
LEGAL ANALYSIS ON AMDAL AS AN ENVIRONMENTAL PROTECTION DOCUMENT

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Abstract

Amdal is an analysis of environmental impacts. The purpose of Amdal is to analyze an effect that arises from a planned construction project or building. The Amdal document is mandatory for any initiator or entrepreneur who will apply for an environmental permit. This obligation is because it aims to protect the environment from damage caused by development. However, many entrepreneurs do not understand the existence of an Amdal, so they mostly build first and then take care of it. Amdal. The research method used in this research is juridical normative or doctrinal. The traditional materials used are primary and secondary legal materials; primary standard materials include statutory regulations and legal documents. Based on the regular analysis from the author, the Amdal document has a critical position to maintain the quality of the environment and the sustainability of public health. On the other hand, Amdal also guarantees sustainable development and environmentally sound development (eco-development).

Keywords: *Legal Analisis, Amdal, Environmental Protection Document*

A. INTRODUCTION

The rapid pace of development and the increasingly dense population growth in Indonesia poses a threat to environmental sustainability and resilience. In action, some activities can have an impact on the environment. These activities must be able to identify the effect so that there is a countermeasure. According to Otto Soemarwoto, a mark is a change that occurs as a result of an activity that is natural, both chemical, physical, or biological. If it is not addressed or responded well, the impact will become a problem for the future (like a time bomb). The time bomb is a decreasing function of the environment both in terms of quality or quantity

Environmental protection can be improved if a system that is run administratively by the government is effective and integrated. The course is a permit; from government licensing, it can maximize administrative prevention of environmental damage. The role of the government has extreme power in overcoming the impacts caused by development. The position is as a decision-maker, as well as a policy.

In the 1969 National Environmental Protection Act (NEPA) in the United States, it is explained that ADL is a tool for planning preventive actions against environmental damage caused by a development activity that is being designed by an organization or company.¹ Amdal was born in response to anxieties about a negative impact from humans. The action is environmental pollution.² Environmental protection is essential, considering the annual disasters that often occur in Indonesia. These disasters are born as a result of human-made mistakes who do activities that do not pay attention to environmental conditions.

The feasibility of development activity can be declared inappropriate or not following the conditions of the surrounding environment. If it is assessed based on an Amdal study, the negative impact cannot be anticipated based on technology, as well as from the aspect of costs in predicting the negative impact is greater than the positive result. The criteria for development activities that are subject to an AMDAL are for large projects that have a significant effect on the environment.

The legal basis of an analysis of environmental impacts (Amdal) is Law Number 32 of 2009, which concern on Environmental Protection and Management (UUPPLH). It contains the addition to UUPPLH. There are implementing regulations for Amdal which have undergone several revisions or changes. The first is regulated through Government Regulation No. 29 of 1986 concerning Environmental Impact Analysis, the second is amended by Government Regulation No. 51 of 1993 concerning Environmental Impact Analysis, the third is Government Regulation No. 27 of 1999 concerning Environmental Impact Analysis and Government Regulation No. 21 concerning Environmental Permit.

The position of AMDAL in Indonesia is powerful when viewed from a legal point of view. It can be proven by a robust regular basis and its implementing regulations, as written above. Still, in reality, Amdal has not been able to control and protect environmental damage from the rapid pace of development in the capital city of Jakarta. It has many multi-story buildings, but each year it has to endure an annual disaster, namely flooding. It should be questioned because a building can get a Building Construction Permit (IMB) with the condition that it must pass an AMDAL.

¹ Ibid hlm. 41.

² Fola Ebisemiju, 1993, *Environmental Impact Assesment: Making it Work in Developing Countries*. Journal Of Environmental Management, Vol 38 , Hal. 247

The discourse on AMDAL elimination by the ministry of agricultural and spatial planning that has recently been raised because amdal removal will make business more comfortable. However, this will create a policy that leads to a setback in environmental protection. Besides that, it will have a broad impact on society in terms of social and ecological security.

The state has a responsibility to maintain and to protect the environment. If the government only focuses on income or only attracts investors to invest and does not think about the sustainability of the ground, it is unlikely that there will be a regulatory vacuum if the state does not take action to anticipate the absence of regulations on AMDAL. This vacuum will have a negative impact on the environment and society, considering that Indonesia is a disaster-prone country.

On the other hand, there is a problem regarding the effectiveness of the AMDAL issue. First, the AMDAL document seems to be only used as a formal document. It means that the AMDAL document is late in preparation; there is no monitoring of the implementation of the AMDAL. The low quality of the AMDAL is also due to inaccurate predictions and evaluations. The AMDAL is used only to justify the project. The two permits have not been issued, but the construction stage has already begun. The licenses have been granted, but the Amdal has not been implemented. In government projects, it is often found that the implementation of development has been carried out, but the AMDAL has not been carried out.

B. RESEARCH METHODOLOGY

The method used in the study of environmental impact analysis and environmental protection instruments is juridical normative or doctrinal. The traditional materials used are primary and secondary legal materials. Primary legal materials include statutory regulations and legal documents related to Amdal and secondary legal materials in the form of references on Amdal and environmental protection.

C. DISCUSSION

The Position of AMDAL as an Environmental Protection Instrument in Indonesia, the definition of AMDAL according to AMDAL-2012 is as follows "Environmental Impact Analysis (AMDAL) is a study of the significant impacts of planned business and activity on the environment required for the decision making

process regarding conducting a business or training.³ Meanwhile, the general understanding of AMDAL is a policy-making through a decision making process.

Each country has a different character of environmental damage and environmental problems. However, the general issues that occur in some developing countries such as ours have ecological questions, namely ecological issues regarding the excessive use of natural resources.

Another problem that arises is the use of natural resources that is not suitable for carrying capacity or exceeds the carrying capacity of the environment. Pollution of the aquatic, atmospheric, and terrestrial climate is a problem that is found by the environment in various settings, mostly urban areas. This pollution that causes low environmental quality is an accumulation of the development activities that are carried out.⁴ Pollution can also be born from the effects of development. If development does not pay attention to the surrounding environment, it will result in pollution.

Project development assessed from the aspect of environmental feasibility can be called the environmentally sound effect. In essence, ecologically sound development is carried out to achieve sustainable development. The instrument for achieving sustainable development is an analysis of environmental impacts.⁵

Indonesia is one of the countries that integrate Amdal or EIA into the decision making process. However, there are differences between the impact of AMDAL from Indonesia and the EIA of the United States. In Indonesia, the effect is not always interpreted as a negative influence. On the contrary, in developed countries such as the United States and Canada, the word impact, which is translated into Indonesian as impact, means negative influence.⁶

The form of AMDAL varies and has their differences, while the structure of AMDAL is: Single Project AMDAL, Integrated AMDAL, Regional AMDAL: Regional AMDAL.

³ Daud Silalahi dan Kristianto, 2016, *Perkembangan Pengaturan Amdal di Indonesia*, CV Keni Media, Bandung, hal. 33.

⁴ Chafid Fandeli, 2011, *Analisis Mengenai Dampak Lingkungan Prinsip Dasar Pada Pembangunan*. Liberty Yogyakarta, hal. 1.

⁵ Ibid hal. 64.

⁶ Takdir Rahmadani, 2013, *Hukum Lingkungan di Indonesia*, Raja Grafindo, Yogyakarta, hal.78.

Amdal is a useful instrument if it is optimized for environmental protection. The legal basis for AMDAL is PP No. 27 of 2012 concerning environmental permits and is also strengthened by Regulation of the State Minister for the Environment No. 8 of 2013 regarding procedures for assessing and examining environmental documents and issuance ecological access.

Apart from Government Regulations and Ministerial Regulations, UUPPLH also regulates AMDAL. Article 22 explains the substantial impact. Every business or activity that has an essential effect on the environment is required to have an Amdal. Significant results are determined based on the size of the population. It will be affected by the intensity of the length time. The cumulative nature of the impact depends on the development of science and technology.

AMDAL is part of the business licensing toolkit. The impact of AMDAL is enormous on the issuance of environmental permits that will be issued by related agencies. After the ecological license is given, it can be said that the business license will obtain approval and may continue the related business.

Environmental protection requires support from all aspects, such as aspects of law enforcement and also parts of strengthening the rule of law. Reads: the criteria for a business or activity that has a significant impact must be accompanied by an Amdal, consisting of Changing the natural form and the shape of the land.

The exploitation of natural resources, both renewable and non-renewable. Processes and activities that can potentially lead to environmental pollution and damage as well as waste and degradation of natural resources and their utilization. Operations and activities whose results can affect the natural environment, the artificial environment, and the social and cultural environment.

Processes and activities whose results will affect the preservation of conservation areas of natural resources and / protection of cultural heritage. Introduction of types of plants, animals, and microorganisms. Manufacture and use of biological and non-living materials. Activities that have a high risk and affect national defense. The application of technology is thought to have great potential to affect the environment.

According to F Gunawan Suratmo in the journal, Zairin Harahap explained that the importance of AMDAL is first that the law requires an AMDAL so that if it is not fulfilled, then a sanction will arise, secondly so that the quality of the environment is

not damaged. As an environmental protection document that has sanctions made by the government, while at the second point, the function of Amdal is to protect the environment from damage, the first and second points have a relationship that explains the process of AMDAL.

AMDAL has a role as a document that can filter out activities that are considered malicious activities. With the AMDAL method, it can be summarized and qualified for these activities to have a more significant adverse impact or less positive impact, but to conclude and qualify an action with the AMDAL method is not easy. It requires community participation and experts in determining the impact qualifications.

Legal consequences if there is a deviation from the Amdal procedure. From the purpose and objective of AMDAL, it is to ensure that a development business or activity can run sustainably without damaging the environment by means of an analysis of environmental impact studies. It is hoped that development businesses or activities can utilize and manage natural resources efficiently, minimizing negative impacts and maximizing positive results. AMDAL has binding power for business actors who will apply for an environmental permit for their business. In an ecological license, there are norms or rules which contain conditions that must be met. If not fulfilled, then the environmental permit will not be issued.

Sanctions for initiators who do not submit Amdal documents may be subject to legal provisions in the licensing system when reviewed by State Administrative Law, such as Article 11 paragraph 1 HO concerning the requirement to meet new needs in the licensing procedure. The function of legal rules in Amdal documents is the function of Amdal, not only as an ordinary or scientific document. Still, it is obeyed by everyone in carrying out development projects, with the existence of legal regulations, everyone who does not comply will be subject to sanctions.⁷ However, in several cases that occurred in the field, many businessmen did not follow the procedure of AMDAL. It was due to the weak supervision of the licensing office in the area.

AMDAL'S role in protecting the environment has been written in the UUPPLH and also PP No. 27 of 2012 concerning Environmental Permits. In both regulations,

⁷ Zairin Harahap, 1997, Beberapa Masalah Hukum Amdal dan Implikasinya Terhadap Sistem Perizinan dan Penegakan Hukum Lingkungan, Jurnal,Hukum, Volume 4, Nomor 7

legal sanctions are regulated both criminally and in state administration. Article 109 UUPPLH is written, "Every person who carries out business and activity without an environmental permit as referred to in Article 36 paragraph (1) shall be punished with imprisonment for a minimum of 1 (one) year and a maximum of 3 (three) years and a fine of at least. Rp1,000,000,000.00 (one billion rupiah) and a maximum of Rp.3,000,000,000.00 (three billion rupiah). " Article 110 UUPPLH is written "Every person who prepares an AMDAL without having a certificate of competency in drafting an AMDAL as referred to in Article 69 paragraph (1) letter i shall be sentenced to imprisonment for a maximum of 3 (three) years and a maximum fine of Rp.3,000,000,000.00. (Three billion rupiahs). "As for administrative sanctions, it is stated in Article 71 PP No. 27/2012, which explains:

a. Environmental permit holders who violate the provisions referred to in Article 53 are subject to administrative sanctions, which include: written warning, government coercion, suspension of environmental permits; or Environmental Permit Revocation.

b. (2) The administrative sanctions, as meant in paragraph (1), are applied by the Minister, governors, or regents/mayors following their respective powers.

D. CONCLUSION

Environmental preservation does require legal protection because, with the existence of a legal guardian, it will minimize a violation of the environment AMDAL has an essential role in protecting the environment. However, it is necessary to know that AMDAL is only a document that has a function as an initial assessment of the impact caused by activity. If the EIA is optimized from the start, it is possible to know the effects caused by movement. Environmental protection in Indonesia is still very much needed because it serves as a basis for issuing environmental permits. AMDAL fraud usually occurs because there are loopholes provided by the access granting official. It can be seen from the AMDAL document published after a project and building have been completed. The administration of fraud has been included in PP No. 27 of 2012, as well as criminal sanctions stated in UUPPLH. However, the effectiveness of sanctions is not optimal if they are not accompanied by firm action and socialization of these sanctions.

E. REFERENCES

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