

Juridical Analysis of Community Participation in the Process of Making an Analysis of Environmental Impact Based on Law Number 32 of 2009 Concerning Environmental Protection and Management and Law Number 11 Year 2020 Concerning Job Creation

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ABSTRACT

Human beings are created on this earth to perform tasks by regulating everything that exists on the earth. AMDAL (Environmental Impact Analysis), UKL-UPL (Environmental Management Efforts and Environmental Monitoring Efforts) series of environmental management and monitoring processes are used as The standard form of prerequisites for decision-making is included in the business license or the approval of the central or regional government. As a prerequisite for obtaining business and/or activity permits or approvals. Community participation emphasizes that citizens directly "participate" in the decision-making of institutions and the procedures of the government. Based on this background, the question of this study is the mechanism and form of community participation in the AMDAL preparation process. Then, in accordance with Law No. 32 of 2009 on Environmental Protection and Management and No. 11 of 2020 on the adoption of the Minister of Environment of the Republic of Indonesia on the 17th 2012 Guidelines on Environmental Impact Analysis and Community Participation in the Environmental Permitting Process, and on the implementation of environmental protection and management and government regulation No. 22 of 2021 from the perspective of legal certainty. The research methods use standardized and legislative methods, and are supported by literature reviews and interview data to strengthen the research results. In summary, according to applicable laws and regulations, the right of the community to participate in the AMDAL preparation process is guaranteed, but there is still no guarantee for those who have not participated in the AMDAL preparation process.

Keywords: *Environment, Environmental Impact Analysis, Community Participation.*

1. INTRODUCTION

The environment is a place to live for all mankind on the earth's surface, The Indonesian environment is a gift from God Almighty, everyone has the right to live in physical and spiritual prosperity and to live and obtain good health services. The statement is in Article 28 H Paragraph 1 of the "Basic" Law of the Republic of "Indonesia" Year 1945. Humans were created "on" this "earth" to "carry out" a task by regulating everything that exists in This earth starts from water, soil, plants, animals and so on. But along with the times, this has become an obstacle to maintaining the stability and beauty of the environment, the progress of this "technology" has an impact on our environment as living beings, in the field of Industrial Property such as the construction of hotels, apartments and condominiums, for

example, which is quite contributing to pollution. Environment [1],

Development is a necessity towards the progress of a nation, development can also have consequences for damage, pollution and without good planning for the environment. there is a need for a new breakthrough in the form of awareness, order and planning by integrating environmental, social and economic aspects into a development strategy to ensure safety, capability, welfare and quality of life that are beneficial for present and future generations. Disturbances or shocks in the balance or stability of the environment, there is the development of today's technology, where humans use their minds and brains, there is an industrial revolution which is a continuation of the invention of a technology derived from steam power. Then the population explosion. As long as population growth is within the range or reasonable limits,

this increase will not disturb the stability of the environment [2]. Thus, it can be said that it is not only the environment that can affect humans, but also humans who over time and the development of the times make humans the main factor that affects the environment, so that human care is needed for their own environment. Development activities carried out in various forms of business and/or activities will basically have an impact on the environment. With the implementation of the principles of environmentally sustainable development in the implementation process, the impact on the environment caused by a variety of development activities are analyzed early planning stages, so that the negative impact of control measures and the development of positive impact can be prepared as early as possible. The tools or instruments that can be used to do this are EIA and UKL-UPL[3], Based On Law Number 11 of 2020 concerning Job Creation, EIA is a study of significant impacts on the environment from a planned business and/or activity, to be used as a prerequisite for making decisions regarding the implementation of a business and or activity and is contained in a Business Licensing, or approval from the Central Government or Regional Government. EIA study the impact of development on the environment and the impact of the environment on development based on the concept of ecological development, which studies the interrelationships between development and environment [4], An activity plan that can be declared environmentally unfit if it is based on the results of an AMDAL study, then the negative impacts that will arise or be caused cannot be overcome by the technology that is already available. Likewise, if the costs are necessary to cope with the effects or negative impacts greater than the benefits of the positive impact generated, it can be said that the plan was declared unfit environment. An activity plan that is determined to be unsuitable for the environment is not granted an environmental permit and cannot be continued for development. In Law Number 32 of 2009 concerning Environmental Protection and Management Environmental permits are permits that are given to everyone who carries out a business and/or activity for which Amdal is required or UKL-UPL in the context of environmental protection and management as a prerequisite for obtaining a business license. and/or activities, In Law Number 11 of 2020 concerning Job Creation, changing the Environmental Permit into an Environmental Approval which has the definition of Environmental Approval is an Environmental Feasibility Decree or a statement of Environmental Management Ability that has obtained approval from the Central Government or Regional Government, Community participation emphasizes the direct "participation" of citizens in making decisions to institutions and processes to government. Gaventa and Valderma in Siti Irene Astuti D. (2009: 34-35) emphasize that community participation has shifted the concept of participation towards a concern with various forms of citizen participation in policy making and decision making in various key arenas that affect the lives of citizens [5]. Based on the background, the legal issues that will be studied and analyzed into discussion in this paper is how the mechanism and form of

community participation in the process of preparing AMDAL, as well as a comparison of regulations on community participation in Law No. 32 of 2009 on Protection and Management Environment and Law Number 11 of 2020 concerning Job Creation Omnibus Law. Based on these reasons, the title of this study is "Public participation in the preparation of analysis on environmental impact based on Law Number 32 of 2009 on Protection and Management of the Environment and Law Number 11 of 2020 Job Creation or Omnibus Law".

1.1. Related Work

Based on the description above, the title of the research entitled: "Juridical Analysis Of Community Participation In The Process Of Making An Analysis Of Environmental Impact Based On Law Number 32 Of 2009 Concerning Environmental Protection And Management And Law Number 11 Year 2020 Concerning Job Creation"

1.1.1. Mechanisms and Forms of Community Participation in the AMDAL Preparation Process

AMDAL or EIA (Environmental Impact Assessment), based on Law Number 32 of 2009 concerning Environmental Protection and Management and document as referred to in Article 22 is prepared by the Initiator by involving the community. The initiator, in preparing the EIA document as referred to in Article 8, involves the community: a. affected; b. environmentalists; and/or c. affected by all decisions in the EIA process, Based on Law Number 11 of 2020 concerning Job Creation and Government Regulation Number 22 of 2021 Concerning the Implementation of Environmental Protection and Management, The preparation of the EIA document is carried out by involving the community who are directly affected by the planned business and/or activity, The person in charge of the business and/or activity in preparing the Amdal as referred to in article 21 paragraph 1 involves the people who are directly affected.

The existence of community participation in the decision-making process regarding recommendations whether or not the activity/business plan is feasible. Community participation here is very important because people know better about the condition of the surrounding environment and the feasibility of the activity/business plan after going through several procedures.

Public participation in the process of identifying the problem and the potential that exists in the community, the selection and decision-making about alternative solutions to deal with the problem, the implementation of efforts to tackle 'issues, and community involvement in the process of evaluating the changes.

Participation can be defined as mental or thought or moral involvement or feelings in group situations that encourage them to contribute to the group in an effort to achieve goals and take responsibility for the business concerned. Participation is not based on physical involvement in work

but involves one's self-involvement so that it will lead to great responsibility and contribution to the group.

1.1.2. Comparison of Public Participation Arrangements in the Preparation of AMDAL Based on Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 11 of 2020 concerning Job Creation

The system regarding community participation in the process of making or compiling AMDAL previously used Law Number 32 of 2009 concerning Environmental Protection and Management, then adjusted to Government Regulation Number 27 of 2012 concerning Environmental Permits, adjustments were made to the new regulation, namely Law Number 11 of 2020 concerning Job Creation, then Government Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management.

Through Law Number 32 of 2009 concerning Environmental Protection and Management Article 26, Government Regulation Number 27 of 2012 concerning Environmental Permits and adjusted to the Regulation of the State Minister of the Environment of the Republic of Indonesia Number 17 of 2012 concerning Guidelines for Community Involvement in the Environmental Impact Analysis Process and Environmental Permits, must be carried out based on the principle of providing transparent and complete information and being notified before activities are carried out.

Law Number 32 of 2009 concerning Environmental Protection and Management as well as Government Regulation Number 27 of 2012 concerning Environmental Permits as a derivative of Law Number 32 of 2009 concerning Environmental Protection and Management, this stipulates that the community must take an active role in protection and management of the environment, especially in the process of compiling an analysis of environmental impacts.

1. Participation in the preparation of the Environmental Impact Assessment (EIA) document through an announcement process called publication to the public, submission of suggestions, opinions and responses from the community and public consultation as well as community participation in the appraisal commission, for business plans and/or activities that must have AMDAL;
2. The process of announcing an application for an Environmental Permit or in a Job Creation is stated as environmental approval, submission of suggestions, opinions and responses from the community as well as an announcement after the environmental permit is issued, both for business plans or/or activities that are required to have an Environmental Impact Analysis or business plan and / or activities that are required to have environmental protection and monitoring efforts.

Then, in Law Number 11 of 2020 concerning Job Creation with Government Regulation Number of Government

Regulation Number 22 of 2021 concerning the Implementation of Environmental Protection and Management as a derivative of Law Number 11 of 2020 concerning Job Creation, it stipulates that the public take an active role or participate in the protection and management of the environment, especially in the process of preparing the Environmental Impact Analysis

1. Participation in the preparation of the Environmental Impact Assessment (AMDAL) document through an announcement process called publication to the public, submission of suggestions, opinions and responses from the community and public consultation as well as community participation in the appraisal commission, for business plans and/or activities that must have AMDAL;
2. The process of announcement of the application for environmental approval, submission of suggestions, opinions and responses from the community as well as announcements after the environmental permit is issued, both for business plans or/or activities that are required to have an Environmental Impact Analysis or business plans and/or activities that are required to have safeguards and environmental monitoring.

1.2. Our Contribution

The purpose of this research is to address issues that have been outlined in the background and the formulation of the problem analyzing and knowing the mechanisms and forms of community participation in the preparation of environmental impact analysis (AMDAL) and to analyzing and knowing the comparison of the arrangements for community participation in the preparation of the AMDAL based on Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 11 of 2020 concerning Job Creation through Regulation of the State Minister for the Environment of the Republic of Indonesia Number 17 of 2012 concerning Guidelines for Community Involvement in the Process of Environmental Impact Analysis and Environmental Permits and Government Regulation Number 22 of 2021 concerning Implementation of Environmental Protection and Management and in the Perspective of Legal Certainty.

1.3. Paper Structure

The structure of this paper uses research methods to collect data, manage data, and conclude from the data according to the problem to be studied by the author[6]. This legal research studies certain legal phenomena, either one or more symptoms. This legal research is carried out with a series of scientific activities based on certain methods, systematics, and thoughts[7]. The research method used by the author in the study is as follows: Types of Research. The type of research in this legal research is normative research[8]. The definition of normative research or doctrinal law is research that provides a systematic explanation of the rules governing certain categories of law, as well as an analysis of the relationship between

regulations that describes areas of difficulty and can predict future developments. And also Legal Sources and Materials In this writing, the author uses legal materials obtained from the results of a study of the law or literature review or library materials related to a problem or material from research which is often called legal material.

2. BACKGROUND

2.1. Environment

Based on Law Number 32 of 2009 Concerning Environmental Protection and Management, The living environment is the unity with all things space, power, state, and living beings, including humans and their behavior, which affect nature itself, the continuity of livelihood and welfare of human beings and other living creatures, Based on Law Number 11 of 2020 Concerning Job Creation The living environment is all living things and inanimate as well as the conditions that exist inside , Humans are part of the environment that can influence or change through their inappropriate activities or behavior. Changes caused can be in the form of environmental damage such as global warming, acid rain and depletion of the ozone layer, pollution and a decrease in biodiversity. Humans were created on this earth to carry out a task by managing everything that exists on this earth starting from water, soil, plants, animals and so on. But as the times, it is an obstacle to the stability and beauty of the environment, technological advances have an impact to our environment as a living being, to the field of Industrial Property such as construction of hotels, apartments and condo for instance considerable contribution of environmental pollution. Changes in the environment will appear changes in physical and psychological conditions for humans to adapt to new environmental conditions, basically humans and the environment have a dynamic relationship. Environment as an ecosystem which have social, cultural, economic and geography with the construction, which in this case continuously exploit the natural resources that exist in order to improve the quality of life kesejatheraan society. Meanwhile, the availability of natural resources is limited and uneven, both in quantity and in quality, while the demand for natural resources to meet the needs of people's lives is increasing as a result of increased development to meet the needs of people's lives which are increasingly growing and diverse[9].

2.2. Environmental Impact Assessment

NEPA (National Environmental Policy Act) is a history of the implementation of Environmental Impact Analysis (EIA) in Indonesia due to the massive industrialization that occurred in the United States in 1970. Environmental Impact Assessment was born in the United States in 1969 and is felt by many to be able to avoid further damage to the environment by human activities. In Indonesia, AMDAL was only officially recognized in 1982 with the

promulgation of a law on basic provisions for environmental management. Environmental Impact Analysis (AMDAL) is actually not a new thing. People often predict what the consequences of their actions will be and think about what further action is needed to increase or decrease the consequences of their actions. Basically this is an AMDAL, although it is not stated explicitly and is not carried out comprehensively covering many areas.

Article 1 paragraph 11 of Law Number 32 of 2009 concerning Environmental Protection and Management states that "Analysis of environmental impacts, hereinafter referred to as Amdal, is a study of the significant impacts of a planned business and/or activity on the environment that is required for the decision-making process regarding the implementation of business and/or activities.

Based on Article 1 Paragraph 11 of Law Number 11 of 2020 concerning Job Creation that an analysis of environmental impacts, hereinafter referred to as Amdal, is a study of significant impacts on the environment from a planned business and/or activity, to be used as a prerequisite for making decisions regarding organizing business funds or activities as well as contained in the Business Licensing, or approval from the Central Government or Regional Governments.

Government Regulation No. 27 of 2012 in lieu of Government Regulation No. 27 of 1999 on EIA. Environmental Impact Analysis, hereinafter referred to as Amdal, is a study on the significant impact of a planned Business and/or Activity on the environment which is required for the decision-making process regarding the implementation of a Business and/or Activity.

Government Regulation Number 22 of 2021 concerning Implementation of Environmental Protection and Management An analysis of environmental impacts, hereinafter referred to as Amdal, is a study of significant impacts on the environment from a planned business and/or activity, to be used as a prerequisite for making decisions regarding the operation of a fund business, or activities as well as contained in the Business Licensing, or approval from the Central Government or Regional Government.

The EIA concept that studies the impact of development on the environment and the impact of the environment on development. EIA is also part of the study the ecological construction reciprocal relationship or interaction between development and the environment, In the Environmental Impact Analysis, the meaning of impact should be defined, the difference between environmental conditions that are expected to exist without development and those that are expected to exist with development. With this limitation, impacts caused by other activities outside the intended development, both natural and human, are not taken into account in the impact estimate. Impact includes both biophysical impacts, as well as socio-economic impact of culture and health, and should not be carried out social impact assessment and analysis of environmental health impacts separately from the EIA, EIA is a process used in monitoring development project objectives for the welfare of the community. EIA as a tool for the government to

plan preventive actions or prevent environmental damage due to development carried out. This Amdal provides benefits for many groups such as the government, capital owners, as well as project owners.

The role of EIA in environmental management is to avoid environmental damage so that it can help maintain the comfort and safety of the community around the construction, determine lending priorities according to the mission to be carried out. This EIA can also avoid unnecessary duplication of projects, helps to spot environmental problems so that development can be carried out more planned and avoid problems that can be avoided. An activity plan that can be declared environmentally unfit if it is based on the results of an EIA study, then the negative impacts that will arise or are caused cannot be overcome by the technology that is already available. Likewise, if the costs needed to overcome the negative effects or impacts are greater than the benefits from the positive impacts, it can be said that the plan is declared environmentally unfit. An activity plan that was decided was not worth the environmental not given an environmental permit and can not proceed to construction

The reason for the need for an EIA for a feasibility study is because it is in government laws and regulations and protects the environment from project operations, industrial activities or activities that can cause environmental damage. The goal of the EIA is to keep up with the possible impacts of a planned business or activity so that. Interest EIA is secure in businesses or activities that do not negatively impact the environment. The EIA is the following functions for regional development planning materials, assist in decision-making processes of the environmental feasibility of the business plan and / or activities, give input in the drafting of the technical details of the business plan and / or activity, the environment permission or consent.

2.3. Community Participation in Preparing Environmental Impact Analysis

Community participation in the process of identifying problems and potentials that exist in the community, selecting and making decisions about alternative solutions to deal with problems, implementing efforts to overcome problems, and community involvement in the process of evaluating changes that occur.

Discussion about participation, taking part or participating. Sastrodipoetra states that participation is spontaneous involvement accompanied by awareness and responsibility for group interests to achieve common goals. While Alastraire White declared their participation as active involvement of local communities in decision-making or implementation of the development project[10], Spontaneous involvement accompanied by awareness and responsibility for group interests to achieve common goals, and several forms of Community Participation include: Participation in the form of energy, Participation

in the form of funds, Participation in material form, Participation in the form of information.

Community participation emphasizes the direct participation of citizens in making decisions to government institutions and processes. Community participation has transferred the concept of participation towards a concern with various forms of citizen participation in policy-making and decision-making in a variety of key arenas that affect " the lives of citizens.

1. The Screening Phase is a form of method of determining whether a project requires an Environmental Impact Analysis (EIA) or not and determining the benchmarks of whether the business and/or activity has a major and significant impact on the environment. At this stage, the number of affected people has been determined, the area of the impact distribution, the duration of the impact, the intensity of the impact, the number of environmental components affected, the cumulative nature of the impact and the reversal and non-reversal of the impact.
2. The Scoping Phase is the initial process to determine the scope of the problem and identify significant impacts (hypotheses) related to the business/activity plan. Community involvement is part of the scoping process. Generally scoping is done through three stages, namely the identification of impact, impact evaluation and classification and priority
3. The stages of preparing the Terms of Reference are the scope of the analysis of environmental impacts that are the results of the scoping, the terms of reference are prepared by a responsible commission such as the Environmental Service together with the Person in Charge of Business and/or Project Activities, the terms of reference are prepared jointly between the commission responsible parties such as the Environment Agency, the person in charge of the business and/or project activity and the EIA implementer or the Environmental Impact Analysis Consultant (EIA), the terms of reference are drawn up by the executors of the Environmental Impact Analysis (EIA) which are submitted to the responsible business and/or Project activities are then discussed with the authorized and responsible agency in a project.
4. Stages of preparing the Environmental Impact Analysis. It is a careful and in-depth form of the significant impact of a business plan and/or activity. General guidelines preparation of EIA serves as a basic reference for the preparation of technical guidelines for the preparation of the EIA when the environmental impact assessment of business or activity concerned has not been established
5. Stages of preparation of Environmental Management Plan, Environmental Monitoring Plan. Is a plan that is prepared in relation to the repetition of measurements of environmental components or parameters at certain times in order to determine whether there are changes in the environment due to the influence of activities or projects

6. Reporting Stages. Is the formulation of the results of the series to the previous stages. The report consists of three parts intended to be able to achieve the target, namely the decision makers to the parties involved in the business and/or activities as well as government agencies with an interest in the project. Reports made must be good and correct

Community involvement in the EIA preparation process is always needed from the beginning to the end. The people involved are people who live and/or have activities around the location of the planned activity, which are referred to as the affected community and people who do not live and/or have activities around the location of the planned activity, but care about the planned activity and the impacts that will be caused, which called the environmentalist society.'

3. CONCLUSION

Regarding the mechanism and form of community participation in the EIA preparation process, starting from the screening, scoping, EIA preparation, Environmental Management Plan, Environmental Monitoring Plan to EIA feasibility decisions, RKL-RPL based on the Environmental Protection and Management Act, the Employment Act, Government Regulations and Regulations of the Minister of the Environment and experienced several obstacles to their implementation. The government, those in charge of businesses and/or activities and the community need to understand the role of the EIA which is not just a study or document as a requirement for implementing legislation, but EIA is a form of preventing environmental damage by using two-way communication. With active community involvement, business owners will know the problems in certain areas and the community is able to provide solutions to problems that occur, therefore the author can conclude that the mechanism of the EIA preparation process involves community participation or involvement.

Comparison of community participation arrangements in the preparation of EIA based on Law Number 32 of 2009 concerning Environmental Protection and Management and Law Number 11 of 2020 concerning Job Creation through Regulation of the State Minister of the Environment of the Republic of Indonesia Number 17 of 2012 concerning Guidelines for Community Involvement in the Analysis Process Environmental Impact and Environmental Permits as well as Government Regulation Number 22 of 2021 concerning Implementation of Environmental Protection and Management and in the Perspective of Legal Certainty. the law on environmental protection and management with creative work using the word adjustment rather than environmental permit into environmental approval and adjustment of the names of the parties authorized to carry out the EIA preparation process (Initiator becomes Responsible for Business

and/or Activity or Business Actor) and In the perspective of legal certainty The author considers that these two regulations are actually in the mechanism, form, delivery method and participation of the community in the EIA process, in fact slightly adjusting to the previous regulations, because the explanation when viewed from the perspective of legal certainty can be a reflection made by the community into a set of regulations. legislation that legally regulates clear legal norms. Community involvement in the EIA preparation process according to the applicable laws and regulations has guaranteed rights but there is still no guarantee of protection for people who are not involved in the EIA preparation process, even the direct consequences or consequences of these laws and regulations are still minimal and the community is not involved In the process of preparing the EIA, there are consequences for the filing of a lawsuit to the State Administrative Court and investors/business actors are obliged to improve the EIA document starting at the stage of investors/business actors not involving the community in the process of preparing the EIA.

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