

Environmental Law in the Tourism Development of Investment in Indonesia

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ABSTRACT

Globally, tourism is seen as one of the sectors increasing its contribution to national income. Tourism encourages economic growth through the investment opportunities, job opportunities, business opportunities and, in the end, can improve welfare of people. Along with continued development of tourism, there has been a change in the environmental component as a buffer. The more developed the tourism sector in Indonesia, the more legal arrangements related to environmental law and environmental law regulations related to tourism not to cause natural damage caused intentionally or unintentionally. This paper has a formulation of How the role of Environmental Law in Tourism Development of Investment in Indonesia.

Keywords: *Environmental Law, Investment, Tourism.*

1. INTRODUCTION

Humans grow and develop with the environment around them. Every human interaction, both among humans and the environment, will impact the environment, both positively and negatively. Therefore, a legal rule is designed to regulate the balance of humans and the environment in which they live. Environmental law regulates the pattern of the environment along with all the devices and conditions with humans that exist and affect the environment.

Environmental conservation in this century is increasingly attracting attention, not only in Indonesia but throughout the world. This is because environmental sustainability has now been seen as an obligation of the entire world community. In addition, environmental sustainability is in the interest of all the people of the world. The environmental damage that occurs around us and harms us also harms the entire community in this world. Government issued the policies to pay attention to environmental sustainability.

Globally, tourism is seen as one of the sectors increasing its contribution to national income. Along with the continued development of tourism, there has been a change in the environmental component as a buffer. Tourism development creates two types of impacts[1]. The impact can be in the form of a positive impact or a negative impact. Positive impacts can be in conservation of natural areas, conservation of historical and archaeological sites and distinctive formations, improvement of environmental quality, improvement of

infrastructure, and increased environmental awareness. At the same time, the negative impacts can be in the form of water pollution, air pollution, noise pollution, landscape pollution, waste treatment problems, ecological decline, environmental disasters, damage to historical and archaeological sites, and land-use problems.

Tourism has been proven to encourage economic growth through investment opportunities, job opportunities, business opportunities and, in the end, can increase people's prosperity. The tourism development throughout Indonesia with natural scenery or natural beauty continues to increase. Facilities and infrastructure supporting or supporting tourism are continuously being built. The attraction of tourism objects that are presented in tourist attractions is also equipped with various facilities. In this way, it can increase the attractiveness of tourist objects, increasing the number of visitors to these attractions.

The more tourism development in Indonesia, the more natural damage that exists caused intentionally or unintentionally. The damage arises from the development of tourism supporting infrastructure that does not prioritize environmental sustainability, such as building roads to tourism objects by displacing the environment without paying attention to the long-term effects of these actions.

To reduce the pollution and also damage, it is needed to balance the sustainabilities of development and environment. The act of increasing economic activity through the tourism sector must not damage the other

sectors. For instance, the construction of hotels or restaurants must not cause the damage of agricultural land. The concept of harmony between development and environmental sustainability is called environmentally sound development, and lately, it is known as sustainable development. Sustainable development has the characteristics of not harming the environment inhabited by people [2]

The preservation of the function of the environment, which is the goal of environmental management, is the foundation for the continuation of sustainable development. Therefore, from the beginning of planning a business and/or activity, it is necessary to predict the changes in the environmental setting due to the establishment of a new environmental condition, both favorable and unfavorable, that arise as a result of the implementation of a business or development activity. Article 15 of Law Number 23 in 1997 regarding every business plan or activity that is likely to own significant impact on the environment must analyze the environmental effects.

By incorporating an analysis of environmental impacts into the planning process of a business and/or activity, the decision-maker will gain a broader and in-depth view of various aspects of the business and/or activity. Environmental effect analysis is such a tool for decision-makers to examine the possible consequences of business plan or activity on the environment to prepare the steps to decrease the negative impacts and evolve the positive effects.

Every business plan or activity that is likely to have significant effect on the environment must examine the environmental impacts. As part of the feasibility study to apply the business or activity plan, the analysis of environmental impacts is as the necessity that must be met to get a permit to conduct a business or activity.

Considering the background as described above, the problem formulated is the role of environmental law in the tourism development of investment in Indonesia.

2. RESULT AND DISCUSSION

2.1 Environmental Law Regulations in Tourism

According to Law number 32 in 2009, the environment refers to the unity of space with objects, forces, conditions, and also living things, such as humans and their behavior, which affect the continuity of life and the prosperity of humans and other living creatures. While, the management of environmental is the integrated effort to maintain the functions of environmental, including arrangements, utilization, development, maintenance, restoration, control, and also the environmental control.

By definition, environmental law is the rules or provisions or legal norms that regulate integrated structuring, exertion, expansion, preservation, restitution, surveillance, and the environmental control.

The management of environmental protection regulations are specifically regulated by the law.

However, the policies issued by the government are not necessarily by the laws used, including to regulate the development of tourism and the protection of environmental management. Law Number 32 in 2009 regarding the protection and management of the environment.

The law refers to systematic and integrated effort conducted to preserve the environmental functions, including the prohibition of polluting, importing hazardous, and also toxic objects (B3), entering waste into environmental media, clearing land by burning.

Many parties highlight that environmental licensing policies and investment interests are considered to have a significant role in causing the environmental crisis in this country. [3]. Environmental destruction and pollution in the tourism sector by business actors can be traced to various policies for providing environmental businesses, such as hotels, restaurants, cafes and so on.

The law is used to organize the development of tourism. The tourism development with natural environment objects is increasing, and more and more tourists are coming. The development of tourism object facilities must be regulated so that investors do not arbitrarily build tourism supporting places, resulting in damage to the environment around tourism objects.

In addition to the law on environmental protection and management, another law, namely Law Number 10 in 2009, concerning Tourism. This law regulates the state of nature, flora, fauna, ancient relics, historical relics of art, culture, which are used as tourism objects owned by the Indonesian people.

Tourism refers to the integral part of the national development, integrated, systematic, sustainable, and also responsible while still protecting the religious values, the culture in society, environmental sustainability and quality, and the national interests.

Tourism policy is an effort to give certainty for the tourists and community related to the tourism development to optimize the benefits of tourism to the stakeholders and minimize the adverse effects, costs, and the other impacts in the development with the sociocultural and environmental economic dimensions depend on the justice not only for the present generation but also for the future generations. [4]

Seeing the sentence above means that environmental sustainability should be very concerned in building or developing tourism in Indonesia. Because environmental sustainability is essential for all human beings both now and even in the future, regulations must govern tourism so that tourism development does not damage the environment.

In addition to the two laws above, according to the author, one more regulation can regulate environmental protection and management, namely environmental impact analysis. Environmental impact analysis or analysis of environmental impacts in Indonesia. It is the study of the principal and significant impacts of the planned business and/or activity on the required of environment for the process of decision-making with

regard to the business and/or activity operators in Indonesia.

One of tourism development policies in the tourism law is tourism development carried out based on the principles referred to Article 2 of Law number 10 in 2009 with regard to the tourism. In this policy, tourism development must concern on various aspects, like the uniqueness of culture and nature.

In carrying out development in the tourism sector, the law also explains that stakeholders must make a development master plan. According to the author, these stakeholders have representatives from the government who examine the impact or impact of the environment, including sustainable development. With the development plans and regulations regarding tourism development, environmental policies should have considered their impact ahead of time, thus reducing the damage to the natural environment [5] resulting from tourism development.

2.2 Development of Tourism to the Environment

Tourism is as the variety of tourism activities that encouraged by many facilities and services given by the community, entrepreneurs, government, and also local governments. [6]

Tourism refers to the temporary and short-term movement of people to the destinations where they usually live and work. [7]

Prof. Salah Wahab defines that the tourism as the conscious human activity that accepts the services between people within country or even abroad, like the residence of people from the other regions for a while seeking varied and diverse satisfaction. [8]

From the understanding of tourism above, tourism is as one of the activities conducted by every human being when humans need diverse atmosphere due to the fatigue with their daily activities. So, the tourism has become the human need even it is not the basic need, but it is a must. Thus, the level of human interest in the traveling is such quite large.

Various kinds of tourism are provided for tourists both from within and outside the country, such tours as nature tourism, cultural tourism, artificial tourism (town squares, city parks, urban forests), Waterland tours, and special interests in the form of pilgrimage tours, tourism culinary and shopping tours. Of the various kinds of tourism that are more attractive to tourists is nature tourism because Indonesia's nature is wonderful to be enjoyed as a reliever and a place for family recreation.

From there, tourism has been proven to increase the growth of economic through various chances, like the investment opportunities, job opportunities, business opportunities, and can create the community prosperity. Tourism also makes the problems in social life, culture, and the conservation of environment.

Many theories and examples show that tourism activities can play a significant role in financing environmental conservation programs. However, it must be noted that activities also can participate in leading to environmental damage. Development planning to

complement tourism facilities often raises the argument that it will damage the environment. Environmental observers see that the development carried out is a real threat to the biodiversity in or around the area to be developed.

According to J. Barros and JM Jonston, environmental damage and pollution are closely related to development activities carried out by humans, among others in the form of waste, hazardous waste substances such as heavy metals, radioactive substances, and others. Second, mining activities, in the form of damage to installations, leaks, pollution of mining disposal, air pollution, and damage to ex-mining land. Third, transportation activities in the form of puffs of smoke, rising city air temperatures, motor vehicle noise, fuel spills in the form of oil from tankers. Fourth, agricultural activities, especially as a result of residues from the use of chemical substances to eradicate pests such as insecticides, pesticides, and also the use of organic fertilizers. [9][10]

In theory, stated above, tourism can provide three causes, namely the first cause, namely industrial activities, for example, with a restaurant or cafe. The third is transportation because more and more tourists want to visit tourist objects, the more transportation or vehicles that enter these attractions.

Talking about environmental pollution will be related to the relationship between human society and the natural environment in a natural way, Humans and their communities. In addition, by having the right to use, it also has a responsibility to save and preserve the environment. [11]. Therefore, it is the people who must be aware that the natural environment around us is essential for our lives together and must take care of it together, not only blame the government.

Some of the impacts that occur due to the development of tourism that result in environmental damage that need to be considered by tourism business investors are:

1) Waste

The impact of tourism on the environment that is the problem of waste. The waste generated by visitors becomes the problem of environment that can affect the quality of tourist destinations. It is easy to happen where the liquid waste disposal is carried out by guesthouses, hotels, restaurants, also villas. It is unavoidable that these places are important part of the tourism. However, without realizing it, the waste generated from these places is not organized, which makes damage to the environment around the place.

Garbage is also the problem in the environment. Waste is unwanted residual material after the end of the process. Humans define waste based on the degree of use. There is no concept of waste in the natural processes, only the products produced during the natural process. Since life human-defined the concept of environment, then trash can be shared depend on the types. [12]

2) Clean Water Source

Often conflicts between the management of the tourism industry, especially the owners of hotels, restaurants, and other tourism developers, against the local population will arise. Conflicts that often occur involve the transfer of use of surface water and groundwater. Usually, this diversion can occur because of the diversion of water flow, namely for the benefit of local communities and local agriculture towards the fulfillment of water resources for hotels, restaurants, and other tourist interests.

Many tourism objects use springs as tourism and are built for tourism purposes to complement the tourist facilities. Indeed, good tourist facilities affect the number of tourists who come. However, investors do not care that their development will have a significant impact in the future when the surrounding nature has begun to be damaged and abandoned by tourists.

3) Air pollution

Air pollution is also one of the environmental problems caused by development of tourism development.

The air in the tourist area is polluted [13] by the fumes of motorized vehicles of tourists heading to tourist attractions. Smoke is the smoke that comes out of the exhaust gas of motorized vehicles, which increases every day due to the increasing number of vehicles coming to the tourist attraction. The impact of this phenomenon is that there is an unpleasant odor from vehicle exhaust gases, and the atmosphere tends to become hotter.

Air pollution causes discomfort for people who are around tourist attractions. The air that was initially cool slowly turned cold again.

4) Wild Life

Wildlife life means great tourist attraction. Tourists are fascinated by the pattern of the life of animal. The tourism activities disrupt the lives of the animals. The composition of the fauna changes because of hunting of animals as the souvenirs, harassment of wildlife for photography, exploitation of animals for show, disturbances in the animal reproduction, changes in the animal instincts (e.x. Komodo dragons, which were vicious animals into the protected tame animals), animal migration. The number of wild animals is reduced, when the tourists visit tourist areas.

5) Natural disasters

Natural disasters are a consequence of natural activities and physical events, such as volcanic eruptions, earthquakes, landslides, and human activities. Human powerlessness due to lack of preparedness and emergency management causes financial and structural losses, even death. [14]

Natural disasters are the most significant impact when the nature around us is damaged, whether damaged by nature itself or by irresponsible human activities. Tourist attractions that often occur in disasters are mountainous areas or highlands and then coastal areas.

Tourists from the summer areas choose to travel to the mountains to shift the atmosphere- meanwhile, the tourist activities in the mountains destroying the mountains and the wilderness areas. The opening of hiking trails, the establishment of hotels at the foot of the hills, and the construction of other facilities are the examples of developments that can harm mountains and wild areas.

As the result, landslides, soil erosion, depletion of mountain vegetation (which can be the lungs of the community), and potential pollution visual and excessive flooding since the mountain cannot absorb the rainwater. In this case, it needs to be done to avoid the damage to mountains and the other wild areas.

2.3 *Overview of Environmental Impact Analysis (AMDAL)*

a. **Definition of AMDAL**

Since 1982 at the Earth Conference in Rio de Janeiro, sustainable development has become a common theme of development in all countries worldwide. Sustainable development incorporate the three pillars of development, that is the fields of economic, social, cultural, and environmental. One of the activities related to the environmental pillar is conducting Environmental Impact Assessment (EIA) activity.

Environmental Impact Analysis (AMDAL) activity is an activity to assess an activity to be carried out without having a detrimental impact on the environment (flora, fauna, soil, water, land use, economical, social, cultural, public health, and other environmental components). This AMDAL activity is significant and strategic in managing resources and the environment and integral to environmentally sound development.

In Government Regulation Number 27 of 1999 concerning "Analysis of Environmental Impacts," Environmental Impact Analysis (AMDAL) is the study of the principal and significant impacts of the planned business and/or activity on the environment which is required for the decision-making process regarding business operations. And/or activities. In Indonesia. This AMDAL is made when planning the project is expected to influence the surrounding environment. What is meant by the environment here is the physical-chemical, ecological, social-economic, social-cultural, and public health aspects.

The definition of AMDAL according to the PPLH Law is an analysis of environmental impacts. Therefore, it is the study of the significant impact of the planned business and/or activity on the environment, which is required for the process of decision-making regarding the implementation of the business or activity. [15]. Meanwhile, in the PPLH Law Number 32 in 2009 Article 1 paragraph (11) defines AMDAL as "Analysis of environmental impacts, hereinafter referred to as Amdal, is a study of the significant impact of a planned business and/or activity on the environment which is required for the decision-making process regarding implementation of business and/or activities."

Besides being regulated in PPLH Law Number 23 of 1997 and PPLH Law Number 32 of 2009, it is also regulated in Government Regulation Number 27 of 1999 concerning Environmental Impact Analysis (AMDAL), known as PP AMDAL. In Article 1 paragraph (1), the definition of AMDAL is not much different from UU PLH Number 23 of 1997 and UU PPLH Number 32 of 2009, wherein PP AMDAL is explained that "Analysis of environmental impacts (AMDAL) is a study of major impacts and the importance of a planned business and/or activity in the environment which is necessary for the decision-making process regarding the operation of a business and/or activity." Article 2 of PP AMDAL Number 27 of 1999 also explains: (1) The analysis of environmental impacts is part of the feasibility study of the business and/or activity plan. (2) The results of the analysis of environmental impacts are used as material for regional development planning. (3) Preparation of an analysis of environmental impacts can be carried out through a study approach to a single, integrated business and/or activity or regional activity.

AMDAL is one of several instruments used to achieve and maintain sustainable development. Sustainable development is also known as environmentally sustainable

development. The concept of sustainable development can be seen in Article 1 paragraph (3) of the Law on Environmental Protection and Management, namely the PPLH Law Number 32 of 2009, which explains that "Sustainable Development is an effort and planned that combines environmental, social, and environmental aspects. and economy into development strategies to ensure the integrity of the environment as well as the safety, capabilities, welfare, and quality of life of present and future generations. [16]

b. Purpose and Functions of AMDAL

One of the environmental law systems that have the most influence on Indonesia's environmental law system is the United States. United States is the first country to introduce "Environmental Impact Analysis" or AMDAL as an essential instrument in controlling environmental impacts. This is stated in The National Environmental Policy Act Of 1969" (NEPA 1969)[17] as the first environmental management regulation in the world, and it has an influence on the environmental law system in various parts of the world and, of course, Indonesia. [18]

Since the 1969 NEPA came into effect on January 1, 1970, environmental laws in other countries have evolved. NEPA 1969 regulates Environmental Impact Analysis as contained in Section 102(2)(c), i.e., any planned activity that is estimated to affect the quality of the human environment significantly must be accompanied by an Environmental Impact Analysis (AMDAL). [19]

To understand the meaning and nature of the 1969 United States Environmental Law, especially the implementation of AMDAL in various countries, including Indonesia, the objectives and procedures of AMDAL are described below. Sewell identified six objectives of the AMDAL, namely: [20]

- a. As the responsibility for future generations (responsibility to future generations)
- b. To ensure a quality living environment for all Americans (provision of a quality environment for all Americans)
- c. Efforts to avoid unwanted environmental impacts (prevention of undesirable impacts)
- d. Efforts to preserve the national cultural heritage (preservation of national heritage)
- e. Efforts to achieve a population-resource balance
- f. Increasing extensible resources and recycling of nonrenewable resources.

In this new legal concept, everyone has the right to good and healthy environment and also should maintain it. NEPA 69 states that the

AMDAL process is the responsibility imposed on the government, which is carried out through the following legal procedures:[\[21\]](#)

- a. Take a systemic and cross-sectoral approach to plan and policy-making processes that affect the environment.
- b. Develop procedures that incorporate unmeasured environmental values.
- c. Avoid conflicts that do not find a resolution regarding the use of land, water, or air.
- d. Conduct international cooperation to maintain the quality of the environment.
- e. Bring all implementing regulations into compliance with the law.

The functions of the AMDAL are:[\[22\]](#)

1. The first function of the AMDAL is to be considered for regional development planning.
2. The second AMDAL function assists in the process of decision-making on the environmental feasibility of the particular business plan or even activity.
3. The third function of the AMDAL is to help provide input to develop a detailed design of a business or activity plan.
4. The fourth function of the AMDAL is to help provide input into preparing environmental management and monitoring plans.
5. The fifth function of the AMDAL is to help give information to the community about possible impacts of the planned business and/or activity.
6. The following function of the AMDAL is as the primary recommendation for a business license
7. The following AMDAL function is Scientific Document and Legal Document.
8. The last function of the AMDAL is the environmental feasibility permit.

While the benefits of AMDAL are as follows:[\[23\]](#)

1. Benefits of AMDAL for the government
 - AMDAL can assist the planning process to prevent pollution and damage to the environment.
 - AMDAL can help prevent conflicts that occur with the community over the impact of environmental damage caused by activities or businesses.
 - AMDAL can keep the development process running by the principles of sustainable development.
 - AMDAL helps realize responsible governance in terms of environmental management.
2. Benefits of AMDAL for the initiator or business implementer

- AMDAL can help make businesses and activities more secure and safe.
 - The AMDAL can be used as a reference for applying for credit or accounts payable at the bank
 - AMDAL can be used to help interact with the surrounding community as evidence of compliance with the law.
3. Benefits of AMDAL for the community
 - The AMDAL can explain to the community the impacts that will occur in the future after the business or activity is carried out.
 - With AMDAL, the community can participate in the implementation of activity and control the activity.
 - With AMDAL, the community can be involved in the process of decision-making that will influence the environment in which they live.

This AMDAL is a project that expected to impact the surrounding environment. What is meant by the environment here is the abiotic, biotic and cultural aspects. The legal basis for AMDAL in Indonesia government regulations 27 in 2012 regarding "Environmental Permit", a substitute for PP 27 in 1999 with regard to AMDAL. The functions of AMDAL are:

- 1) Assist in the process of decision-making with regard to the environmental feasibility of the planned business or activity.
- 2) Give input for the preparation of detailed technical designs of the plans or activities.
- 3) Give input for the preparation of management plans and the monitoring of environmental.
- 4) Provide information to the public on the impact of business plan or activity.
- 5) The beginning of the recommendation on business license.
- 6) As the Scientific Document and Legal Document.
- 7) Environmental Feasibility Permit.

According to the author, the AMDAL permit needs to be used in every construction of hotels, villas, restaurants that exist in every the tourist attraction in Indonesia, so that our natural environment can be maintained and not damaged in the present in the future and in the future.

3. CONCLUSION

Tourism is one sector that continues to increase its contribution to state revenue. Tourism policy has been proven to increase the economic growth through the investment opportunities, job opportunities, business opportunities and, in the end, can increase people welfare. Tourism requires constructing facilities to make the tourists comfortable to come to tourism objects. The investors need to focus on the environment, so that there

is no impact of environmental damage. Therefore, it is essential to have regulations regarding tourism policies and environmental management protection.

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