

Addressing the Existence of Environmental Impact Assessment (EIA) Issues in National Infrastructure Development from the Perspective of Law Number 32 of 2009

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Abstract: AMDAL (Environmental Impact Assessment) is an important issue to consider because it has serious implications for the environment. This research aims to understand the issues surrounding the presence of AMDAL in the development of national infrastructure, viewed from the perspective of Law No. 32 of 2009. This research employs a normative juridical method. The results of this study indicate that AMDAL holds a significant position in efforts to protect and manage the environment, as regulated by the Environmental Protection and Management Law (UU PPLH). However, there are still numerous problems with AMDAL in the activities or efforts of national infrastructure development, such as the complete absence of AMDAL in the process, reducing it to mere formality. Such AMDAL issues result in environmental damage and disruption to its sustainability and functionality. Therefore, serious law enforcement is necessary to address these issues to ensure the preservation of the environment.

Keywords : AMDAL, Infrastructure Development, Environmental Protection and Management Law (UU PPLH)

Introduction

Indonesia, a country striving to be recognized as a developed nation, is currently occupied with the construction of various national infrastructures. Efforts include building airports, ports, railways, hospitals, toll roads, and more. All these developments are closely related to the environment, meaning that all forms and attempts to add infrastructure and state facilities significantly impact environmental sustainability. The environment, a divine gift to all living beings, should motivate everyone to protect, utilize, and preserve it. As stated in Indonesia's constitution, natural resources must be used for the prosperity of the entire population. This also implies that future generations must sustainably benefit from the natural resources in Indonesia.

To achieve this, any form of development undertaken by the government in the name of the state must be carried out by balancing the utilization of natural resources with the benefits to the environment. The goal is, of course, to ensure that the people prosper both materially and spiritually (Taufiq, 2011, p. 1). Regarding environmental management and protection, the primary concern is licensing. Licensing can guide business operators in managing the environment. Environmental permits are inseparable from the obligation to have an Environmental Impact Assessment (EIA), a strategy to anticipate cases of environmental pollution. This strategy is realized through the establishment of regulations regarding the EIA, which must be adhered to by everyone in Indonesia. This means that business operators who wish to manage the environment must first obtain an EIA before applying for an environmental permit (Sukananda & Nugraha, 2020, p. 120).

According to Suparto Wijoyo, the principle of integrated environmental licensing should be based on good administrative procedures that align with good environmental governance (Wijoyo, 1999, pp. 328–329). Development activities in Indonesia will inevitably impact the environment. Articles 1, points 35 and 36 of the Environmental Protection and Management Law (EPM Law) regulate environmental and business/activity permits. Essentially, an environmental permit is a form of licensing granted to business operators or activities with the obligation of an EIA. This is done to protect and manage the environment, as having a business license is mandatory. A business license is a permit issued by a technical agency to conduct business or activities. If a business or activity plan requires an EIA, it means there are significant

environmental impacts. This is stipulated in Article 22, paragraph (2) of the EPM Law, which includes the number of people affected, the area affected, the intensity and duration, the impact on other parts of the environment, the cumulative and reversible nature of the impact, and other criteria aligned with technological developments (Yakin, 2017, pp. 114–115).

Without an EIA, it is impossible to propose an environmental permit. Such a permit is a prerequisite for applying for a business or activity license. In other words, if there is no EIA, the business operator cannot apply for an environmental or business license (Yakin, 2017, p. 115). Ironically, in Indonesia, many businesses or development activities proceed without an EIA. This means that many infrastructure development activities continue even though the required permits have not been issued. Additionally, permits are often issued easily without thorough monitoring and assessment of the EIA. As a result, the EIA process becomes merely a formality, conducted hastily, leading to vague and inadequate analysis when adverse environmental impacts occur. The core issue is not fully recognized by the government, which has the authority to issue permits. There is a phenomenon in the permit issuance process for businesses or activities related to the EIA assessment process. It is also necessary to consider whether it adheres to proper procedures and criteria (Lestari, 2020, p. 44).

Previous research related to this topic was conducted by Abdurrakhman and Yoga (2021). Their findings indicate that the development activities by PT. Usaha Jaya Karya Makmur had an impact on the local community and environment. Land processing eventually led to landslides, damaging residents' homes, and the dispute was resolved through civil litigation (Alhakim & Lubis, 2021). Another study by Satria and Danang (2020) concluded that the EIA plays a crucial role in environmental management, serving as an effort to prevent environmental damage and dysfunction. Legal enforcement against violations of EIA procedures can be carried out through administrative, civil, or criminal law methods (Sukananda & Nugraha, 2020). Research by Maudy (2020) concluded that the EIA is essential and must be the basis before executing a project or activity (Lestari, 2020).

The difference from previous research is that this study is more general, focusing on national infrastructure development without an EIA and the issues arising in the development process based on Law No. 32 of 2009.

Methods

The research method used is normative juridical. The author conducted the study through an approach based on primary and secondary legal sources relevant to this discussion (Anggraeni, 2021, p. 121). The author utilized primary data, specifically Law No. 32 of 2009 (EPM Law), in this research. Additionally, secondary data was obtained through literature studies, including materials or sources related to the discussion, such as articles, books, and other sources. This research is descriptive, explaining the events that occurred to obtain an overview consistent with the predetermined juridical basis (Alhakim & Lubis, 2021, p. 345).

Results and Discussion

The Urgency of Environmental Impact Assessment (AMDAL) in Infrastructure Development

Infrastructure development is one of the efforts to improve the welfare of society and accelerate economic development in Indonesia. The existence of infrastructure development has proven to facilitate activities in various regions of Indonesia. However, behind the positive aspects of infrastructure development, the significant negative impacts on the environment are substantial. This can occur when infrastructure development processes are not accompanied by environmental policy formulations, such as the absence of environmental permits based on AMDAL (Environmental Impact Assessment).

Infrastructure development in the country that is not based on AMDAL has led to poor environmental quality. For example, the conversion of land into industrial areas ultimately leads

to air, water, soil pollution, and other environmental components. In essence, AMDAL functions to provide information regarding specific business plans and their environmental impacts, gather suggestions and opinions, and information from the community related to environmental issues before starting development activities. This helps anticipate negative impacts on the environment.(Hefni, 2019)

In efforts to maintain environmental quality, AMDAL plays a crucial role in preventing damage to natural resources, particularly those that cannot be restored, and preventing negative impacts from projects that create community conflicts. It also aims to prevent environmental degradation, which could threaten the health, comfort, and safety of the community. AMDAL is essential in identifying forms of changes caused by infrastructure development activities to ensure they are part of the natural cycle's sustainability. As a tool for sustainable development and decision-making in project implementation stages, AMDAL should be an integral part of development initiatives. However, improper implementation of AMDAL mechanisms can create additional burdens.

Environmental Impact Assessment (AMDAL) is one of several preemptive tools in environmental management, continually strengthened through the enhancement of environmental management responsibilities during AMDAL document formation. This is crucial for obtaining environmental permits before business activities. According to the Environmental Protection and Management Law No. 32 of 2009, the right to a good and healthy environment is a manifestation of human rights as stated in Indonesia's constitution. As a continuation of human rights, the government has enacted legal products such as Law No. 32 of 2009 on Environmental Protection and Management (PPLH Law) after various evaluations, including those related to AMDAL.

The concept of AMDAL in the PPLH Law complements the idea of environmental protection. AMDAL emphasizes community participation in environmental democracy efforts and strengthens the decentralization authority of environmental agencies, especially in the AMDAL assessment process. To enhance AMDAL's quality, regulations on AMDAL maker certification are also stipulated in the PPLH Law. AMDAL is closely related to the requirements for obtaining environmental permits or business activity permits. The environmental permit is granted to business actors who will carry out activities related to the environment. In this regard, activities or businesses that require AMDAL aim to protect and manage the environment as conditions for obtaining permits for activities or businesses.

The definition of AMDAL in the PPLH Law is stated in Article 1 number 11, essentially as an analysis related to the significant effects of planning activities or businesses on the environment needed for decision-making mechanisms concerning business or activity implementation. AMDAL is one of the 13 instruments to prevent environmental pollution and damage. AMDAL is also mandatory for activities or projects with significant environmental impacts as stated in Article 22. Article 23 of the PPLH Law lists forms of activities that have significant impacts requiring an AMDAL document, including changes in natural and artificial environments, social and cultural activities, and conservation areas for natural resources and cultural heritage protection.

Furthermore, the AMDAL document serves as a basis for determining environmental feasibility decisions as stated in Article 24. The AMDAL document, as stated in Article 25, consists of six elements: impact studies from business or activity planning, evaluations in the area, inputs and responses from residents regarding the planning, predictions of the extent and critical nature of the impacts if the plan is carried out, comprehensive assessments of resulting impacts to determine environmental suitability, and a draft of environmental management and monitoring.

The AMDAL document is prepared by the initiator (assisted by others) with the participation of affected communities, environmental observers, and communities affected by all AMDAL process provisions as stated in Article 26. This is done based on providing comprehensive and

transparent information before activity or business implementation. the PPLH Law requires AMDAL preparers to have competency certificates covering methods of AMDAL preparation, the ability to carry out scope, estimate and evaluate impacts, and make decisions. Additionally, they must develop designs for environmental management and monitoring. The AMDAL document will be evaluated by the AMDAL Assessment Commission after obtaining licenses from relevant ministers, governors, or mayors adjusted to their authorities. In other words, without an AMDAL application, environmental permits cannot be granted..

Issues with AMDAL in Infrastructure Development

Activities or businesses that require AMDAL in infrastructure development must comply with these provisions. The consequences of development on the environment can disturb or even deprive the environment of its function in providing benefits and welfare to society. In line with Article 87 (1) of the PPLH Law, entrepreneurs who cause environmental pollution or destruction and harm to the community must compensate for losses as a form of responsibility.

In Indonesia, many infrastructure developments continue even without AMDAL. For example, the construction of the South Palu V bridge, which connects Anoa Road 2 and Nunu Village, Tatanga District. The bridge project is nearly complete, with a completion rate of 70%, but the process is carried out without AMDAL. The issue of AMDAL becomes crucial when infrastructure development has negative impacts on the environment and society. Many projects proceed despite the absence of environmental permits and AMDAL. In other cases, permits are easily issued without proper AMDAL assessment and monitoring, resulting in unclear analyses and potentially negative environmental impacts from future developments or activities.

In essence, the issues with AMDAL in infrastructure development boil down to two main problems: complete absence of AMDAL despite ongoing development and AMDAL being merely a formality. Both scenarios present negative consequences for the environment and society. The issue of AMDAL being a mere formality can be influenced by the lack of community involvement in the AMDAL document creation process. This necessitates a reevaluation of AMDAL documents. Community participation is regulated in Article 26 of the PPLH Law, ensuring that affected communities, environmental observers, and communities affected by AMDAL process decisions have the right to comprehensive and transparent information before development activities or businesses commence.

Additionally, the absence of community involvement during the AMDAL document creation can lead to environmental pollution or damage similar to the absence of AMDAL in development activities or projects. For example, the AMDAL issues of PT MSM/PT TTM in North Sulawesi have various problems, such as expired documents requiring reapplication and community controversies due to contamination in Teluk Buyat. Issues with the complete absence of AMDAL or its existence solely as a formality violate existing laws such as the PPLH Law. The AMDAL document will ultimately determine the environmental feasibility of development decisions as stated in Article 24 of the PPLH Law. For example, the AMDAL document for the Permanent Residence (Huntap) for disaster victims on September 28, 2018, has not been completed with an AMDAL document.

Furthermore, according to data from the Indonesian Supreme Audit Agency (BPK RI) cited by Koran Sindo (2017), there are 10 infrastructure projects without AMDAL, including flyovers and toll roads in Jakarta. The resolution of AMDAL issues in infrastructure development, whether complete absence or existence as a formality, can be seen administratively in the PPLH Law. Administrative sanctions are legal penalties that can be imposed by officials without passing through judicial processes against businesses or activities contrary to environmental laws. One example is violations in implementing business requiring AMDAL but lacking or not yet completed an AMDAL document.

Administrative lawsuits can be filed by individuals against administrative decisions (TUN) by bodies or TUN officials who issue environmental permits for businesses or activities requiring AMDAL but do not include AMDAL documents. The implementation of such a lawsuit

refers to the Administrative Law Procedure. Administrative sanctions are imposed on businesses or activities when there are violations of environmental permits issued by the Minister, Governor, or Mayor, including written warnings, coercive orders, freezing, or revocation of environmental permits in line with Article 76 of the PPLH Law.

The administrative sanctions under Article 76 of the PPLH Law do not absolve businesses or activities from their responsibility to restore the environment and criminal penalties according to Article 78. This means that administrative sanctions are applied before criminal sanctions, with cumulative external sanctions in environmental law enforcement. In essence, these sanctions must begin with written warnings as required, but Article 80 (2) of the PPLH Law states that administrative sanctions in the form of government coercion can be imposed without prior written warnings if the violation poses serious threats with significant consequences if not immediately stopped.

Administrative sanctions in the form of freezing or revocation of environmental permits are applied when businesses comply with government coercion. Additionally, in terms of punishment for each AMDAL preparer without a competency certificate for AMDAL preparation, they face a maximum prison sentence of 3 years and a maximum fine of 3M. Violators have violated Article 69 (1) (i) of the PPLH Law and deserve such sanctions (Article 110). For officials issuing environmental permits without AMDAL, they face a maximum prison sentence of 3 years and a maximum fine of 3M (Article 11 (1)). Officials in question have disregarded the provisions of Article 37 (1).

Conclusion

Based on the discussion, it can be concluded that the Environmental Impact Assessment (AMDAL) has a crucial role in the activities or businesses involved in the country's infrastructure development. It serves to determine the environmental feasibility and acts as an instrument to prevent environmental pollution or damage. AMDAL, as viewed from the Environmental Protection and Management Law (UU PPLH), holds a significant position in Indonesia's legal framework. This means that AMDAL is an aspect that cannot be overlooked when business actors or activities managing the environment aim to build national infrastructure. The regulations regarding AMDAL are contained in Articles 22 through 37 and other articles within the UU PPLH that mention "amdal." Additionally, the UU PPLH also stipulates sanctions against AMDAL violators, whether criminal, civil, or administrative. The core issues with AMDAL in infrastructure development in Indonesia consist of two main points: infrastructure development that proceeds without AMDAL and development with AMDAL that is merely a formality. In other words, AMDAL in the country's infrastructure development activities has not fully received serious attention from either the government or business actors or activities. The resolution of AMDAL issues can be carried out through administrative or criminal sanctions as stipulated in the articles of the UU PPLH. The enforcement of these sanctions, as intended by the UU PPLH, is aimed at violators related to AMDAL documents, whether they are business actors/activities or officials who issue environmental permits without accompanying AMDAL documents.

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