

Analysis of Environmental Approval in Government Regulation No. 22 of 2021 on the Implementation of Environmental Protection and Management

Dwi Elvia Ningsih^{1*}, Aldri Frinaldi², Rembrandt³

^{1,2,3} Postgraduate Environmental Science, Universitas Negeri Padang, Indonesia

* Corresponding author, e-mail: elviadwi@gmail.com

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ABSTRACT

The environment is one of the sectors that has undergone a transformation since the Job Creation Law was passed. A number of clauses in Law No. 32/2009 were removed and amended by the Cipta Kerja Law. One of them is the elimination of Environmental Permits and replaced with environmental approvals that are integrated with business licensing. Government Regulation No. 22 of 2021 on the Implementation of Environmental Protection and Management is a derivative regulation of the Cipta Kerja Law. Many stakeholders are still unaware of the government regulation even though it has been in effect for two years. Therefore, the purpose of this article is to provide a brief explanation of how environmental approvals are issued. The method is normative legal research through a literature study of the mechanism for issuing environmental approvals listed in Government Regulation No. 22 of 2021. This research uses content analysis and flow charts as analysis techniques. The mechanism for issuing environmental approval has been regulated in detail in Government Regulation No. 22 of 2021 starting from self-screening by the person in charge of the business and/or activity, preparation of environmental documents, the process of examining and/or assessing environmental documents in the form of Environmental Impact Analysis (EIA) and Environmental Management Efforts and Environmental Monitoring Efforts (UKL-UPL) forms and Issuance of Environmental Approval.

Keywords: Government regulation; Environmental approval; EIA; UKL-UPL.

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INTRODUCTION

The enactment of Law No. 32 of 2009 is evidence of the government's commitment to sustainable development. Environmental permits are one of the many tools required for sustainable development regulated by law. One of the prerequisites that must be met by business actors and/or individuals who will carry out activities mandated by EIA or UKL-UPL to obtain a business license is an environmental permit. In order to preserve and maintain the environment, environmental permits are required.

However, the government passed the Cipta Kerja Law, often known as the Omnibus Law, in late 2020 [1]. This law amends a number of sectoral laws have not been able to address the problem of convoluted licensing procedures and conflicting regulations that hinder investment [2]. The environmental sector is one of the areas undergoing changes. The Cipta Kerja Law in principle does not change previous regulations. Instead, the changes centered on simplifying policies and enforcing rules that uphold the objectives of the Cipta Kerja Law, in particular making it easier for everyone to obtain environmental approval while still complying with the

requirements [3]. The enactment of the Cipta Kerja Law resulted in the elimination and amendment of certain parts of Law No. 32 of 2009 including the elimination of environmental permits and replaced with environmental approvals that are integrated with business licensing [4].

Communities and environmentalists are concerned with the elimination of environmental permits because they conclude that the Cipta Kerja Law was passed to encourage investment and business while neglecting environmental protection [5]. In an effort to address these concerns, the government issued Government Regulation No. 22 of 2021 on the Implementation of Environmental Protection and Management which provides a thorough explanation of the environmental approval process.

Although Government Regulation Number 22 of 2011 has been in effect for 2 (two) years, there are still many stakeholders who do not know the regulation. In connection with this, the author is encouraged to write this article with the title "Analysis of Environmental Approval in Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management". Based on this background, the problem formulation of this article is how environmental approval is regulated in Government Regulation Number 22 of 2021. The purpose of this study is to explain the environmental approval process regulated in Government Regulation Number 22 of 2021.

METHODS

This research uses a normative legal research method, namely through a literature review of environmental approval procedures regulated in Government Regulation Number 22 of 2021. An explanation of 1) the definition and form of environmental approval; 2) independent screening by the person in charge of the business and/or activity; 3) preparation of environmental documents; 4) the process of examining and/or assessing environmental documents in the form of Environmental Impact Analysis (EIA) and Environmental Management Efforts and Environmental Monitoring Efforts (UKL-UPL) forms; 5) Issuance of Environmental Approval becomes in this research which is analyzed in content and flow charts.

RESULTS AND DISCUSSION

Definition and forms of Environmental Consent

Government Regulation No. 22 of 2021 defines environmental approval as a decision from the Central Government or Regional Government regarding the environmental feasibility or environmental management capability of a business and/or activity. A business and/or activity must have environmental approval regardless of how it impacts the environment. Business actors and/or activities cannot obtain business licenses or government approval without environmental approval.

To start their business, the person in charge of the business must obtain a business license. Meanwhile, activities planned by the central government or local government must have government approval. This is in line with the provisions in the Job Creation Law. Provisions in Government Regulation No. 22 of 2021 explain that there are two ways to obtain Environmental Approval, namely by preparing and examining the UKL-UL form and preparing and testing the feasibility of EIA.

The important impact of a business and/or activity on the environment is analyzed through an EIA study. EIA is a prerequisite for deciding whether a business and/or activity can be continued or not. EIA is required for businesses and/or activities whose scale meets the criteria for EIA as stipulated in the Minister of Environment and Forestry Regulation No. 4 of 2021 concerning List of Businesses and/or Activities that are required to have EIA, UKL-UPL, or SPPL or business plans and/or activities that are located directly within or directly adjacent to protected areas. Based on the provisions in Government Regulation No. 22 of 2021, business and/or activity plans located directly adjacent to protected areas include types of business and/or activity plans that a) the boundaries of the project site directly intersect with the boundaries of protected areas; and/or b) based on scientific considerations have potential impacts that affect the function of the protected area. The protected areas referred to are listed in Appendix I of Government Regulation No. 22 of 2021.

Government Regulation No. 22 of 2021 states that UKL-UPL is a set of standardized environmental management and monitoring procedures as a prerequisite for decision-making and is included in business licensing or approval by the central government or local government. Plans for activities and/or businesses that have no significant impact on the environment are required to have a UKL-UPL. Plans for the following types of businesses and/or activities must be submitted for UKL-UPL: a) those that do not have significant impacts; b) those located outside protected areas and/or not directly adjacent to protected areas; and c) those exempted from the requirements of EIA.

SPPL is a statement of the ability of the person in charge of the business and/or activity to carry out environmental management and monitoring of environmental impacts from their business and/or activities outside of businesses and/or activities that are required to have an EIA or UKL-UPL, in accordance with the explanation in Government Regulation No. 22 of 2021. Businesses and/or activities that are not in accordance with the mandatory UKL-UPL requirements and have no significant impact on the environment are required to follow SPPL. SPPL for business actors is included in the Business Identification Number (NIB) for their business and/or activities. Meanwhile, SPPL for the government is completed by filling out a form, which serves as a basis for the government through filling out the form as contained in appendix III of Government Regulation Number 22 of 2021. The integration of environmental approval into business licensing can be seen in figure 1.

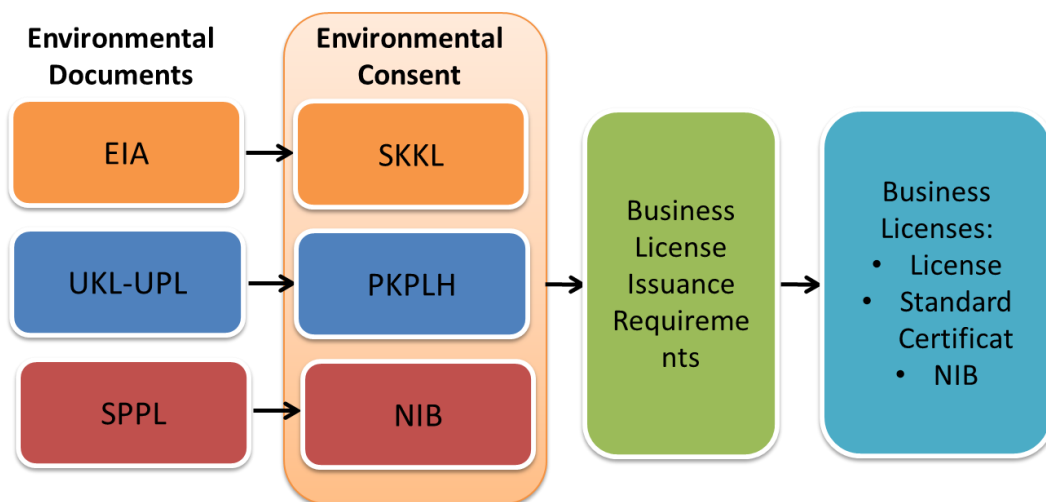


Figure 1. Integration of Environmental Approval into Business Licensing

Self-screening by the person in charge of the business and/or activity

Article 20 paragraph (1) of Government Regulation No. 22 of 2021 stipulates that the person in charge of the business and/or activity must conduct an independent screening process by following the guidelines of the Minister of Environment and Forestry Regulation No. 4 of 2021 concerning List of Businesses and/or Activities that are required to have an EIA, UKL-UPL, or SPPL in order to determine business plans and/or activities that are required to have such permits. Independent screening is screening conducted by the person in charge of the business and/or activity and can be submitted to environmental agencies for review in accordance with their authority. Submitting an application for the determination of screening to the environmental agency in accordance with the authority is what is done if the person in charge of the business and/or activity cannot carry out the screening independently. Appendix I of Government Regulation No. 22 of 2021 can serve as a guide for the screening determination process for business companies and/or activities that are still in the planning stage. Annex V of Government Regulation No. 22 of 2021 provides guidance for the screening determination procedure for businesses and/or activities that intend to make changes to environmental approvals. Screening decisions can also be made automatically through the Amdalnet system, especially for businesses and/or activities that are still in the planning stage.

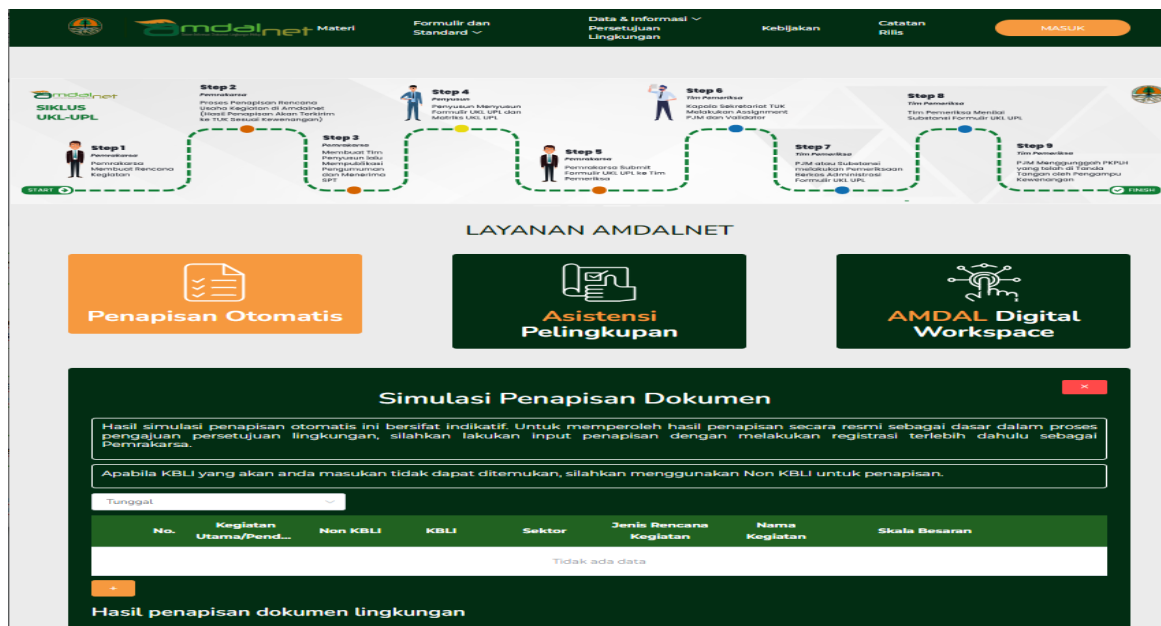


Figure 2. Self-Screening Through Amdalnet System

Preparation of environmental documents in the form of EIA and UKL-UPL Form

According to Government Regulation No. 22 of 2021 article 67, the person in charge of the business and/or activity forms an EIA preparation team that is responsible for preparing the EIA. The drafting team consists of individuals or institutions that provide EIA preparation services consisting of a chairman and members. The chief compiler must have a certificate of competence that meets the qualification standards of the head of the EIA drafting team. While the members consist of at least 2 (two) people who are required to have a certificate of competence for the qualifications of the members of the EIA drafting team and / or the qualifications of the head of the EIA drafting team. The drafting team may request the assistance of a team of experts who meet the qualifications in their respective fields in accordance with the type of business and/or activity and environmental impacts caused by the business and/or activity plan. For the EIA drafting team that comes from individuals, the business actor can

form a team that is legalized through a decree of the person in charge of the activity. Annex II of Government Regulation No. 22 of 2021 explains in detail the guidelines for preparing the EIA.

The provision of data and information in the form of a description of the business plan and/or is the first stage in the preparation of the UKL-UPL form. Furthermore, it will be examined whether the business plan and/or activity in question is required to have technical approval. Technical approval is an approval from the Government or Regional Government that includes procedures determined for the protection and management of the environment and/or an analysis of the impact of business traffic and/or activities. Appendix II of Government Regulation No. 22 of 2021 provides a detailed explanation of the guidelines for preparing UKL-UPL.

Matters of concern in the preparation of environmental documents include:

1. Business and/or activity plans must be in accordance with Spatial Planning (land/sea);
2. The business plan and/or activities are not included in the area affected by the Indicative Map of the Termination of the Granting of New Permits (PIPIB) Presidential Instruction of the Republic of Indonesia Number 5 of 2019 concerning the Termination of the Granting of New Permits and Improving the Management of Primary Natural Forests and Peatlands;
3. Prepared at the planning stage;
4. If the business plan and/or activity is required to have technical approval, the person in charge of the business and/or activity must fulfill the technical approval obligation first.

The process of examining and/or assessing environmental documents in the form of EIA and UKL-UPL forms

Examination of Terms of Reference Form

Article 26 of Government Regulation No. 22 of 2021 stipulates that the Terms of Reference, Andal and RKL-RPL are part of the EIA. The Environmental Feasibility Test Team (TUK) will evaluate the Terms of Reference, Andal and RKL-RPL. Annex II of Government Regulation No. 22 of 2021 explains how TUK examines the TOR forms through self-assessment and examination meetings. When TUK appoints TUK members to self-assess, the self-assessment begins. TUK members must submit the results of the examination of the terms of reference form in hardcopy and electronic file (softcopy) to the TUK secretariat before the deadline of the terms of reference examination meeting. After the terms of reference form is submitted by the person in charge of the business and/or activity and accepted and declared to be in accordance with the terms of reference form format by the secretariat of the environmental feasibility test team, TUK conducts a meeting to examine the terms of reference form for a maximum of 10 (ten) working days. The Chairperson of TUK leads the meeting to examine the implementation of the terms of reference form as listed in Appendix III of Government

Regulation Number 22 of 2021 and is attended by:

1. Members of the environmental due diligence team;
2. The person in charge of the business and/or activity;
3. Team leader and members of the EIA document preparation team;
4. Experts related to the business and/or activities who assist the EIA drafting team;
5. Experts related to the business plan and/or activities or environmental impacts of the business and/or activities; and
6. Agencies related to business and/or activities or business and/or activity impacts.

The person in charge of the business and/or activity presents the terms of reference in the terms of reference review meeting. TUK members then provide suggestions, opinions, and inputs that help shape the results of the terms of reference examination. These results are then presented in the form of minutes stating approval or disapproval of the terms of reference. If the terms of reference are approved, then the agreement on hypothetical significant impacts, agreement on the study area boundary and study time limit, agreement on the study method and the duration of preparation of the Andal and RKL-RPL documents must be included in the minutes of agreement on the terms of reference form.

Assessment of Andal and RKL-RPL Documents

Appendix III of Government Regulation No. 22 of 2021 outlines four different stages for the assessment of Andal documents and RKL-RPL documents. These stages include administrative assessment upon receipt, substance assessment, feasibility test assessment, and submission of recommendations based on the results of the environmental feasibility test. In accordance with its authority, the procedure begins when the person in charge of the business and/or activity submits an application for Andal and RKL-RPL assessment to TUK. The TUK Secretariat conducts an administrative evaluation in accordance with Article 44 paragraph 22 of Government Regulation No. 22, namely:

1. Conformity of business plan location and/or with spatial plan from TKPRD/authorized agency;
2. Conformity of the location of the business plan and/or with the Map of Indication of Termination of New License Granting (PIPIB);
3. Initial approval related to the business plan and/or activities (such as techno-economic approval for mining activities, FS/Master Plan/DED, etc.);
4. Technical approvals related to business plans and/or activities consisting of:
 - a. Fulfillment of Wastewater Quality Standard;
 - b. Fulfillment of Emission Quality Standard;
 - c. LB3 management; and/or
 - d. Traffic Impact Analysis (ANDALALIN).
5. The validity of the proof of registration of the EIA preparation service provider institution if the preparation of Andal and RKL-RPL is carried out by LPJP EIA;
6. The validity of proof of certification of the competence of the EIA compiler; and
7. Systematic conformity of Andal and RKL-RPL documents with the preparation guidelines.

The TUK Secretariat provides a written statement regarding the completeness or incompleteness of the administrative assessment of Andal and RKL-RPL documents based on the results of the administrative assessment. The TUK Secretariat returns the application for Andal and RKL-RPL documents to the person in charge of the business and/or activity to be completed in the event that it is declared incomplete.

Ten (10) working days after the Andal and RKL-RPL documents are declared administratively complete, a TUK meeting is held. The TUK meeting to evaluate the Andal and RKL-RPL documents is organized by the TUK Secretariat. All TUK meeting participants must receive the Andal and RKL-RPL documents no later than 5 (five) working days before the meeting. Self-assessment of Andal and RKL-RPL documents by TUK is carried out through project stage test, quality test of Andal and RKL-RPL documents and review of environmental feasibility or infeasibility criteria of business plans and/or activities. Project stage test to ensure the business plan and/or activities at the feasibility study or detailed engineering design stage. The consistency test, necessity test, relevance test and depth test are components of the quality

assessment of Andal and RKL-RPL documents. Meanwhile, the assessment of environmental feasibility or infeasibility is carried out by considering the feasibility criteria.

Substance assessment is carried out through a TUK meeting chaired by the TUK chairman and attended by:

1. TUK members;
2. Communities directly affected by the business plan and/or activities;
3. The community of environmentalists and/or those affected by all forms of decisions in the EIA process who have submitted relevant suggestions, opinions and responses to community involvement by TUK;
4. Issuing sector agencies of preliminary approval and technical approval;
5. Experts related to business and/or activity plans or business and/or activity impacts;
6. The person in charge of the business and/or activity or a representative appointed by the person in charge of the business and/or activity who has the capacity for decision-making, as evidenced by a letter of appointment;
7. Team leader and members of the EIA document drafting team; and
8. Experts related to business and/or activities and business and/or activity impacts who assist the EIA preparation team.

The presentation of the Andal and RKL-RPL documents submitted for evaluation is carried out by the person in charge of the business and/or activity. Related to the presentation, the RKL-RPL evaluation and Andal assessment are discussed by the TUK team and meeting participants. The TUK Secretariat documents and includes in the meeting minutes both in printed and electronic form (softcopy) all suggestions, opinions and input from all TUK team members and meeting participants. If the results of the TUK team's assessment indicate that the Andal and RKL-RPL documents need to be revised, the documents are returned to the person in charge of the business and/or activity for revision. The final substantive assessment of the Andal and RKL-RPL documents must be compiled in the TUK team meeting, and the results of the feasibility test are stated in the form of recommendations for environmental feasibility or environmental infeasibility submitted to the Minister, governor, regent, or mayor in accordance with their respective authorities.

Examination of UKL-UPL form

The UKL-UPL examination starts with an administrative completeness check conducted by the environmental agency according to its authority with reference to article 58 paragraph (2) of Government Regulation No. 22 of 2023, namely:

1. Confirmation of the suitability of space utilization activities or recommendations on the suitability of space utilization activities from TKPRD/authorized agencies;
2. Conformity of the location of the business plan and/or with the Map of Indication of Termination of Granting New Permits (PIPIB);
3. Preliminary approval related to the business plan and/or activities (such as techno-economic approval for mining activities, FS/Master Plan/DED, etc.);
4. Technical approvals related to business plans and/or activities consisting of:
 - a. Fulfillment of Wastewater Quality Standard
 - b. Fulfillment of Emission Quality Standard
 - c. LB3 management; and/or
 - d. Traffic Impact Analysis (ANDALALIN).
5. Conformity of the content of the UKL-UPL form with the preparation guidelines.

Within a maximum period of 5 (five) working days after the statement of administrative completeness of the UKL-UPL form by the person in charge of the business and/or activity and received by the authorized environmental agency, a coordination meeting is held to examine the substance of the UKL-UPL form. This meeting involves:

1. The agency in charge of the business plan and/or activity concerned;
2. The agency issuing Technical Approval for the fulfillment of environmental quality standards, hazardous waste management and/or traffic impact analysis; and/or
3. The agency that organizes government affairs in the field of spatial planning.

Issuance of Environmental Approval

After the Andal and RKL-RPL documents have been assessed, based on the minutes of the TUK meeting, the TUK secretary formulates recommendations on the results of the final assessment which are then submitted to the TUK Chairperson. The Head of TUK provides recommendations based on the findings of the final assessment, accompanied by:

- a. Draft environmental feasibility decision letter in the event that the business plan and/or activity is declared environmentally feasible;
- b. Draft environmental infeasibility decision letter in the event that the business plan and/or activity is declared not environmentally feasible; to the Minister, governor, regent, or mayor in accordance with their authority.

The Minister, Governor, or Regent/Mayor in accordance with their authority shall issue an environmental feasibility decision letter or environmental infeasibility decision letter based on the recommendation of the feasibility test results. Recommendations on the results of the feasibility test must be received by TUK through the head of TUK within a maximum period of 10 (ten) working days to determine environmental feasibility or infeasibility.

The Minister, governor, regent, or mayor in accordance with their authority shall issue an approval of the Statement of Environmental Management (PKPLH) within a maximum period of 2 (two) working days after the UKL-UPL form review meeting if the meeting result is declared that no improvement is required. If the results of the UKL-UPL form examination meeting are declared to need improvement, then the person in charge of the business and/or activity must submit the results of the UKL-UPL form improvement to the environmental agency under his/her authority within 5 (five) working days.

CONCLUSION

One of the fundamental prerequisites for Business Licensing is environmental approval. Government Regulation No. 22 of 2021 on the Implementation of Environmental Protection and Management explains in detail the environmental approval process. Starting with an independent screening guided by applicable laws and regulations, the person in charge of the business and/or activity is the first step in the process of issuing environmental approval. The next step is for the person in charge of the business or activity to prepare an EIA or UKL-UPL form. Then an evaluation by the Environmental Feasibility Test Team of the EIA document or an examination by the environmental agency of the UKL-UPL form. The Minister, Governor, Regent, or Mayor, in accordance with their authority, issues an Environmental Approval (Decree on Environmental Feasibility or Statement of Environmental Management) after a statement of environmental feasibility in the EIA document or UKL-UPL form.

REFERENCE

- [1] Lahabu, Z., Mina, R., Marzuki, A. U., & Sucipto, D. (2022). Kedudukan Persetujuan Lingkungan Terhadap Perizinan Berusaha Dalam Perlindungan Dan Pengelolaan Lingkungan Hidup. *Jurnal Yustisiabel*, 6(1), 70–88.
- [2] Luhukay, R. S. (2021). Penghapusan Izin Lingkungan Kegiatan Usaha Dalam Undang Undang Omnibus Law Cipta Kerja. *Jurnal Meta-Yuridis*, 4(1).
- [3] Muryati, D. T., Triasih, D., & Mulyani, T. (2022). Implikasi Kebijakan Izin Lingkungan Terhadap Lingkungan Hidup Di Indonesia. *Jurnal USM Law Review*, 5(2), 693-707.
- [4] Benuf, K., Aritonang, A. R., & Simanjuntak, S. (2021). Kebijakan Penghapusan Izin Lingkungan Dalam Ruu Cipta Kerjadan Dampaknyaterhadap Pembangunan Berkelanjutandi Indonesia. *Jurnal Hukum & Pembangunan*, 51(1), 42-56.
- [5] Effendi, H., Mursalin, M., & Sonaji, R. (2021). Dinamika persetujuan lingkungan dalam perspektif Peraturan Pemerintah nomor 22 tahun 2021 dan peraturan turunannya. ... Lingkungan Berkelanjutan (Journal of <http://www.bkpsl.org/ojswp/index.php/jplb/article/view/116>
- [6] Undang-Undang Nomor 32 Tahun 2009 Tentang Perlindungan Dan Pengelolaan Lingkungan Hidup
- [7] Undang-undang Nomor 11 tahun 2020 tentang Cipta Kerja
- [8] Peraturan Pemerintah Nomor 22 ahun 2021 tentang Penyelenggaraan Perlindungan dan Pengelolaan Lingkungan Hidup.