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## *Implementation of Article 491 Paragraph 1 Criminal Code Against Perpetrators Abandonment of Crazy People in Ternate City*

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### **Abstract**

*Responsibility of the EIA Consultant in Making Analysis Regarding Environmental Impact". Supervised by Rusdin Alaudin and Dahlai Hasim. This study aims to (1) determine the responsibilities of the Amdal Consultant in making an Environmental Impact Analysis and (2) to determine the factors that influence the implementation of an environmental impact analysis. This type of research is a normative juridical law research type, namely research by using basic analysis of primary data sources and secondary data. While the type of research is qualitative by using a descriptive analysis approach. The results show that the consultant's responsibility for environmental impact analysis here is the consultant's duty to make or compile an environmental impact analysis, while the project owner as the party who has an environmental impact analysis activity plan in connection with the project has an important impact on the environment. For this reason, each EIA consultant must be responsible for all the data it produces, so the consultant must be careful in making an analysis of environmental impacts. This responsibility concerns compensation if the consultant makes errors and omissions in making data analysis. Factors influencing the implementation of the analysis of environmental impacts are problems that have not been accommodated by the provisions that are considered to contain certain weaknesses, such as the linkage of AMDAL with licensing, the mechanism for linking AMDAL and the community as implementing people's participation in the decision-making process, and methods of collecting information capable of providing identification of various environmental influences and impacts. Another obstacle The AMDAL consultant does not accept the risk due to environmental impacts outside of the AMDAL and is returned to the Government and the Proponent itself because these impacts are caused by the workers themselves or natural events.*

**Keywords:** *Consultant, Impact, Environment.*

### **Abstrak**

Tanggung Jawab Konsultan AMDAL dalam Membuat Analisis. Tentang Dampak Lingkungan". Dibimbing oleh Rusdin Alaudin dan Dahlai Hasim. Penelitian ini bertujuan untuk mengetahui tanggung jawab Konsultan Amdal dalam membuat Analisis Mengenai Dampak Lingkungan dan (2) untuk mengetahui faktor-faktor yang mempengaruhi pelaksanaan analisis mengenai dampak lingkungan . Jenis penelitian ini adalah jenis penelitian hukum yuridis normatif, yaitu penelitian dengan menggunakan analisis dasar sumber data primer dan data sekunder. Sedangkan jenis penelitiannya adalah kualitatif dengan menggunakan pendekatan deskriptif analisis. Hasil penelitian menunjukkan bahwa tanggung jawab konsultan analisis mengenai dampak lingkungan disini adalah tugas konsultan untuk membuat atau menyusun analisis mengenai dampak lingkungan,

Untuk itu setiap konsultan AMDAL harus bertanggung jawab atas semua data yang dihasilkannya, sehingga konsultan harus berhati-hati dalam membuat analisis mengenai dampak lingkungan. Tanggung jawab ini menyangkut kompensasi jika konsultan melakukan kesalahan dan kelalaian dalam melakukan analisis data. Faktor yang mempengaruhi pelaksanaan analisis mengenai dampak lingkungan adalah permasalahan yang belum terakomodasi oleh ketentuan yang dianggap mengandung kelemahan tertentu, seperti keterkaitan AMDAL dengan perizinan, mekanisme penautan AMDAL dan masyarakat sebagai pelaksana partisipasi masyarakat dalam proses pengambilan keputusan, dan metode pengumpulan informasi yang mampu memberikan identifikasi berbagai pengaruh dan dampak lingkungan. Kendala lain Konsultan AMDAL tidak menerima risiko akibat dampak lingkungan di luar AMDAL dan dikembalikan kepada Pemerintah dan Pemrakarsa sendiri.

**Kata Kunci:** Konsultan, Dampak, Lingkungan

## PRELIMINARY

The environment is a gift from God in which humans carry out various activities, interact with other existing components in order to maintain their survival. Initially the environment was an environment that had existed naturally, but in its development, humans made changes in such a way that it gave rise to new things due to human intervention. The human ability to change nature and create new things also affects the balance of the environment. And if the environmental balance is disturbed, within a certain time it will cause a back reaction from nature which can then lead to disaster.

Environmental sustainability is now one of the biggest problems faced by humans. In fact, it has become a problem that penetrates national boundaries, and puts human existence on the face of the earth. Humans are only one element in the chain of life on earth, which causes dependence on the planetary system as a life support system. The nature of human dependence on the environment is controlled by the laws of ecology. Environmental damage has become a very urgent problem to be handled immediately for human life, because in this case humans are the perpetrators as well as the victims. This kind of situation makes the environment threatened by a potential environmental crisis<sup>1</sup>.

Environmental issues formally only became the world's attention after the United Nations (UN) conference on the environment, which was held from 5 to 16 June 1972 in Stockholm Sweden, was known as the United Nations Conference on Human Environment<sup>2</sup>. The conference succeeded in producing international agreements in dealing with environmental issues, and in developing environmental law at the national, regional and international levels. This declaration recognizes the human right to enjoy a good and healthy environment or the right of everyone to protect against environmental pollution or Environmental protection<sup>3</sup>. To adapt to the rapid development of the times and the needs of environmental law, Law Number 4 of 1982 concerning Principles of Environmental Management (hereinafter referred to as UULH) after being in effect for approximately 15 years was renewed into Law Number 23 of 1997 concerning Environmental Management. Life (hereinafter referred to as UUPLH)

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<sup>1</sup> Syahrul Mahmud, *Penegakkan Hukum Lingkungan Indonesia, Penegakan Hukum Administrasi, Hukum Perdata, Dan Hukum Pidana Menurut Undang-Undang No. 32 Tahun 2009* (Yogyakarta: Graha Ilmu, 2012).

<sup>2</sup> Munadjat Danusaputro ST, *Hukum Lingkungan Buku I, Nasional* (Bandung: Bina Cipta, 1985).

<sup>3</sup> ST.

which regulates sustainable and sustainable environmental management. Furthermore, this UUPPLH on October 3, 2009 has been changed to the Law on Environmental Protection and Settlement Number 32 of 2009 hereinafter referred to as UUPPLH. The UUPPLH applies as an umbrella or umbrella act or umbrella provision or in legal science it is called *cadrewet* or *raamwet*, because only the basic provisions are regulated. Therefore, it must be supported by many implementing regulations<sup>4</sup>. Regarding environmental problems, a global mindset is needed, but the steps and actions that need to be taken in the context of environmental management are local. The key to environmental policy lies in determining the necessary means for operational measures<sup>5</sup>.

Environmental law is a juridical instrument that contains rules on environmental management aimed at preventing depreciation and deterioration of environmental quality<sup>6</sup>. Danu Saputro said that environmental law is a concept of environmental studies that specializes in legal science, with the object of the law being the level of protection as a necessity of life. All regulations regarding the environment are basically intended so that nature can be utilized for the benefit of the welfare of mankind at this time and which is no less important for the benefit of the welfare of mankind in the future (sustainable development). In other words, the making of UUPPLH and other sectoral regulations are intended or inspired to save the environment. As it is known that the Indonesian environment has suffered various damages which are very worrying and for that, adequate regulation is needed<sup>7</sup>.

Indonesia is a country rich in resources, especially natural resources. This is one of the capitals to carry out development that aims to improve people's welfare. However, natural resources are something that is limited, while population growth is not proportional to the availability of natural resources.

Malthus predicted that the progress of population to increase in quantity was greater than the ability of natural resources to provide human food needs. Therefore, the use of natural resources must pay attention to its availability in the future. For this reason, wisdom and accuracy and prudence are needed in managing natural resources so that they can be utilized properly to achieve the aspired goals<sup>8</sup>.

The use of natural resources must be harmonized and harmonized with environmental sustainability, which means that the use of natural resources should not cause damage and pollution to the environment, as well as other economic improvement efforts carried out by both the government and the private sector are required to pay attention to aspects of environmental conservation.

Sustainable development according to Law No. 32/2009 concerning (PPLH) is a conscious and planned effort that integrates environmental, social and economic aspects into a

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4 Mahmud.hal 2

5 Daud Silalahi, *Hukum Lingkungan Dalam Sistem Penegakkan Hukum Lingkungan Indonesia* (Bandung: Alumni, 2001).

6 ST.opcit hal 168

7 Mahmud.opcit hal 3

8 Muhamad Erwin, *Hukum Lingkungan Dalam Sistem Kebijakan Pembangunan Lingkungan Hidup* (ba: RefikaAditama, 2008).

development strategy to ensure the integrity of the environment as well as the safety, capabilities, welfare, and quality of life of the present generation and future<sup>9</sup>.

Environmentally sound development is a principle with a modern environment, this is in line with Law No. 32/2009 concerning (PPLH). This is as contained in Article 1 point 3 which states that sustainable development is a conscious and planned effort that integrates environmental, social and economic aspects into a development strategy to ensure the integrity of the environment as well as the safety, capability, welfare, and quality of the present and future generations. future generation.

One way in development, the company must make an Environmental Impact Analysis (AMDAL), Environmental Monitoring Business (UPL), as well as Environmental Management Business (UKL) and Environmental Licensing. So it is expected to minimize the impact of environmental damage. Article 3 PP No. 27 of 1999 concerning AMDAL, businesses and/or activities that are likely to have a major and significant impact on the environment include:

1. changing land forms and landscapes.
2. exploitation of natural resources, both renewable and non-renewable.
3. processes and activities that can potentially lead to waste, pollution and environmental damage, as well as deterioration of natural resources in their utilization.
4. processes and activities whose results can affect the natural environment, the artificial environment, as well as the social and cultural environment.
5. processes and activities whose results will affect the conservation of resource conservation areas and/or the protection of cultural heritage.
6. introduction of plant species, animal species, and micro-organisms.
7. manufacture and use of biological and non-biological materials.
8. The application of technology which is estimated to have great potential to affect the environment.
9. activities that have a high risk, and or affect the defense of the state.

Preparation of documents for obtaining environmental permits which are prepared and compiled by the company, and can be assisted by consultants. This is as regulated in the Minister of Environment Regulation Number 11 of 2008 concerning Competency Requirements in Compiling Environmental Impact Analysis Documents and Requirements for Competency Training Institutions for Compiling Environmental Impact Analysis Documents contained in Article 1 number 2, namely Institutions providing services for preparing AMDAL documents is a legal entity that is engaged in the field of AMDAL document preparation services.

Amdal is probably the term most widely known by the public. After more than 20 years in circulation, the Amdal is known to the general public as a device that protects the environment from pollution and damage. When there are environmental cases that arise, what various parties ask is the Amdal of the activity concerned, but among environmental practitioners or observers, many have become cynical about Amdal and its benefits, or have even played down the meaning of this tool.

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<sup>9</sup> Marhaeni Ria Siombo, *Hukum Lingkungan Dan Pelaksanaan Pembangunan Berkelanjutan Di Indonesia* (Jakarta: Gramedia Pustaka Utama, 2012).

The EIA apparatus, which is plagued by various weaknesses and chronic problems, is considered to have failed to contribute to the prevention of environmental damage and pollution. There are also those who think that EIA has been plagued by weak accountability issues for too long, from the initiator, consultants, and decision makers. Various criticisms have been made and various efforts have been made by the government to improve EIA in Indonesia, but the results have not been satisfactory. As a result, EIA is often no longer considered a promising tool<sup>10</sup>.

The problems that plague Indonesia's EIA are a reflection of the multidimensional problems that plague this country. These include weak law enforcement, unsystematic development planning processes (especially in the regions), and central-regional relations that are still not well established, as well as partial attention to environmental problems. As long as these matters have not been resolved, then the EIA cannot be expected to be optimal. The EIA approval process has become an arena for collusive practices, which occur due to gaps (and gray areas) in the regulations, weak ethics, and the lack of allocation of government funds to manage the environment. Combating misbehavior by government officials (who ask for funds for approval of Amdal documents or even to prepare Amdal documents), punishing Amdal consultants (who intentionally alter or manipulate environmental data and cover up the actual results of the study)<sup>11</sup>.

In the pre-survey that the author carried out, each EIA consultant must be responsible for all the data it creates so that the Amdal consultant in Ternate City must be careful in making an analysis of environmental impacts. make data analysis. The power of attorney can directly appoint the person appointed by the power of attorney as his successor.

The explanation above is very clear that the responsibility of the Amdal consultant is very large. So that the AMDAL formulated by the AMDAL consultant must be based on the environment in accordance with what is expected by the community, so that there is no longer a polemic between the company and the community.

Based on the description of the background above, the authors feel interested in conducting research with the title "Responsibility of the Amdal Consultant in Making Environmental Impact Analysis.

## RESEARCH METHODS

### 1. Research Type

This type of research is a normative juridical research type, namely research by using basic analysis of primary data sources and secondary data.

- a. Primary Data is empirical data obtained from respondents by means of a field search, the data includes factors that are directly correlated with the responsibility of the AMDAL consultant on Environmental Impact Analysis
- b. Secondary data is data obtained through literature studies such as books, newspapers, research results or other data elements.

### 2. Data Types And Sources

- a. Data Type

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<sup>10</sup> Iwan j AZIZ and DKK, *Pembangunan Berkelanjutan (Peran Dan Kontribusi Emil Salim)* (Jakarta: Gramedia Pustaka Utama, 2010).

<sup>11</sup> AZIZ and DKK, opcit hal. 240-241

Because the author's research type is juridical-empirical research, the types of data used in this study are primary data types and secondary data types. The primary data that the author uses is data directly obtained from the results of interviews with related parties. Secondary data are all types of data that can support research based on the title that the author adopts<sup>12</sup>.

b. Data Source

The data sources in this study are divided into two, namely primary data sources and secondary data sources. The primary data source is the result of observations made in the field. The secondary data sources are various analytical materials from the results of library studies.

### 3. Data collection technique

Data collection techniques that the authors use in this study are:

a. Observation

The author uses observational studies by observing and recording material or data obtained through various literatures written by experts in the form of scientific knowledge, or new understandings of known facts and understanding of an idea (ideas) in the form of books, research reports, thesis, theses, dissertations and other things that are certainly related to the problems raised by the author.

b. Study Documentation

Documentation methods are all kinds of sources of information related to documents, whether in a report, official letters or daily newspapers, diaries and the like, both published and unpublished.

### 4. Data Analysis Technique

To produce conclusions that are truly accurate, reliable, and scientifically correct according to the title of the author's research, the data analysis technique that the author obtained through literature study is then processed and analyzed qualitatively using deductive methods.

The deductive method in question is a form of analysis with a starting point from things that are general in nature, then concluded into things that are specific. This method is used to conclude things that are very general to specific things.

## DISCUSSION

### 1. Definition of Responsibility

Big Indonesian Dictionary (KBBI) responsibility is the obligation to bear everything, if anything happens, it can be prosecuted, blamed, and brought to justice<sup>13</sup>. In the legal dictionary, responsibility is a must for someone to carry out what has been required of him. Responsibility in the science of law is a consequence of the consequences of a person's freedom regarding his actions related to ethics or morals in carrying out an act<sup>14</sup>. Responsibility is natural, meaning that it has become part of human life, that every human being is burdened with responsibility. When examined, responsibility is an obligation that must be borne as a result of the actions of the party who did it. Responsibility is a characteristic of civilized human beings. Humans feel responsible because they are aware of the good or bad consequences of their actions, and also

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<sup>12</sup> Amirudin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2012).

<sup>13</sup> Andi Hamzah, *Kamus Hukum* (Ghalia Indonesia, 2005).

<sup>14</sup> Soekidjo Notoatmojo, *Etika Dan Hukum Kesehatan* (Jakarta: Rineka Cipta, 2010).

realize that the other party needs a trial or sacrifice<sup>15</sup>.

Furthermore, according to the Quarterly Point, accountability must have a basis, namely things that cause a legal right for a person to sue another person at the same time in the form of things that give birth to other people's legal obligations to provide accountability<sup>16</sup>.

According to civil law, basic liability is divided into two types, namely errors and risks. Thus, it is known as liability without based on fault and liability without known fault, which is known as risk responsibility or absolute liability (strict liability) the basis of responsibility on the basis of error implies that a person must be responsible because he made a mistake because it harmed other people. On the other hand, the principle of risk responsibility is that the plaintiff's consumer is no longer required but the defendant's producer is directly responsible for the business risk.

Abdulkadir Muhammad theory of responsibility in breaking the law (tort liability) is divided into several theories, namely<sup>17</sup>:

- a. Responsibility due to unlawful acts committed intentionally (intentional tort liability), the defendant must have committed an act in such a way as to harm the plaintiff or know that what the defendant did would result in a loss.
- b. Liability due to unlawful acts committed due to negligence (negligence tort liability), is based on the concept of fault related to morality and law that has been mixed (intermingled).
- c. Absolute responsibility for violating the law without questioning the error (strict liability), based on his actions either intentionally or unintentionally, meaning that even though it is not his fault he is still responsible for the losses that arise as a result of his actions.

## 2. Concept of Environmental Impact Analysis

### a. Understanding Amdal

The concept of EIA which studies the impact of development on the environment and the impact of the environment on development is also based on the concept of ecology which is generally defined as the study of the interaction between living things and their environment<sup>18</sup>. Government Regulation No. 27/1999 on AMDAL as regulated in Article 1 as follows<sup>19</sup>:

AMDAL is a study of the major and significant impacts of a business and or activity caused by a plan and or activity.

#### 1) Number of people affected,

The number of people affected becomes important if the number of people in the AMDAL study area who are affected by the environment but do not enjoy the benefits of the business or activity, are equal to or greater than the number of people who enjoy the benefits of the business or activity in the area.

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<sup>15</sup> 'Manusia Dan Tanggung Jawab', *BaguspemudaIndonesia.Blogdetik.Com* <<http://baguspemudaIndonesia.blogdetik.com/2011/04/20/manusia-dan-tanggung-jawab/>> [accessed 8 July 2015].

<sup>16</sup> Titik Triwulan and Shinta Febrian, *Perlindungan Hukum Bagi Pasien* (Jakarta: Prestasi Pustaka, 2010). hal 49

<sup>17</sup> Abdulkadir Muhammad, *Hukum Perusahaan Indonesia* (Citra Aditya Bakti, 2010).hal 503

<sup>18</sup> Otto Soemarwoto, *Analisis Mengenai Dampak Lingkungan* (Yogyakarta: Gadjah Mada University Press).hal37

<sup>19</sup> Pemerintah Republik Indonesia, *Peraturan Pemerintah Nomor 27 Tahun 1999 Tentang AMDAL* (Indonesia: Lembaran Negara Republik Indonesia, 1999).

- 2) The area of impact distribution  
A business plan or activity is important if it results in an area undergoing fundamental changes in terms of impact intensity, impact irreversibility, cumulative impact.
- 3) The duration of the impact  
It is said to be important if the planned business or activity results in a fundamental change in terms of impact intensity or irreversibility of impacts, or cumulative impacts that only occur in one or more stages of activity.
- 4) Impact intensity  
The environmental changes that arise are severe, or drastic, taking place over a relatively large area, in a relatively short period of time.
- 5) The number of other environmental components that will be affected  
The business plan or activity causes secondary impacts and other follow-up impacts whose components are more or equal to the environmental components affected by the primary impact.
- 6) The cumulative nature of impact  
Cumulative has the meaning of increasing, piling up or piling up. The impact of a business or activity is said to be cumulative if at first the impact is not visible or is not considered important, but because the activity works repeatedly or continuously, over time the impact is cumulative.
- 7) Reversal or non-reversal of impact  
Changes that will be experienced by an environmental component cannot be reversed even with a. The major and significant impacts in question are very basic environmental changes caused by a business and or activity. Guidance on the size of large and significant impacts in accordance with Agency Decisions

Environmental Impact Control Number 56 of 1994 concerning Guidelines on Significant Impacts are as follows:

a) human intervention

The definition of Environmental Impact Analysis (AMDAL) as regulated in Article 1 point (11) of Law No. 32/2009, 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 the implementation of a business and/or activity. /or activities<sup>21</sup>. This is in line with the definition of EIA as stated in Article 1 number (2) of Government Regulation Number 27 of 2012 concerning Environmental Permits. 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 the implementation of a Business and/or Activity. /or Activities<sup>20</sup>.

Amdal according to Ministerial Regulation No. 16 of 2012 concerning Guidelines for the Preparation of Environmental Documents is a study of the significant impact of a planned Business and/or Activity on the environment that is required for the decision-making process regarding the implementation of a Business and/or Activity<sup>21</sup>.

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20 Pemerintah Republik Indonesia, *Peraturan Pemerintah Nomor 27 Tahun 2012 Tentang Izin Lingkungan* (Indonesia: Lembaran Negara Republik Indonesia, 2012).

21 Pemerintah Republik Indonesia, *Peraturan Menteri No 16 Tahun 2012 Tentang Pedoman Penyusunan Dokumen Lingkungan Hidup* (Indonesia: Lembaran Negara Republik Indonesia, 2012).



Otto Soemarwoto<sup>22</sup> Amdal is a tool for planning preventive actions against environmental damage that may arise from a construction activity. According to Munn<sup>23</sup> Amdal is an activity (study) carried out to identify, predict, interpret, and communicate an activity plan (project) to the environment. Meanwhile, David Silalahi<sup>24</sup> provide an understanding that EIA is a scientifically powerful predictive tool to provide forecasts and early warnings on possible risks, or hazards and on the other hand can act as a means of development to prevent and reduce and control negative environmental impacts.

AMDAL is a study of the positive and negative impacts of a planned activity/project, which is used by the government in deciding whether an activity/project is environmentally feasible or not. The positive and negative impact studies are usually prepared by considering the physical, chemical, biological, socio-economic, socio-cultural and public health aspects. An activity plan can be declared environmentally unfit, if based on the results of the AMDAL study, the negative impacts that arise cannot be overcome by the available technology. Likewise, if the costs needed to overcome the negative impacts are greater than the benefits from the positive impacts that will be generated, then the planned activity is declared environmentally unfit. An activity plan which is determined to be unsuitable for the environment cannot be continued construction<sup>25</sup>. This EIA is an analytical activity that must be carried out when we are going to plan and design a project for consideration to make decisions<sup>26</sup>. Environmental Impact Analysis (AMDAL) according to the Environmental Dictionary what is meant by<sup>27</sup>:

- 1) Amdal is the result of a study on the significant impact of a planned business or activity on the environment that is required for the decision-making process.
- 2) Integrated/multi-sector Amdal is the result of a study on the significant impacts of an integrated planned business or activity on the environment in a single ecosystem overlay and involves the authority of more than one responsible agency.
- 3) Regional Amdal is the result of a study on the significant impact of a planned business or activity on the environment in a single ecosystem overlay and involves the authority of a responsible agency.

Thus Azis, Iwan J<sup>28</sup> believes that EIA has many weaknesses, both in the draft legislation, understanding and practice.

b) Concept of Environment

What is meant by environment is the sum of all living and inanimate objects and all conditions in the environment. According to Law No. 4/1982 concerning Basic Provisions for Environmental Management, Law No. 10/1992 concerning Population Development and Development of Prosperous Families, Law No. 23/1997 concerning Environmental Management, states that the environment is a unitary space with all objects, forces,

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22 Otto Soemarwoto, *Ekologi Lingkungan Hidup Dan Pembangunan* (Jakarta: Djambatan, 1999).hal 36

23 Daud Silalahi, *AMDAL Dalam Sistem Hukum Lingkungan Di Indonesia (Analisis Mengenai Dampak Lingkungan)* (Bandung: Mandar Maju, 1995). Hal 23

24 Mahmud.opcit. hal 183

25 Kementerian Lingkungan Hidup, *Tanya Jawab AMDAL* (Jakarta: Kementerian Lingkungan Hidup Republik Indonesia, 2004). Hal 1

26 'Pengertian AMDAL Menurut Para Ahli', *Duniapelajar.Com*.

27 H.A. Mustofa, *Kamus Lingkungan* (Jakarta: Rineka Cipta, 2005).hal 8

28 AZIZ and DKK.. opcit. Hal 238

conditions, and living things, including humans and their behavior that affect the survival and welfare of humans and other living creatures<sup>29</sup>.

Otto Soemarwoto<sup>30</sup> argued that in English the term environment is environment. Furthermore, it is said, the environment or the living environment is everything that exists in every living thing or organism and affects its life. For example, in animals such as cats, everything around the cat and affects the cat's survival is the environment. Likewise, in a certain type of plant, for example a mango tree or rice in a rice field, everything that affects the growth or life of the plant is its environment.

ST. Munajat Danusaputra<sup>31</sup> The environment is all objects and conditions including humans and their activities, which are contained in the space where humans are located and affect the survival and welfare of humans and other living organisms.

Furthermore, how about the human environment, of course we can conclude that basically it depends on what and who is in the spotlight and the study. If humans are in the spotlight or study, their environment is everything from the air touching their noses to celestial bodies hundreds of millions of kilometers from the planet earth. So, it can be concluded that the environment or the living environment is everything (objects, circumstances, situations) that exist around living things and affect the life (nature, growth, distribution) of the living things concerned.

The environment both biotic and abiotic factors influence and are influenced by humans. Everything in the environment can be used by humans to meet the needs of human life because the environment has a carrying capacity. Environmental carrying capacity is the ability of the environment to support human life and other living things on earth.

Under natural conditions, the environment with all the various interactions that exist is able to balance the situation. However, it is possible, such conditions can change with human intervention with all activities to fulfill needs that sometimes exceed limits. Natural environmental balance can take place due to several things, namely the components involved in the action-reaction and play a role according to the balance conditions, energy transfer (energy flows), and biogeochemical cycles can take place. The environmental balance can be disturbed if there is a change in the form of a reduction in the function of the component or the loss of some components that can cause a break in the chain in an ecosystem.

### **3. Purpose and Procedure for Preparation of AMDAL**

The purpose of environmental management is the implementation of development environmentally sound and controlled use of natural resources wisely. In order for this goal to be achieved, from the beginning, planning must predict changes in environmental conditions, both positive and negative, so that management steps can be prepared, ways to assess changes in these conditions through EIA studies.

In a development activity, a feasibility study generally includes an analysis of the technical and economic aspects. For businesses or activities that have a large and significant impact on the environment, an environmental feasibility study must be added. Therefore, the

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29 Pemerintah Republik Indonesia, *Undang-Undang No 23 Tahun 1997 Tentang Pengelolaan Lingkungan Hidup* (Indonesia: Lembaran Negara Republik Indonesia, 1997).

30 Soemarwoto, *Analisis Mengenai Dampak Lingkungan*. Hal 13

31 Otto Soemarwoto, *Lingkungan Hidup Dan Pembangunan* (Bandung: Djambatan, 2001). Hal 15

Amdal must be prepared and get approval before any construction/development activities are carried out. AMDAL aims to examine the possibility of changes in environmental conditions both from the aspect of geology, physics, chemistry, biology and socio-economic culture, public health, due to a development activity.

The form of the results of the AMDAL study is an AMDAL document consisting of 5 (five) documents, namely the Environmental Impact Analysis Terms of Reference (KAANDAL), Environmental Impact Analysis Documents (ANDAL), Environmental Management Plan Documents (RKL), Environmental Monitoring Plan Documents Life (RPL), Executive Summary Document i.e.<sup>32</sup>:

a. Terms of Reference for Environmental Impact Analysis (KA-ANDAL)

KA ANDAL is the scope of the ANDAL study that is mutually agreed upon between all relevant parties, namely the initiator, AMDAL drafters, the community and government agencies responsible for the activity. The ANDAL KA serves as a guide for all parties, both in the preparation of the ANDAL and in the evaluation of the study document. KA ANDAL is the end result of a scoping process that includes various important activities of a business plan or activity that can have a major and significant impact on the environment, various parameters that will be affected by the impact, the scope of the study area and the time scope.

b. Environmental Impact Analysis (ANDAL)

In the process of preparing the ANDAL, the important steps that must be carried out by the AMDAL compiler are:

- 1) Collecting data and information on planned activities and baseline environmental assessments. This data must be in accordance with what is stated in the TOR ANDAL.
- 2) Projection of changes in the initial environmental setting as a result of the planned activity. It is known that the condition or quality of the environment without a project will change according to time and space. Likewise, the condition or quality of the environment will experience greater changes with the activity of an activity according to space and time. The difference in the magnitude of the change between “with the project” and “without the project” is what is called the environmental impact.
- 3) Determination of significant impacts on the environment due to planned activities. Based on the results of the impact estimates carried out from the two impacts above, it can be seen that there are various important impacts that need to be evaluated.
- 4) Evaluation of significant impacts on the environment. Significant impacts are evaluated in terms of the cause and effect of the impact, the characteristics and characteristics of the impact, as well as the pattern and extent of the impact. The results of this evaluation will become the basis for determining the steps for environmental management and monitoring later. In the process of preparing the ANDAL, the important steps that must be carried out by the compilers of the AMDAL are:
  - a) Collecting data and information about the activity plan and initial environmental baseline. This data must be in accordance with what is stated in the TOR ANDAL.
  - b) Projection of changes in the initial environmental setting as a result of the planned activity. It is known that the condition or quality of the environment without a project will change according to time and space. Likewise, the condition or quality of the environment will experience greater changes with the activity of an activity according

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<sup>32</sup> Helneliza, ‘Evaluasi Dokumen AMDAL’ (Unand Padang, 2006). Hal 24

to space and time. The difference in the magnitude of the change between “with the project” and “without the project” is what is called the environmental impact.

- c) Determination of significant impacts on the environment due to planned activities. Based on the results of the impact estimates carried out from the two impacts above, it can be seen that there are various important impacts that need to be evaluated.
- d) Evaluation of significant impacts on the environment. Significant impacts are evaluated in terms of the cause and effect of the impact, the characteristics and characteristics of the impact, as well as the pattern and extent of the impact. The results of this evaluation will become the basis for determining future environmental management and monitoring measures.

c. Environmental Management Plan (RKL)

RKL is a document that contains efforts to prevent, control and overcome significant negative environmental impacts as well as maximize the positive impacts that occur as a result of an activity plan.

Soeryo Adiwibowo<sup>33</sup> the main principles of environmental management, namely:

- 1) Efforts to prevent significant impacts while at the same time increasing business efficiency and reducing risks to humans and the environment must be a top priority.
- 2) Environmental management efforts must be an integral part of the overall organizational management system and must be continuously integrated into production processes, products and services.
- 3) Environmental management efforts must be the responsibility of all management and employees of the organization according to their respective duties and functions
- 4) Environmental management efforts must open up sufficient space for the surrounding community to be involved in environmental management. Environmental management by involving the community must be oriented towards environmental management as well as community needs as well as in planning, implementing, monitoring and evaluating programs that will be implemented together with the community.

5) Environmental Monitoring Plan (RPL)

RPL is a document containing monitoring programs to see environmental changes caused by impacts originating from planned activities. The results of this monitoring are used to evaluate the effectiveness of environmental management efforts that have been carried out, the proponent's compliance with environmental regulations and can be used to evaluate the accuracy of the impact prediction used in the ANDAL study.

Soeryo Adiwibowo, environmental monitoring must be designed in such a way as to provide periodic input or information on the following matters:

- 1) Effectiveness of efforts to prevent negative significant impacts
- 2) Changes in business efficiency
- 3) Anticipate early environmental risks that will arise
- 4) The effectiveness of the built management system
- 5) Environmental quality

Environmental management is an integrated effort to preserve environmental functions which includes policies for structuring, utilizing, developing, maintaining, recovering,

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<sup>33</sup> Suryo Adiwibowo, 'Gagasan Penguatan AMDAL Sebagai Instrumen Pengelolaan Lingkungan Hidup' (Yogyakarta: PPLH, 2004), p. 36.

supervising and controlling the environment (Article 1 paragraph (2) of Law No. 23/1997). It is further stated in Article 3 of UU P LH No. 23/1997, that environmental management which is carried out with the principles of responsibility, sustainability and benefit principles aims to realize sustainable development with an environmental perspective in the context of developing Indonesian people as a whole and the development of Indonesian society as a whole who believe and have faith in God Almighty. And the target for this environmental management is (Article 4 UUP LH No. 23/1997)<sup>34</sup>:

- 1) The achievement of harmony and balance between humans and their environment.
- 2) The realization of Indonesian people as environmental people who have attitudes and actions to protect and foster the environment.
- 3) Ensuring the interests of current and future generations
- 4) Achievement of environmental function sustainability.
- 5) Controlled use of resources wisely.
- 6) The protection of the Unitary State of the Republic of Indonesia against the impact of businesses and/or activities outside the territory of the State causing pollution and/or environmental destruction

d. Executive Summary

The Executive Summary is a document that briefly and clearly summarizes the results of the ANDAL study. The thing that needs to be conveyed in the executive summary is usually a brief description of the size of the AMDAL and the significance of the impacts studied in the ANDAL and the environmental management and monitoring efforts that will be carried out to manage these impacts.

#### 4. Stakeholders With Amdal

There are three parties with an interest in AMDAL, namely<sup>35</sup>:

a. Government Apparatus

Government officials with an interest in AMDAL can be distinguished between the responsible agency and the related agency. The responsible agency is the agency that has the authority to make decisions on environmental feasibility with the understanding that the authority at the central level rests with the head of the agency tasked with controlling environmental impacts and at the regional level lies with the Governor. This environmental feasibility decision is intended to protect the interests of the people and conformity with sustainable development policies. To make decisions, the government needs information that can be accounted for, both from the owner of the activity/initiator and from other interested parties. The information is arranged systematically in the AMDAL document. This document is assessed by the AMDAL Assessment Commission to determine whether the information contained in it can be used for decision making and to assess whether the planned activity can be declared feasible or not based on an environmental feasibility criterion that has been set by a Government Regulation.

b. Initiator

The initiator is any person or government agency that is responsible for a business and/or activity to be implemented. From the point of view of the initiator, basically it is

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<sup>34</sup> Pemerintah Republik Indonesia, *Undang-Undang No 23 Tahun 1997 Tentang Pengelolaan Lingkungan Hidup*. <sup>35</sup> Niniek Suparni, *Pelestarian Pengelolaan Dan Penegakan Hukum Lingkungan* (Jakarta: Sinar Grafika, 1994).p100-107

necessary to distinguish between internal and external decision-making processes. In the internal decision-making process the initiator faces the question of whether he or she will initiate an activity plan and implement it. It is the initiator who is obliged to carry out the AMDAL study. Although the initiator may appoint other parties such as environmental consultants to assist in carrying out the AMDAL study, the responsibility for the results of the study and implementation of the AMDAL provisions remains with the activity initiator.

c. Society

The community of interest is the community that is affected by all forms of decisions in the AMDAL process. The community has a very important position in the AMDAL which is equal to the position of other parties involved in the AMDAL. In the AMDAL study, the community is not a study but is a subject who participates in the decision-making process on matters related to AMDAL.

Interested communities can be based on reasons, among others, as follows: proximity of living distance to business and/or activity plans, economic influence factors, socio-cultural influences. Attention to the environment. And or factors influence the values or norms that are believed. According to PP 27/2012 Article 9, what is meant by people who have an interest in the Amdal process are people who are affected, environmentalists and/or who are affected by all forms of decisions in the Amdal process. Community participation in the EIA process is carried out through commission sessions, announcements of business and/or activity plans as well as public consultations. Amdal is required to announce its planned activities to the community for socialization or public consultation. Announcements are made by the activity initiator and the responsible agency. Minimum announcement time is 10 working days. Procedures and announcements as well as procedures for the form of submission, opinions and responses are regulated in the Regulation of the State Minister of the Environment No 17/2012 concerning Guidelines for Community Involvement in the Process of Environmental Impact Analysis and Environmental Permits<sup>36</sup>.

In this process, the community conveys their aspirations, needs, values that are owned by the community and the values of problem solving to obtain the best decision. In the AMDAL process, the community is divided into two categories, namely:

- 1) Affected communities: people who will feel the impact of the planned activity (beneficiary people or groups), and disadvantaged people or groups (risk groups)
- 2) Observer Community: a community that is not affected by an activity, but has concern for the activity and its environmental impacts.

In order for the implementation of the AMDAL to run effectively and to achieve the expected targets, the monitoring is carried out with a licensing mechanism. The government regulation on AMDAL clearly states that AMDAL is one of the licensing requirements, where decision makers must consider the results of the AMDAL study before granting a business/activity permit. AMDAL is used to make decisions regarding the implementation/granting of business and/or activity permits.

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36 'Proses Amdal', *Blhd.Tanjabarkab.Go.Id*, p.3  
<<http://blhd.tanjabarkab.go.id/kategori/anpedaling/prosesamdal.html>> [accessed 7 July 2015].

For institutions providing services for the preparation of AMDAL documents/AMDAL consultants, they are required to register at the Ministry of the Environment. There are several requirements that must be met by the consultant before registering, namely<sup>37</sup>:

- 1) Incorporated
- 2) Have at least 2 (two) permanent employees making AMDAL documents who have a certificate of competence with the qualifications of the team leader for making AMDAL documents
- 3) have a work agreement with non-permanent employees of AMDAL documents who have AMDAL document certificates and all personnel involved in the preparation of AMDAL documents

If there is an AMDAL that has been prepared and processed by the AMDAL assessment commission, this regulation applies, then these documents can continue to monitor the document of the drafting team and its consultants that do not meet the provisions stipulated in this regulation.

#### **5. Duties and Authorities of the Parties in the Preparation of the AMDAL**

Based on the legal guidelines regarding the preparation of the Amdal involving various parties, including the government, the initiator and the community, some of their duties and responsibilities can be explained as follows:

Duties of the Government and the EIA Assessment Commission:

- 1) Provide clear guidance on community engagement procedures.
- 2) Ingest and publish examples of community involvement from previous AMDAL experiences and from other AMDAL systems.
- 3) Provide publication of techniques or methods that may be used for community consultation.
- 4) Provide simple guidelines for the general public.
- 5) Continue to seek community participation in the entire AMDAL process, with techniques and mechanisms that are adequate and suitable for certain planned activities and specific communities.
- 6) Review the AMDAL draft objectively, taking into account the considerations conveyed by the community wisely.
- 7) Report the AMDAL process openly.
- 8) Act as a facilitator and mediator among AMDAL stakeholders in community engagement activities.
- 9) Act as a decision maker. Supervise the implementation of community involvement.

The government's authority can be described in accordance with the government's work duties in this case as follows:

- 1) determine the location for determining the environment
- 2) know and determine the EIA Assessment Commission Team
- 3) issue environmental permits

The duties of the community in the involvement of the assessment and decision making

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<sup>37</sup> Peraturan Menteri Lingkungan Hidup, *Peraturan Menteri Lingkungan Hidup Nomor 11 Tahun 2008 Tentang Persyaratan. Kompetensi Dalam Penyusunan Dokumen Analisis Mengenai Dampak Lingkungan Hidup Dan Persyaratan Lembaga Pelatihan Kompetensi Penyusunan Dokumen Analisis Mengenai Dampak Lingkungan Hidup* (Indonesia: Lembaran Negara Republik Indonesia, 2008).

of the EIA document include.

- 1) Participate in the evaluation of proposals/activity plans through giving suggestions, giving opinions, providing local knowledge, proposing alternatives, and evaluating how a proposal can be turned into a good one.
  - 2) Get involved in the community process as early as possible because this is the most effective time to convey considerations; participate in any appropriate planning activities, as this will affect the evaluation and development process.
  - 3) Be informed and involved in the AMDAL process, know the nature of the assessment, applicable policies, give approval and its conditions, during monitoring activities, and know the reasons for approval or disagreement from decision makers.
  - 4) Take a responsible approach in every opportunity for community participation in the AMDAL process, informing the objectives of the issues of concern.
  - 5) Participate in the assessment and decision-making process.
- a. Community Authority:
- 1) participate in the decision-making process through the AMDAL.
  - 2) decisions on business plans and/or development activities that have the potential to have a major and significant impact on the environment.
  - 3) Choose their own representative who sits on the AMDAL Assessment Commission

The task of the initiator:

- 1) Consult the AMDAL Commission and the community as early as possible.
  - 2) Provide adequate information about the planned activities to the community.
  - 3) Initiate environmental impact mitigation and have an obligation to implement RKL/RPL.
  - 4) Cooperate with the community to implement the RKL and provide adequate information on the implementation of the RKL.
  - 5) conduct an ANDAL study and prepare AMDAL documents objectively.
  - 6) the opportunity provided by the AMDAL process, to initiate and promote community involvement.
  - 7) Make a commitment to involve the community as much as possible in the AMDAL process.
- b. Initiator Authority:
- 1) Prepare the Amdal Document
  - 2) Announce the business and/or activity plan before starting the preparation of the AMDAL document.

Minister of Environment Regulation Number 11 of 2008 concerning Competency Requirements in Compiling Environmental Impact Analysis Documents and Competency Training Institute Requirements for Preparation of Environmental Impact Analysis Documents also stipulates the requirements of the team in preparing an AMDAL document. Later, if this ministerial regulation is effective, an AMDAL document that is prepared must meet at least 3 (three) AMDAL drafters who already have a competency certificate with 1 (one) person with qualifications as team leader and 2 people with team member qualifications. In this composition, the document drafting team must involve experts in accordance with the significant impacts caused by the business and/or activity plan



## 8. Responsibilities of Consultants in Making Environmental Impact Analysis

The AMDAL document must be prepared by the proponent for a business and/or activity plan. In preparing the AMDAL study, the initiator may request the services of a consultant to prepare the AMDAL document. The AMDAL document preparer must have an AMDAL Drafter certificate and is an expert in the field (article 26 paragraph 1 of law no 32/2009).

The minimum standard provisions for the coverage of AMDAL preparation materials are regulated in the Decree of the Head of Bapedal Number 09/2000 concerning Guidelines for AMDAL Preparation. The time required for the AMDAL process until the issuance of the Environmental Feasibility Decree generally ranges from 6-18 months. There is no standard fee required to prepare an AMDAL document. The fee is generally determined by the AMDAL consultant and depends on several factors such as the scope of the study, the depth of the study, the length of the study, the experts implementing the study.

Article 11 Paragraph (1) PP 27/2012 The preparation of the Amdal document must be carried out by an Amdal compiler who has a competency certification for an Amdal compiler. Regulation of the Minister of the Environment number 07 of 2010 Article 2 Paragraph (3): The preparer of the Amdal document as referred to in paragraph (1) and paragraph (2) must have a certificate of competence. And Article 4 paragraphs (2) and (3) , explains that the compiling team consists of the Team Leader (1 person) and the team members (2 people).

The parties with an interest in the AMDAL process are the Government, the initiator, the community concerned whose explanations can be described as follows:

### a. Government and EIA assessment commission

The government apparatus is the agency that is responsible and authorized to make decisions on environmental feasibility. The authority at the central level rests with the Head of the agency tasked with controlling environmental impacts and at the regional level lies with the Governor. To evaluate the AMDAL document, a commission for evaluating the AMDAL is formed, namely the central commission of assessment and the commission of regional assessment. The central assessment commission is formed by the Minister who is assigned to manage the environment based in the agency tasked with controlling environmental impacts (namely BAPEDAL).

One of the instruments for preventing pollution and environmental damage is the licensing instrument. Licensing is part of the arrangement through environmental law enforcement, environmental permits are given to everyone who carries out business and/or activities for which EIA or UKL-UPL is required in the context of environmental protection and management. as a prerequisite for obtaining a business license<sup>38</sup>.

Every business and/or activity that is required to have an Amdal or UKL-UPL is required to have an environmental permit, which is issued by the minister, governor, or regent/mayor in accordance with their authority. . Environmental permits can be issued based on a decision on environmental feasibility determined by the Amdal Assessment Commission, which for activities located in the district area are chaired by the regent.

The AMDAL Assessment Commission is a commission in charge of evaluating AMDAL documents. At the central level it is located at the Ministry of Environment, at

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<sup>38</sup> Muhammad Akib, *Penegakan Hukum Lingkungan* (Yogyakarta: Graha Ilmu, 2015). P 17

the provincial level it is located at Bapedalda/Provincial environmental management agency, and at the district/city level it is located at Bapedalda/environmental management agency.

Regency/City. Other interested government elements and affected community members are sought to be represented in this Assessment Commission. The working procedure and composition of the membership of the AMDAL Assessment Commission is regulated in a decree of the State Minister of the Environment, while the members of the AMDAL Assessment Commission in the provinces and districts/cities are determined by the Governor and the Regent/Mayor<sup>39</sup>.

The technical team or members of the AMDAL assessment commission may conduct field visits to gather information related to the scoping and impact assessment process at the behest of the chair of the AMDAL assessment commission. Funding for field observers is borne by each agency. In carrying out its duties, the appraisal commission is assisted by a technical team in charge of providing technical considerations on KA, ANDAL, RKL and RPL. In particular, the central appraisal commission is assisted in carrying out its duties by technical teams from each sector. The membership composition of the technical team will be determined by the Minister who is assigned to manage the environment for the central assessment commission and by the governor for the regional assessment commission, which consists of:

- 1) Experts from technical agencies in charge of the business and/or activity concerned.
- 2) The agency assigned to control environmental impacts.
- 3) Other experts with other related fields.

The implementation of the AMDAL is effective and can achieve the expected targets, its supervision is linked to the licensing mechanism. The government regulation on AMDAL clearly states that AMDAL is one of the licensing requirements, where decision makers must consider the results of the AMDAL study before granting a business/activity permit.

The government in this case the Minister, governor or regent/mayor in accordance with their authority, is obliged to carry out supervision as stipulated in Article 71 of the Law on Environmental Protection and Management (UUPPLH)<sup>40</sup>.

- 1) The minister governor or mayor/regent with their respective authorities is obliged to supervise the compliance of the person in charge of the business and/or activity to the provisions stipulated in the laws and regulations in the field of environmental protection.
- 2) The minister, governor, or mayor/regent may delegate their authority in supervising the official/technical agency responsible for environmental protection and management.
- 3) In carrying out the supervision, the Minister, governor, or regent/mayor shall determine the environmental supervisory officer who is a functional official.

The central and regional governments are obliged to supervise the compliance of the person in charge of the business and/or activity with respect to the environmental permit, as stipulated in Article 73 of the PPLH Law. serious violations occurred in the field of environmental protection and management.

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<sup>39</sup> Bangazul.com, 'Analisis Mengenai Dampak', *Bangazul.Com* <<http://www.bangazul.com/analisis-mengenai-dampak-lingkungan-amdal->>.

<sup>40</sup> Ahmad Faisal, *Hukum Lingkungan* (Jakarta: Pustaka Yustisia, 2016). P 49

Because the government is the most in charge of everything that happens in the country, including in the development process that has a negative impact on the environment, the government has the right to take policies for project owners and capital owners who will establish or implement a project so that project owners implement AMDAL in carrying out the project. In addition to the government, the parties who are also responsible for AMDAL are the community and project owners, because the community also needs to know the impact of a development project on the environment in which they live through the AMDAL program implemented by the project owner or capital owner, so that the community can contribute to preventing environmental damage due to the establishment of a development project. The project owner must also be responsible for AMDAL issues, because the project owner is very influential on the course of a development project and the project owner determines everything for the project he builds. Therefore, the owner must be responsible for AMDAL issues to prevent environmental damage caused by construction of a project.

b. Initiator

Initiator is a person or legal entity who is responsible for a business plan and or activity to be implemented. It is the initiator who is obliged to carry out the AMDAL study. Although the proponent may appoint another party (such as an environmental consultant) to assist in carrying out the AMDAL study, the responsibility for the results of the study and implementation of the AMDAL provisions remains with the activity proponent.

The AMDAL initiator, the person or legal entity responsible for a business plan and/or activity to be implemented. This is because, according to Article 1 number 24 of the UUPH, what is meant by people are individuals, and/or groups of people, and/or legal entities. Thus, the obligation to prepare an AMDAL is not only borne by individuals, but can also be imposed on several people or groups of people or even legal entities, both civil legal entities and public legal entities. also charged to government agencies that wish to carry out a business plan and/or activity that has a major and important impact on the environment.

c. Society

Law Number 32 of 2009 concerning Environmental Protection and Management (UUPH) has regulated and provided a wide space for the community to be able to participate in environmental protection and management. Furthermore, the environmental permit process is regulated in government regulation No. 27 of 2012 concerning Environmental Permits which integrates the application process and issuance of environmental permits in the AMDAL and UKL-UPL processes. The final product of the EIA or UKL-UPL process is an environmental permit. Article 9 paragraph (6) of PP 27 of 2012 and further elaboration of Article 44 to Article 46 and Article 49 which regulates the application and issuance of environmental permits, the community is involved through announcements and public consultations.

The analysis document regarding the environmental impact (Amdal), something with the provisions in Article 26 of Law Number 32 of 2009 concerning environmental protection and management is prepared by involving the community through public announcements and consultations, as follows: first, participation in the preparation of the Amdal document, for business plans and/or activities that are required to have an amdal, the process of announcing the application for environmental permits, submission of

suggestions, opinions and comments from the public after the announcement after the environmental permit is issued, both for business plans and/or activities that are required to have UKL-UPL. The process of community involvement in AMDAL and environmental permits is needed, among others, to ensure the implementation of community rights and obligations in the PPLH field. Realizing the implementation of a transparent, effective, accountable and quality environmental permit process<sup>41</sup>.

In Government regulation no. 27 of 1999 also pays attention to the involvement, participation, and/or rights of the people who will be affected. Important things to know regarding community involvement in EIA are as follows<sup>42</sup>:

- 1) Community representatives and affected community members are involved as elements of the amdal assessment commission.
- 2) Before the EIA is carried out, every business or activity must be announced to the public. Within 30 days, the community has the right to submit suggestions, opinions, and responses about the business plan or activity
- 3) Interested community members must be involved in the process of compiling the terms of reference for environmental impact analysis (ka-andal), environmental management plans (RKL), and environmental monitoring plans (RPL).
- 4) All EIA documents, suggestions, opinions and responses from the public concerned, as well as the conclusions of the preliminary assessment commission and environmental feasibility decisions are open to the general public.

For the smooth implementation of PP 27 of 1999, especially with regard to clarity on community participation, Bapedal issued Decree of the Head of Bapedal No. 8 of 2000 concerning Community involvement and information disclosure in the EIA process. In the attachment it is stated that the purpose and objective of community participation in the EIA process is to protect the interests and empower the community in decision making as well as to create transparency and an atmosphere of equal partnership between all parties.

With early community involvement and document disclosure, it is hoped that from the start the community will know what the benefits, risks, and consequences will be so that the community together with the government can prepare themselves to accept the risks and positive opportunities.

The preparation and manufacture of the AMDAL of course has the participation of related parties. These parties are the Initiator, Government Apparatus, and Community. Of the three interested parties above, there is one more party that really determines the existence of an AMDAL. This party is an Amdal Consultant. The AMDAL consultant is in charge of compiling and making the AMDAL and is responsible for the implementation of the AMDAL that he has made.

The consultant in the AMDAL is a Consultant who is meritorious and responsible for the preparation of the report. This report contains a study of the major and significant impacts of a planned business on the environment in order to make decisions about the operation of the business. This report is called a document, in this case it is called an AMDAL document.

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<sup>41</sup> Endang L. Binawan, 'Jalan Terjal Ekokrasi', *Hukum Lingkungan Indonesia*, 2014, 15.

<sup>42</sup> Onny Fahamsyah, *Keikutsertaan Masyarakat Dalam Proses Amdal*.

## **6. Obligation to make Environmental Impact Analysis based on Article**

22 Law Number 32 of 2009 concerning Environmental Protection and Management which stipulates that “every business and/or activity that has an important impact on the environment must have an environmental impact analysis”.

The impact that occurs after the construction is underway, the Consultant's job is to make an analysis so that the impact can be predicted and then found a solution as a form of anticipatory effort. Meanwhile, the important impact here is the impact that occurs after construction, which is handled by consultants making an analysis of these impacts, so as not to damage the structure of an environmental area.

Making the AMDAL document, if the Proponent feels unable to make it himself, cooperation between the Initiator and the legal entity Consultant is required. Here the responsibility of the Consultant is required in the preparation of the Environmental Impact Analysis. All projects or developments in an environment are analyzed. So as not to have a negative impact on the environment. By referring to Government Regulation no. 27 of 1999

Consultants can make an Environmental Impact Analysis. The Consultant's responsibility is required in the preparation of an Environmental Impact Analysis (AMDAL). All projects or developments in an environment are analyzed, which is expected so that each development activity does not have a negative impact on the environment. Therefore, through the provisions of Article 2 paragraph (3) and Article 3 of the Regulation of the Minister of the Environment Number 7 of 2010 concerning Competency Certification for Compilers of Environmental Impact Analysis Documents and Requirements for Competency Training Institutions for Compiling Environmental Impact Analysis Documents, determine the requirements that must be met. fulfilled for consultants making Environmental Impact Analysis (AMDAL) documents.

Article 2 paragraph (3) of the Regulation of the Minister of the Environment Number 7 of 2010 concerning Competency Certification for Compilers of Environmental Impact Analysis Documents and Requirements for Competency Training Institutions for Compiling Environmental Impact Analysis Documents determines that “the compiler of the Environmental Impact Analysis (AMDAL) document as referred to in paragraphs (1) and (2) must have a certificate of competence”. Furthermore, in Article 3 of the Regulation of the Minister of the Environment Number 7 of 2010 concerning Competency Certification for Compiling Environmental Impact Analysis Documents and the Requirements for Competency Training Institutions for Compiling Environmental Impact Analysis Documents, it is determined that the agency providing services for the preparation of Environmental Impact Analysis (AMDAL) documents as referred to in Article 2 paragraph (3) must meet the following requirements:

- 1) legally incorporated
- 2) have at least 2 (two) permanent staff drafting Environmental Impact Analysis (AMDAL) documents who have certificates of competence with qualifications of the head of the team preparing the Impact Analysis document Environment (AMDAL)
- 3) have a work agreement with non-permanent personnel who prepare Environmental Impact Analysis (AMDAL) documents who have a certificate of competence in preparing Environmental Impact Analysis (AMDAL) documents and all personnel involved in the preparation of Environmental Impact Analysis (AMDAL) documents

- 4) that can be accounted for law, including in terms of impartiality
- 5) have a quality management system; and
- 6) implementing internal quality control over the implementation of the preparation of the Environmental Impact Analysis (AMDAL) document, including maintaining the principle of impartiality and/or avoiding conflicts of interest.

Based on the foregoing, it is understood that the Consultant making the Environmental Impact Analysis (AMDAL) is responsible for all the data it produces. The data he created is the result of an Environmental Impact Analysis, the report of which is in the form of an AMDAL document. Therefore, a Consultant must not deviate from the above provisions.

The Civil Code regarding this responsibility is regulated in article 1801 and article 1803 of the Civil Code: The power of attorney is not only responsible for acts committed intentionally but also for negligence committed in exercising his power. However, the responsibility for negligence for a person who freely receives power is not so heavy as that which can be demanded of a person for which he receives wages.

Environmental Impact Analysis (AMDAL) goes through several processes and involves various parties to reach an AMDAL document. This process is long and lengthy, because the AMDAL consists of several documents. Based on Article 5 paragraph (1) PP 27 of 2012, the EIA document consists of 4 (four) documents, namely:

- 1) ANDAL Terms of Reference (KA ANDAL)
- 2) Environmental Impact Analysis (ANDAL)
- 3) Environmental Management Plan (RKL)
- 4) Environmental Monitoring Plan (RPL)

KA-ANDAL is a document that contains the scope and depth of the ANDAL study. The scope of the ANDAL study includes determining the significant impacts that will be studied in more depth in the ANDAL and the boundaries of the ANDAL study. Meanwhile, the depth of study relates to the determination of the methodology that will be used to assess the impact. The determination of the scope and depth of this study is an agreement between the Activity Initiator and the EIA Assessment Commission through a process known as the scoping process.

Environmental Impact Analysis (ANDAL) is a document that contains a careful study of the significant impacts of an activity plan. The significant impacts that have been identified in the KA-ANDAL document are then analyzed more carefully using the agreed methodology. This study aims to determine the magnitude of the impact. After the magnitude of the impact is known, the next step is to determine the significance of the impact by comparing the magnitude of the impact to the criteria for significant impacts that have been determined by the government. The next stage of the study is an evaluation of the relationship between one impact and another. This impact evaluation aims to determine the basics of impact management that will be carried out to minimize negative impacts and maximize positive impacts.

Environmental Management Plan (RKL) is a document that contains efforts to prevent, control and overcome significant negative environmental impacts and maximize the positive impacts that occur as a result of an activity plan. These efforts are formulated based on the results of the basic management guidelines impact resulting from the ANDAL study.

Environmental Monitoring Plan (RPL) is a document that contains monitoring programs

to see environmental changes caused by impacts originating from the activity plan. The results of this monitoring are used to evaluate the effectiveness of environmental management efforts that have been carried out, the proponent's compliance with environmental regulations and can be used to evaluate the accuracy of the impact prediction used in the AMDAL study.

The large and significant impact of an activity on the environment is determined by<sup>43</sup>:

- 1) Number of people who will be affected
- 2) The area of impact distribution
- 3) The duration of the impact
- 4) Impact intensity
- 5) The number of other environmental components that will be affected
- 6) The cumulative nature of the impact
- 7) Reversal or non-reversal of impact

The making of this AMDAL involves various parties, such as the project owner, local government and related agencies, and consultants. What is meant here is AMDAL Consultants. These consultants have an active role in making Environmental Impact Analysis (AMDAL). immediately accepted by all parties.

The duties of the Consultant who are accountable before all parties, include the rights and obligations of the Consultant. Cooperation with the Consultant is in the form of an agreement. This agreement contains permanent legal force so that it can have legal consequences in it. Its obligations include<sup>44</sup>:

- 1) Carry out work in accordance with the provisions that have been set
- 2) Reporting the implementation of work periodically to the Initiator
- 3) Completing and submitting work in accordance with the provisions
- 4) Maintain the safety of workers and bear all occupational safety risks that arise during the execution of work
- 5) Maintain environmental order in carrying out work
- 6) Maintain the building for 3 months after the building is handed over to
- 7) The initiator according to the Minutes of Handover
- 8) Mandatory insure the building from dangers, such as: fire, riots and natural disasters, up to 3 months after the building is handed over by the party Initiator. If the Consultant neglects or intentionally does not insure the building and a risk occurs such as: fire, riots and natural disasters, then the rebuilding is the responsibility and is fully carried out by the Consultant.

Meanwhile, the rights of the Consultant include:

- 1) Receive payment for work that has been completed in accordance with the agreed terms
- 2) It is prohibited to hand over the implementation of the work either partially or wholly to another party without the knowledge of the Proponent

The responsibility of the AMDAL Consultant is a person or legal entity who is obliged to bear all risks if a study on environmental impacts, both large and important, results in environmental damage. agreement.

An agreement is an act in which a person or more binds himself with another person or

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43 Suparni. Opcit. P 97

44 Faisal. Opcit. P 34

more. The agreement that occurs here is between the AMDAL Consultant and the Project Proponent or Owner. The AMDAL consultant is tasked with making or compiling the AMDAL and the preparation has been approved by all parties and has been declared a proper test of the AMDAL document. Meanwhile, the Project Owner (Initiator) is the party who has a plan for development activities related to the project.

Based on the results of an interview with Mr Iqbal, an EIA Consultant in the City of Ternate, that the responsibility of an AMDAL Consultant professionally is that the Consultant must be responsible for the results of his work. continue to prioritize the public interest In order for the responsibility to be realized through the accountability mechanism in accordance with the provisions of the applicable laws and regulations.

Responsibilities in accordance with the contents of the agreement between the AMDAL Consultant and the Initiator related to the implementation of this work are regulated in the agreement/contract itself:

- 1) Part or all of the work is handed over to another party, unless there is another agreement and the Proponent knows
- 2) This work is completed within the specified time limit
- 3) Each AMDAL report must be made known to the proponent, either gradually or in its entirety.

Preparation of Environmental Impact Assessment document a Consultant must be responsible for all data that he creates, based on the agreement made between the Proponent and the Consultant. If a Consultant makes an error, either by intention or negligence, resulting in the data made by the Consultant is not the actual data, the result will be fictitious data. This is what causes the failure or cancellation of the AMDAL document creation.

The failure or cancellation of this document has legal force, because it has been legally protected by evidence that prior to the making of an environmental impact analysis, an agreement was made between the parties. This agreement makes the document legally binding. The cancellation or failure of the preparation of the AMDAL does not only occur due to the negligence of the Consultant, but can also occur due to the negligence of the Initiator.

Carelessness in decision-making and the arbitrariness of the Proponent may disrupt the making of the Environmental Impact Analysis. So the collaboration between the Consultant and the Proponent is very much needed in the process of making the AMDAL. The consequences if there is a legal defect, causing legal consequences. For example, if there is a default by one of the parties, it will cause a dispute. This dispute can be resolved in 2 (two) ways, namely:

- a. Deliberation Path
  - 1) Cancel by law. This means that here the contract fails or is canceled, because one of the parties violates the contents of the agreement. Thus, canceling the AMDAL.
  - 2) Not null and void. This means that here the agreement can still be continued, but those who have made negligence must bear all the losses incurred.
- b. Court line



This path is used if the deliberation route does not reach an agreement. This means that there must be a complaint from one of the parties who are dissatisfied with the results of the deliberation. The implementation is in accordance with existing legal procedures. The legal consequences for the AMDAL Consultant who default (broke promise) is to bear the amount of loss incurred by the Consultant based on the contents of the agreement that has been agreed upon by both parties.

Based on existing theory or according to legislation. Regulated in Law no. 23 of 1997 concerning Environmental Management and Law no. 18 of 1999 concerning Construction Services. The impact on the community is that if the AMDAL made by the Consultant fails, then environmental pollution will have an impact on the environment. The environment is part of people's lives, especially the community around the project or development. The legal impact is that the community can file a lawsuit.

This lawsuit is regulated in Law no. 18 of 1999 concerning Services Construction, which includes the following articles: 115 Article 38 :

- 1) People who are harmed by the implementation of construction work have the right to file a lawsuit to the court by:
  - a) individual person
  - b) group of people with power of attorney
  - c) a group of people who are not authorized through a representative suit.
- 2) If it is known that the community suffers as a result of carrying out construction work in such a way that it affects the basic living environment of the community. The government is obliged to take sides and can act in the interests of the community.

Article 39: A lawsuit as referred to in Article 38 paragraph (1) is a demand to take certain actions and/or a claim in the form of real costs or expenses, without closing the possibility of other claims in accordance with the provisions of the applicable laws and regulations.

## **7. Factors Affecting the Implementation of Environmental Impact Analysis**

Statement of a work order from the Initiator to the consultant who produced the Environmental Impact Analysis (AMDAL) document along with other requirements to then proceed with the implementation of the tasks that must be carried out for each consultant who prepares the Environmental Impact Analysis (AMDAL) document. The duties of the Consultant include the main tasks, the agreed tasks, and the tasks in accordance with the applicable laws and regulations.

Constraints that often arise in the preparation of environmental documents, especially AMDAL, include:

1. A clear technical and administrative planning document is not yet available
2. Incompetent document drafting team
3. The Environmental Document Assessment Commission Team is less competent
4. Changes in policies regarding regulations and laws

5. A force major condition that forces the planned activity to be terminated or cancelled. These barriers tend to focus on technical factors, such as:
- a. Inadequate environmental laws and regulations
  - b. Institutional strength
  - c. Scientific and professional training
  - d. Data availability

Various things that can support the AMDAL to work effectively and act as a pollution/damage control tool, the following points must be considered:

1) Quality of AMDAL documents

The quality of the AMDAL document is influenced by several factors, including: the capacity of the AMDAL drafters (consultants) must be adequate, the capacity of the members of the assessment commission should have advantages over the consultants or at least equal, and the capacity of the community must be adequate.

Support for the preparation of secondary data (statistics) from government agencies should have become a common awareness as an effort to organize information systems and documentation of environmental data in an area, so that adequate and accurate data can be easily obtained. Accurate data will help accurate analysis sharpness in AMDAL and be able to predict and formulate appropriate impact mitigation efforts, which are able to prevent and reduce environmental pollution.

2) EIA bureaucratic process

Services to the Initiator are fast and timely, so that time barriers can be avoided in the investment process. Efforts to change towards efforts to shorten the bureaucratic process in the management of AMDAL, Changes to normative provisions and also need to be supported by the AMDAL bureaucracy. Adequate data support and an uncomplicated, fast and precise bureaucratic process as well as good quality compilers and evaluators are needed support in accelerating the AMDAL study process and the quality of the AMDAL study results.

3) Capable law enforcement institutions

A good quality of AMDAL document and a good and fast bureaucratic process will encourage activity planners (propane) to fulfill the technical and juridical prerequisites for environmental management. This will be even more meaningful if the entrepreneurs (industrialists) can be objectively convinced of the benefits and advantages of conducting an AMDAL study for the sake of the survival of their industry in the future.

Institutional control over the implementation of the contents of the AMDAL document, especially RKL and RPL. The monitoring agency specified in the RPL should be supported by the capacity of the institution that has the authority to take action on violations (non-compliance with the operationalization of the contents of the document and RPL) carried out by the industry. However, it seems that the problem of prosecution for such violations has not shown a significant progress. Administrative sanctions that should precede legal action steps from other aspects have not run smoothly and have not shown consistent steps forward.

AMDAL as a legal product will be operationally capable and enforceable if the state has operational tools for law enforcement, there are law enforcement institutions that have the capability and capacity as tools that understand environmental problems, therefore they must be educated officers in fields related to environmental problems. environment.

The relationship between the AMDAL Consultant and the Proponent is established in a collective agreement, all of the provisions of which are contained in the contractual contents of the AMDAL agreement. As a result of the initial lack of scrutiny of the Proponent's agreement, everything that happens after the issuance of the Environmental Impact Analysis document in the form of a business permit is the responsibility of the initiator.

According to Mr. Ikbal, the AMDAL Consultant in Ternate, stated that:

The AMDAL consultant does not have the authority and is not responsible for the AMDAL document which is a prediction of a business activity that has been made if the document has been approved and a business license issued by the government. If there is pollution, those who have responsibility are the initiator or the government that has issued the business license.

The Consultant for Making Environmental Impact Analysis Documents (AMDAL) in carrying out their duties is in accordance with their main tasks and in accordance with the provisions that have been agreed between the parties, namely between the consultant who made the Environmental Impact Analysis (AMDAL) document and the initiating party. However, the tasks contained in the laws and regulations are not entirely carried out by consultants who make Environmental Impact Analysis (AMDAL) documents. There are obligations that are still the responsibility of the consultant making the Environmental Impact Analysis (AMDAL) document, but they are not implemented.

The obligations, among others: related to workers, such as: maintaining safety and taking their risks in carrying out their duties, as well as building maintenance after the preparation or preparation of Environmental Impact Analysis (AMDAL) documents.

Based on the provisions in Article 84 of Law Number 32 of 2009 concerning Environmental Protection and Management, classifying the company's responsibility for environmental pollution, namely civil responsibility (compensation), administrative responsibility (revocation of business license, suspension of environmental permit, written warning, and government coercion) as well as criminal liability (closure of business activities, confiscation of profits obtained from criminal acts, reparation due to criminal acts, obligation to do what was neglected without rights, and/or placing the company under supervision for a maximum of 3 (three) years) and in general, namely imprisonment and fines for business actors or against superiors who give orders. In Law Number 32 of 2009 concerning Protection and Management Environment, regulates dispute resolution efforts both inside and outside the court

## CONCLUSION

- 1) Responsibilities of consultants for environmental impact analysis Here the consultant is tasked with making or compiling an environmental impact analysis, while the project owner as the party who has an activity plan for making an environmental impact analysis in connection with the project has an important impact on the environment. For this reason, each EIA consultant must be responsible for all the data it produces, so the consultant must be careful in making an analysis of environmental impacts. This responsibility concerns compensation if the consultant makes errors and omissions in making data analysis.
- 2) Factors that influence the implementation of the analysis of environmental impacts, problems that have not been accommodated by the provisions that are considered to contain certain weaknesses, such as the linkage of AMDAL with licensing, the mechanism for linking AMDAL and the community as implementing people's participation in the decision-making process, and methods of collecting information capable of providing identification of various environmental influences and impacts. Another obstacle The AMDAL consultant does not accept the risk due to environmental impacts outside of the AMDAL and is returned to the Government and the Proponent itself because these impacts are caused by the workers themselves or natural events.

## SUGGESTION

- 1) In preparing the Amdal, the Amdal Consultant must be careful in making the Amdal, whether it is already running or not. So that there is no negative impact, which results in losses for the company or the community itself.
- 2) There needs to be supervision participation from the government, the community and the consultants of the AMDAL itself by the company that runs its business processes by looking at the realization in the implementation of the AMDAL

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