the latest one year after the enactment of UUPPLH turned out to be very late in its stipulation. This reality will certainly have an impact on efforts to protect and manage the environment, especially in terms of restoring the environment that has been damaged and/or polluted due to careless act of human activities. An environment that has been damaged or polluted cannot be ignored. Of course, it is necessary to immediately take recovery measures so that the environment can be restored to its function. This recovery requires substantial financial support. Therefore, the certainty of the legal framework for environmental funding is an important and strategic effort that must be carried out in restoring the preservation of environmental functions. It is impossible for the concept of sustainable development to be realized when the environment which is the basic capital of sustainable development has been damaged and polluted. Legal certainty over environmental funding regulations and policies is seen as a strong tool to force all parties to contribute to environmental protection and management efforts.

Especially when it comes to current Indonesia situation on the Covid-19 that become a valuable lesson for all parties, to pay more attention to the existence of the environment. So that humans can enjoy life in a good and healthy environment, humans must pay attention to environmental rights in order to remain sustainable. The anthropocentric understanding must be completely abandoned and restore the position of humans as an inseparable unit with the existence of the environment and other living things.

One crucial thing that happened during the Covid 19 pandemic from a legal perspective was related to the ratification of the UU Cipta Kerja which, by the time of this article is written, was in transition to revise the content of the UU Cipta Kerja after the Constitutional Court Decision. The environment is one of the clusters affected by the enactment of the Job Creation Act. Starting from the provisions regarding environmental impact analysis (AMDAL) and licensing to the provisions on environmental funding. Even the presence of Government Regulation No. 21 of 2020 concerning the Implementation of Environmental Protection and Management as a derivative rule of the UU Cipta Kerja also has significant legal implications for the provisions of environmental funding which have been regulated in Government Regulation No. 46 of 2017 concerning Environmental Economic Instruments. Article 471 Government Regulation No. 21 of 2021 revoked the regulation on environmental funding as regulated in Government Regulation No. 46 of 2017. Of course, with the revocation of the provisions in the stated article, there will be consequences for changes to the legal basis relating to environmental funding. Therefore, in the future, this change will need to be strengthened by ensuring a more operational legal framework in handling environmental guarantee funds. Considering that the certainty of legal substance is an important and strategic factor for environmental protection and management efforts towards a sustainable and fair environment.

3. Embodiment of the effectiveness of environmental law enforcement in Indonesia

The discussion of environmental issues always leads to the issue of environmental law enforcement. It is undeniable that until now the effectiveness of environmental law enforcement in Indonesia is still facing complex challenges. Especially during the Covid-19 pandemic, which is still ongoing and is being faced by all nations in the world, including Indonesia. In the midst of the country's attention that focuses on handling Covid 19, of course, efforts to protect and manage the environment must continue to be carried out even though with limitations. The handling of the Covid-19 pandemic must be carried out in an integrated manner with other sectors, such as law and the environment. The occurrence of the COVID-19 pandemic cannot be separated from the mindset and patterns of human action towards the environment. The Covid pandemic is proof that human relations and the environment are currently not in harmony. Therefore, one of the important and effective efforts to improve it is through environmental law enforcement efforts.

According to Siti Sundari Rangkuti, environmental law enforcement is closely related to the ability of the apparatus and community members' compliance with applicable regulations, which cover three areas of law, namely administrative, criminal and civil. This is in line with the notion of environmental law enforcement proposed by Biezeveld.⁶ On the other hand, Susanto argues that there are at least four dimensions that can affect the quality of environmental law enforcement, namely the actual existence of environmental

laws, law violators themselves, victims (society), and law enforcement officers. These four dimensions are mutually influencing and take place in one political, social, economic, and cultural structure in certain circumstances.⁷

Environmental law enforcement is a link that forms a process of environmental law enforcement. The environmental law enforcement process has a different character, when compared to law enforcement in general. The link in question is grouped into six aspects, namely policy determination, design and planning, environmental impact statement; licensing regulations; administrative decisions on violations; civil action; community lawsuits; and criminal charges.⁸ It was further stated that in law enforcement there are factors that influence, which revolves around legal facilities, law enforcement, facilities and facilities, as well as factors of public awareness of the law on the environment. Increasing the effectiveness of supporting factors and overcoming obstacles to environmental law enforcement will be able to create a conducive atmosphere for environmental law enforcement.

Reinforcing the description above, that environmental law enforcement faces various obstacles that result in the ineffectiveness of supporting factors in environmental law enforcement. Many legal regulations have been issued by the government, but their implementation in the field still faces obstacles. The inhibiting elements include the legal aspects themselves, law enforcement officers, facilities and infrastructure, licensing and analysis systems regarding environmental impacts, as well as public legal awareness of the environment.

With regard to law enforcement, there has been a growing and widespread erroneous opinion that states that law enforcement is only through a process in court. It is as if law enforcement is solely the responsibility of law enforcement officers. In fact, law enforcement is the obligation of all members of society, so that understanding of rights and obligations is an absolute requirement. The community is not a spectator of how the law is enforced, but the community must play an active role in law enforcement.

Based on the discussion on environmental law enforcement as described above, it can be emphasized that basically the factors that influence environmental law enforcement must be placed as an inseparable unit. It is not allowed to see these factors partially, because all factors are related in the framework of effective environmental law enforcement. Enforcement of environmental law is considered to have fulfilled its effectiveness and succeeded in protecting the existence of the environment if all factors carry out their respective roles and functions.

One of the most important and fundamental factors is the aspect of legal substance which is used as a guideline or legal basis for environmental protection and management. Effective environmental law enforcement is very much determined from the substance of the regulation as well as how the process of law formation is carried out. When the two blend well, it certainly has succeeded in laying a solid foundation in the implementation of the next aspect. Regulatory substances that have fulfilled the nature and purpose of the law that contain certainty, benefit, and justice will contribute positively to the implementation carried out by the community and law enforcement. It is not an exaggeration to state that

the regulatory substance of a regulation or regulation is the main “key” for the effectiveness of environmental law enforcement in Indonesia.

The discussion above is highly correlated with the issue of the importance of ensuring the legal framework for environmental funding for the realization of sustainable development during the COVID-19 pandemic as it is today. Refer back that the existence of economic instruments is understood as an instrument for preventing pollution and/or environmental damage which has been regulated in UUPPLH. Environmental funding as part of an economic instrument is an important element in controlling environmental damage. The issue of environmental funding must be regulated within a definite and clear legal framework. Taking into account that the certainty of the legal framework for environmental funding will greatly determine how the environment as the basic capital for sustainable development is properly protected. Considering that the existence of a sustainable environment and natural resources is the basic capital for the state in carrying out sustainable development and fulfilling the welfare of its people.

UU Cipta Kerja and its derivative regulations PP No. 22 of 2021 concerning the Implementation of Environmental Protection and Management is predicted to have a very significant influence on environmental law enforcement in Indonesia. The pros and cons of the ratification of the UU Cipta Kerja are of course quite reasonable, because the environmental issues regulated in the UU Cipta Kerja have logical consequences for important provisions relating to AMDAL and environmental permits. The implication of changes to the provisions of AMDAL and licensing regulated in the UU Cipta Kerja will indirectly affect the preservation of environmental functions. It is believed by many that this provision can weaken efforts to protect and manage the environment. The philosophy of the Employment Creation Law in the form of the traditional omnibus is to facilitate investment. However, on the other hand, a provision that simplifies environmental licensing is an unwise move. The provisions relating to the environment should not be made more relaxed but must be tightened. The reason for the ease of investment should not be at the expense of the preservation of environmental functions. The paradigm in the environment needs to be positioned as "sustainability" not just as "compliance". Placing the interests of the preservation of environmental functions only from the aspect of compliance, will result in not fulfilling human justice and ecological justice in a balanced way. Moreover, if one observes the regulation of Article 21-25 PP No. 46 of 2017 concerning Environmental Economic Instruments which were removed and replaced with the provisions of Article 471 PP No. 22 of 2021 concerning the Implementation of Environmental Protection and Management. It is very apparent that there is a lack of clarity in the arrangement. In fact, the scope of the regulation has been reduced, which is only oriented to the provision of guarantee funds for environmental restoration.

After the issuance of the Constitutional Court Decision which stated that the Job Creation Act was conditionally unconstitutional, it led to the enactment of the Job Creation Act in a transitional period, including also in terms of environmental aspects as regulated in the Job Creation Law. At this time, all parties are waiting for the government's steps in revising the provisions of the UU Cipta Kerja for a period of two years given by the Constitutional Court, in the midst of the situation where the Covid 19 virus is still spreading in Indonesia.

The Covid-19 pandemic period should be used as a lesson and a valuable lesson in environmental protection and management efforts. Humans as legal subjects are absolutely responsible for maintaining the preservation of environmental functions. The occurrence of the Covid 19 pandemic must of course be realized as a result of human behavior in positioning and treating the environment. Therefore, in order to improve human and environmental relations, it is necessary to ensure the legal framework of environmental funding as an important and fundamental factor for the effectiveness of environmental law enforcement. In the end, effective environmental law enforcement will lead to the realization of sustainable development in Indonesia with the preservation of environmental functions as its paradigm.

Conclusion

Based on the discussion of the three problem formulations described above, the following conclusions can be conveyed: The regulation of environmental funding as one of the economic instruments in environmental protection and management is found in several legal regulations in the form of laws, government regulations, presidential regulations to the minister of finance regulations, including: Law Number 32 of 2009 concerning Environmental Protection and Management; Government Regulation Number 46 of 2017 concerning Environmental Economic Instruments; Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management; Presidential Regulation Number 77 of 2018 concerning Environmental Fund Management; Minister of Finance Regulation No.137/PMK.01/2019 concerning the Position, Duties and Functions of the Environmental Fund Management Agency; and Regulation of the President Director of the Environmental Fund Management Agency Number 05/BPDLH/2020 concerning Technical Guidelines for the Implementation of Environmental Fund Management Accounting at the Environmental Fund Management Agency. The urgency of the legal framework certainty for environmental funding as the manifestation of sustainable development in Indonesia's new normal era is based on three reasons or considerations, namely: the certainty of the legal framework for environmental funding as the implementation of state responsibility in realizing a good and healthy environment; certainty of the legal framework for environmental funding is an important and strategic effort to protect the preservation of environmental functions; and certainty of the legal framework for environmental funding as a manifestation of the effectiveness of environmental law enforcement in Indonesia.

References

- Aminah. (2017). Mewujudkan Penegakan Hukum Lingkungan yang Ideal di Semarang. *Jurnal Bina Hukum Lingkungan*, 2(1), 85-98. <https://doi.org/10.24970/jbhl.v2n1.8>
- Elviandri, Dimiyati, K., & Absori. (2019). Quo Vadis Negara Kesejahteraan: Meneguhkan Ideologi Welfare State Negara Hukum Kesejahteraan Indonesia. *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada*, 31(2), 252.
- Fahmi, S. (2011). Asas Tanggung Jawab Negara Sebagai Dasar Pelaksanaan Perlindungan Dan Pengelolaan Lingkungan Hidup. *Jurnal Hukum Ius Quia Iustum*, 18(2), 212-228.

<https://doi.org/10.20885/iustum.vol18.iss2.art4>

- Hardjasoemnatri, K. (2002). *Environmental Management Law*. Gadjah Mada University Press.
- Herlina, N. (2017). Penerapan Konsep Green Management dalam Prespektif Yuridis. *Jurnal Ilmiah Galuh Justisi*, 4(2), 154-170.
- Sanusi, Z. (2020). Tantangan Pemulihan Lingkungan di Masa Pandemi Covid-19: Antara Idealita dan Realita. *Petitum*, 8(2), 114-130. <https://doi.org/10.36090/jh.v8i2.808>
- Siska, F., Aqimuddin, E. A., Adnan, H., Zain, M., & Malaik, M. R. A. (2017). *Laporan Akhir Penelitian Dosen Muda: Pembangunan yang berkeadilan Terhadap Hak Masyarakat yang Menguasai Tanah Negara*.