

Transformation of AMDAL as a Tool for Supervision and Enforcement of Environmental Conservation and Management

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Abstract. One of the essential strategies for advancing the development of sustainable environmental management and preservation is the transformation of AMDAL. AMDAL, as a control system, needs to be supported by laws and the enforcement of professionally capable apparatus. How to Build an AMDAL Enforcement System as an Instrument for Supervision and Enforcement of Licensing and Environmental Destruction is the topic of this conceptual piece of writing, which employs the method of qualitative writing. The government urgently needs to develop the AMDAL System as an instrument to monitor licenses and environmental devastation. As a result, the government must redesign AMDAL as a separate control system using a new strategy. A substantive component that accommodates the legal basis, a structural component that accommodates AMDAL implementers, and a cultural component that impacts the mechanisms and procedures for implementing the AMDAL are the three fundamental components needed for the development.

Keywords: Transformation, AMDAL, Supervision and Enforcement

1 Introduction

The environmental world and the living environment play a significant role in the current order of things, including an ecosystem for any living things, including people, plants, and animals. Given the rejuvenation of nature and Greenpeace Indonesia's concerns, Indonesia is currently experiencing a natural crisis. The topic of "sustainable development" has been discussed internationally and domestically. However, it still needs to be clarified at the policy and regulatory layers in its implementation, which has numerous symptoms in the implementation or implementation sequence.

The government must assess environmental management licensing, or AMDAL, issues to prevent the devastation of nature caused by commercial development activities and promote sustainable development and environmental protection. Environmental management initiatives (UKL) and environmental monitoring efforts (UPL) require AMDAL. Everyone who intends to manage or develop the environment must have AMDAL permission. The Environment Minister of the Environment Regulation Number 5 of 2012, About the Types of Business Plans or Activities Required to Be Equipped with Environmental Impact Analysis, has information about AMDAL. They were regulating the implementation of AMDAL in accordance with Government Regulation (PP) Number 27 of 2012. It has been mentioned in several discussions that AMDAL has been eliminated, particularly in the section relating to

environmental permit documents. The processing of AMDAL permits seems sluggish, discouraging international businesses from investing in Indonesia's economic development..

The implementation of Law No. 11 of 2020 about Job Creation and Government Regulation (PP) Number 24 of 2018 concerning Electronically Integrated Business Licensing Services is one tool to reduce AMDAL, formerly incorporated in Law No. 32 of 2009, concerned with Environmental Protection and Management. Some people undoubtedly discuss the pros and cons of this topic. There is a viewpoint that asserts the present AMDAL System is an AMDAL with good flexibility and efficiency because:

- As a new improvement
- Provides certainty
- Strengthens commitment
- Restores the actual function of AMDAL
- Facilitates AMDAL licensing

Meanwhile, on the other hand, it is stated that the current AMDAL system is a reduction from the previous AMDAL policy because:

- a. There are some reductions to the AMDAL authority, especially on public participation in evaluating and submitting objections
- b. Employment Creation Law (UU Cipta Kerja) which is contrary to the spirit of AMDAL
- c. Simplification
- d. Establishment of a Comprehensive RDTR regarding AMDAL exceptions

As a replacement for the abolition of AMDAL, environmental impact analyses for operations or activities situated in cities or provinces that currently have a Detailed Spatial Plan (RDTR) should be compiled. AMDAL has been an instrument that may maintain various commercial activities involving environmental management stability. Additionally, AMDAL is an instrument for managing the effects and hazards of natural disasters and preventing them. AMDAL cannot be eradicated in pursuing sustainable environmental development, particularly concerning early environmental management permits. It runs counter to Indonesia's current campaigns for eco-innovation, ecological sustainability, and the preservation of natural habitats. In fact, by doing away with AMDAL, especially in permits, the government is forced to work harder to examine the effects of environmental management.

According to the Preamble of the 1945 Constitution's Fourth Paragraph on Environmental Management, environmental management that is consistent with environmentally sustainable development is a serious issue that must be a concern and obligation to safeguard, maintain, and manage Indonesia's natural resources. The government can change AMDAL, particularly when developing strategies for policy-making that can make it simpler, less onerous, or less complex, by integrating AMDAL with rapid and straightforward digital-based development. Additionally, AMDAL could continue to be a stabilizing force, particularly in upholding and safeguarding a sustainable living environment.

The question posed in this paper is, "How to Develop an AMDAL Enforcement System that can be used for Licensing and Environmental Destruction Supervision and Enforcement?"

2 Method

In order to identify and develop answers and comprehensive comprehension of the challenges and problems that were begun, qualitative research will be used in this study.

According to Denzin and Lincoln, qualitative research uses a natural environment intending to interpret "phenomena" that occur and is carried out by incorporating several existing approaches [1]. The research used in this study includes primary and secondary data, including legal information gleaned from books, articles, and papers, descriptive observations, and investigations on the covered topics.

3 Finding and Discussion

3.1 Regulating the AMDAL system to deal with environmental damage

The AMDAL provides various legal products to address environmental and natural resource degradation. The legal products are Law Number 32 of 2009 Concerning Protection of Environmental Management (UUPPLH), State Minister for the Environment Regulation Number 5 of 2012 Concerning Types of Business Plans or Activities That Must Be Completed with Environmental Impact Analysis, AMDAL Implementation Regulation Number 27 of 2012, or Law of the Minister of Environment and Forestry of the Republic of Indonesia Number: P.38/MENLHK/SETJEN/KUM.1/7/2019 Concerning Environmental Impact Assessment. The government's decision to provide environmental permits will be significantly influenced by AMDAL, which will serve as the first foundation for the corporate licensing System. The business/activity license is the next step. AMDAL can be considered the primary factor in determining the caliber of environmental and activity permits [2]. Environmental Damage Management by the AMDAL system can be described as follows:

1. AMDAL as a predictive and control instrument (preventive legal aspect)
2. AMDAL as an instrument for activity management, particularly concerning unanticipated effects in the management of activities (legal aspects of environmental management)
3. AMDAL as evidence in court in determining environmental concerns (scientific evidence for environmental disputes)
4. AMDAL is a planning, activity, and feasibility information system for the area (environmental information system)
5. AMDAL can enhance decision-making when stakeholders' information includes technical and scientific understanding [3]”.

In actuality, handling the effects of the growth of commercial or business activities must be considered from the beginning of the planning process. It is done to prevent numerous scenarios, including the potential for damage, and implement a recovery plan immediately. AMDAL can be employed as a preventive tool in dealing with natural damage or natural disasters brought on by management activities that harm the balance of natural ecosystems. However, it needs to be given more attention to how the AMDAL system is implemented. The authors, specialists, and academics have analyzed the AMDAL process in Indonesia and found numerous flaws, including:

1. It is unclear whether AMDAL can be used to reject or approve a development activity plan because it has yet to be fully integrated into the licensing process for such plans.
2. The community participation method still needs to be at its best. NGOs have participated in AMDAL commission meetings thus far. Still, their opinions have not been heard entirely in the decision-making process.
3. The application of AMDAL research has a variety of flaws. In other words, there is no assurance that the proponent will follow the different suggestions from the AMDAL, UKL, and UPL studies.

4. The methods for preparing AMDAL are still insufficient, particularly the "social-cultural" component, preventing a thorough examination of development activities with significant socio-cultural implications [4].

The AMDAL is indirectly reduced in various stages of Law No. 11 of 2020 about Job Creation (UU Cipta Kerja) by reducing various portions of various components. Public participation in disapproving is one aspect. Before this change, the public could protest the permit's issuance, particularly in cases where the permission could impact the stability of nearby areas or the company's management activities. Law No. 11 of 2020, however, emphasizes that the public can engage because they are the ones who would be impacted. In the evaluation, the AMDAL problem comprises the policy for preparing the AMDAL and its application. Field criticism of the management of AMDAL or UKL-UPL papers, whose implementation is typically less effective and efficient and takes a considerable amount of time. Many actors believe that AMDAL or UKL-UPL are unnecessary formalities that cost money, starting with printing documents, hiring experts, paying for lab tests, etc.” Administrative law enforcement, civil law enforcement, and criminal law enforcement are the three types of environmental law enforcement listed in Law Number 32 of 2009. As stated in Article 76, paragraph 2, the following are involved in executing administrative law::

- 1) Warning;
- 2) Government coercion;
- 3) Environmental permits being freezed, or
- 4) Environmental permits being revoked.

Implementing administrative law enforcement is necessary "in an effort to achieve compliance with regulations and requirements in general and individual provisions that apply through monitoring and (threats of) sanctions [5]. Administrative sanctions result from the permit issued to the licensee to enforce environmental legislation under administrative law for those who transgress the restrictions or conditions outlined in the permit's issuance—a crucial instrument in law enforcement sanctions.

Civil law is a private law that is distinct from administrative law, which is a public law, and it is used to enforce environmental laws. Mediation or arbitration can settle disagreements out of court as an alternative dispute resolution. According to civil procedural law, environmental conflicts are resolved through the courts by bringing a lawsuit. Implementing environmental law through criminal law instruments, as stated in the general explanation of Point 6 of Law No. 32 of 2009, which reads: "This Law introduces the threat of minimum punishment in addition to the maximum, expansion of evidence, punishment for violations of quality standards, integration of criminal law enforcement, and regulation of corporate crime."

The *ultimum remedium* principle, which provides for criminal law enforcement as a last resort if administrative law enforcement is ineffective, is still essential to environmental criminal law enforcement. Criminal law enforcement in Indonesia is inextricably linked to its instruments. Law No. 32 of 2009 incorporates comprehensive criminal measures since environmental law enforcement must also follow the criminal process. The *ultimum remedium* principle enforces environmental law through criminal law tools. Although it is used, the *ultimum remedium* principle is primarily restricted to punishing formal crimes such as emissions, disruptions, and violations of wastewater quality requirements.

3.2 Monitoring and enforcing environmental damage through the transformation of the AMDAL enforcement system

AMDAL needs a transformation to implement robust and independent supervision to foresee pollution and environmental harm. The Minister of Environment's Regulation number:

24/MENLHK/SETJEN/KUM.1/7/2018 regarding the exclusion of the requirement to prepare an analysis of environmental impacts for businesses or activities located in a district or city area that already has an RDTR was proposed by the Ministry of Agrarian Affairs and Spatial Planning in several speeches as a replacement for the AMDAL. Following the President's instruction on "accelerating investment and producing jobs," the RDTR is a replacement tool and a simplified licensing procedure. However, it is commonly understood that getting rid of the AMDAL will lead to needless friction between some parties and avoidable issues.

"The RDTR does not expressly govern the specifics of a project, much alone the responsibilities that business actors must uphold in environmental management as outlined in the AMDAL document. It merely regulates area restrictions or area designations. As a condition of the environmental permit, RDTR cannot take the role of AMDAL in this situation. Because RDTR is more focused on public policy and AMDAL is more focused on specific projects or activities, the position of using AMDAL and RDTR cannot be equalized [6]".

Sustainable development will continue to grow in the context of environmental development and sustainable conservation for each generation, "it can be seen clearly that there is a close relationship between sustainable development and environmentally sound development [7]". AMDAL is intended for the improvement of development identified with AMDAL [8]". Sustainable growth depends on environmentally responsible development. M. Daud Silalahi added that environmentally sound and sustainable development could be compared to two sides of the same coin where both are interrelated when discussing the relationship between them [9]. There are several evaluations of the AMDAL, which can be divided into three components:

1. AMDAL Administration System
2. AMDAL Structural System
3. AMDAL Cultural System

There are document and permit policies in the AMDAL Administration System; The AMDAL culture system covers Implementation & how AMDAL functions and the AMDAL structure system contains the Organizing Body Assessment team and others. Therefore, more than an AMDAL transformation is needed to merely focus on the implementation element since AMDAL is a united whole that must be perfected in an integrated manner, which implies comprehensive and total both in substance, structure, and management activities;

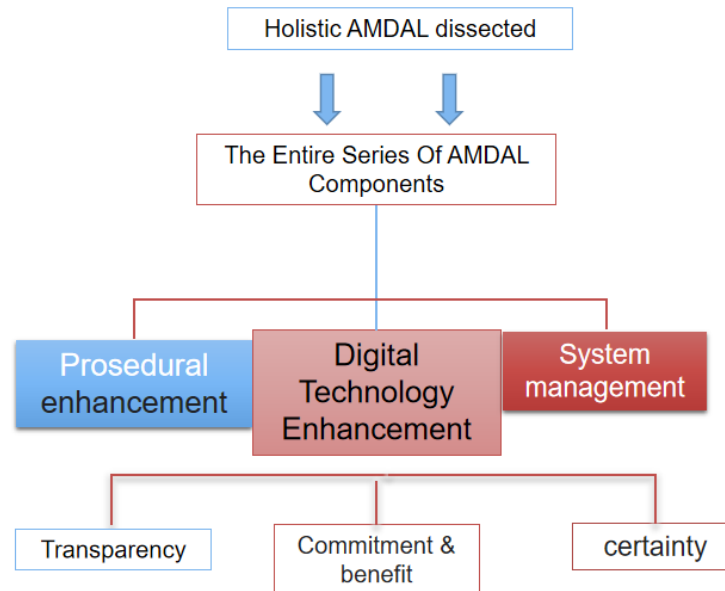


Fig. 1. The Policy Stages of AMDAL

There must be numerous policy stages, from the structural to the implementation of the AMDAL system to be in balance. In order for AMDAL to continue to work in harmony with state development, it is necessary to ensure its oversight and enforcement in sustainable environmental development. As a result, the strategy for creating AMDAL must focus on several factors, specifically:

1. It is a unity that cannot be separated;
2. AMDAL must be contained in a unified whole in a building;
3. There is no division of authority without exception;
4. AMDAL is an absolute obligation;
5. RDTR, equipped with KLHS, is temporary for a certain period before finally being integrated into the full AMDAL document

Considering the sophistication of technology that even causes disruption, the current level of environmental exploitation is unquestionably relatively high. In particular, Indonesia, which is well known for its abundant natural resources, will undoubtedly result in several environmental infractions. The UUPPLH's provisions on regulating rights and obligations, environmental prohibitions, and sanctions against pollution and environmental damage make it crucial to know, understand, and put into practice. As a result, it endangers both humans and the survival of environmental ecosystems [10]. Therefore, a policy reform that can control the legal tools that run when a violation happens is required to promote sustainable growth and environmentally sound development. A law enforcement classification can be said to run first if we look at regulation number no. 32 of 2009. Conceptually, "Harmonizing the Relationship between Values" is the action that defines the essence and meaning of law enforcement [11]". The law enforcement process, which is mechanical but capable of carrying out its mandate, is a good example. It enables him to establish a moral environment that can coexist in society.

"Law enforcers must recognize that they actually have the legal spirit that underpins the legal norms that are enforced and, in this case, are tied to the Act," Muladi emphasized [12]. Considering that no guarantee in criminal law can be employed later if administrative law and civil law instruments are ineffective in preventing environmental pollution and damage, the transformation of AMDAL as a supervisory instrument must be comprehensive and flexible. Therefore, environmental law enforcement through the three legal tools can be deployed concurrently in the event of environmental pollution and destruction without waiting for other legal tools to successfully address environmental pollution and destruction or fail to do so. On the other hand, UUPLH also has flaws that impact compliance and law enforcement.

"The UUPLH stresses community empowerment, which is the first reason. The UUPLH is currently out of compliance with Law No. 32 of 2004 regarding Regional Government, which is the second. The environmental community, the Indonesian House of Representatives, the government, universities, and non-governmental organizations (NGOs) all support passing a law on managing natural resources [13]".

The development of AMDAL's transformation into a supervisory system requires more than just altering substantive policies. The government requires a new strategy that can view the entire series as an integral AMDAL system to address the requirement for development in both the structural and cultural components. As a product, AMDAL may study and track the positive and negative effects of a business activity or project and serve as a baseline for determining whether controlling the environment is feasible. "AMDAL is not a permit; instead, it is a requirement that must be completed to get a permit from an authorized official to execute a business or activity. A permit application for a business or activity must be accompanied by an environmental feasibility decision (AMDAL) [14]". There are still several misleading paradigms in law enforcement makes it seem like only law enforcement professionals are in charge of keeping the peace. According to Yahya Harahap, protecting everyone from environmental contamination or environmental protection is related to human rights. It is predicated on establishing several claims for rights to environmental preservation, such as:

1. Protection of a harmonious relationship between production activities and the environment for people.
2. The right to defend oneself from initiatives aimed at halting or eradicating harm to the environment and biological diversity and promoting human health and wellbeing.
3. The right to defend against hazardous carbon monoxide (CO), nitrogen oxide, and hydrocarbon air pollution brought on by automobiles and factories so that the air is always free from pollution.
4. Ensure protection from industrial waste pollution in rivers, oceans, and land so that all water is free from waste pollution (clean water) [15]"

In order to have a variety of options for enforcement, including administrative sanctions, civil sanctions, and criminal punishments, the legislation requires additional attention. Understanding rights and obligations is a prerequisite for law enforcement, a responsibility the entire community shares. In addition to actively participating in law enforcement, the community does not just observe how the law is applied.

4 Conclusion

It is strongly advised that the government transform AMDAL to build the AMDAL System as an Instrument for Supervision and Enforcement of Licensing and Environmental Damage. Building three fundamental components—a substance component that accommodates the legal basis, a structural component that accommodates AMDAL implementers, and a cultural component that influences the mechanisms and procedures for implementing AMDAL—will enable AMDAL to be transformed into an independent control system. It is also necessary to grow the economy and sustain harmony while maintaining a sustainable environmental system.

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