

## Ease of Business Licensing Based on the Job Creation Law (Study of Public Participation in Preparation of AMDAL Document)

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### Abstract

The omnibus law of the Job Creation Act changes several laws and regulations, including Law Number 32 of 2009 concerning Environmental Protection and Management (*UU PPLH*). This study found that changes in provisions related to Environmental Impact Analysis (*Amdal*) in Law No. 11 of 2020 concerning Job Creation, with those previously regulated in Law No. 32 of 2009 concerning Environmental Protection and Management. Such as the definition of *Amdal*, the role of environmental observers, the elimination of objections and community involvement, the *Amdal* Assessment Commission, the Feasibility Test Team, and cancellation based on court decisions. This research is normative legal research that examines in detail library materials such as books, scientific journals, laws and other information that is considered related to this research. This study argues that public participation in the preparation of the *Amdal* document must be carried out by the initiator and the government considering that public participation is the obligation of the initiator and the government in addition to being a good right of the community.

**Keywords:** Job Creation; *Amdal*; Public Participation.

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### Introduction

Omnibus law The Job Creation Law was officially promulgated as Law Number 11 of 2020 after being signed by President Joko Widodo on November 2<sup>th</sup> 2020. There are several laws and regulations that have undergone changes, one of which is Law Number 32 of 2009 concerning Protection and Environmental Management (*UU PPLH*) (Farisa, 2021). "Law Number 11 of 2020 concerning Job Creation (*UU Cipta Kerja*) contains various amendments to Law Number 32 of 2009 concerning Protection and Management of the Environment (*UU PPLH*)" (Job Creation Law).

This sweeping universe law changes a number of provisions in this law, one of which is related to Environmental Impact Analysis (*Amdal*). There are at least 6 points of change related to this *Amdal*, including:

#### 1. Definition of EIA/*Amdal*

Article 1 point 11 of Law Number 32 of 2009 concerning Environmental Protection and Management (*UU PPLH*) defines *Amdal* as "a study of the significant impact of a planned business and/or activity on the environment which is necessary for the decision-making process regarding the implementation of business and and/or activities".

This definition has changed in the Job Creation Law, in article 22 paragraph 1 it says the provisions of article 1 number 11 are changed to "An analysis of environmental impacts, hereinafter referred to as *Amdal*, is a study of the significant impacts on the environment of a planned business and/or activity, to be used as a prerequisite for making a decision regarding

the implementation of a business and/or activity as well as contained in a Business Permit, or approval from the Central Government or Regional Government.”

## 2. The Role of Environmental Observers

Article 26 of Law Number 32 of 2009 concerning Environmental Protection and Management (*UU PPLH*) says that the EIA/*Amdal* document as referred to in Article 22 was prepared by the initiator by involving the community. Community involvement must be carried out based on the principle of providing transparent and complete information and being notified before the activity is carried out. The community as referred to in paragraph (1) includes: those who are affected, environmental observers, and/or those who are affected by all forms of decisions in the EIA/*Amdal* process.

However, this provision has changed in the Job Creation Law, the formulation of article 26 becomes: The EIA/*Amdal* document as referred to in article 22 is prepared by the initiator by involving the community. EIA/*Amdal* documents are prepared by involving the community directly affected by the planned business and/or activity. Further provisions regarding the process of involving the community as referred to in paragraph (2) are regulated in government regulations.

## 3. Elimination of Objections and Community Involvement

The Job Creation Law also abolishes the provisions of Article 26 Paragraph (2) of the *PPLH* Law which states that community involvement must be carried out based on the principle of providing transparent and complete information and notified before activities are carried out. Article 26 Paragraph (4) which originally stipulated that the public could submit objections to the EIA document was also abolished.

## 4. *Amdal* Assessment Commission

The existence of this commission was previously regulated in articles 29, 30 and 31 of the *PPLH* Law. Article 29 paragraph 1 states that *Amdal* Documents are assessed by the *Amdal* Evaluation Commission formed by the Minister, governor or regent/mayor in accordance with their authority. Furthermore, in Article 30 it is said that the Membership of the *Amdal* Evaluation Commission as referred to in Article 29 consists of representatives from:

- a. environmental agency;
- b. related technical agencies;
- c. experts in the field of knowledge related to the type of business and/or activity being studied;
- d. experts in the field of knowledge related to impacts arising from a business and/or activity being studied;
- e. representatives of potentially affected communities; and
- f. environmental organization.

Meanwhile, in Article 31 it is said that based on the results of an assessment by the *Amdal* Assessment Commission, the Minister, governor or regent/mayor shall make a decision on environmental feasibility or ineligibility in accordance with their authority.

The Job Creation Law states that the provisions in articles 29, 30 and 31 are deleted.

## 5. Due Diligence Team

The Job Creation Law further regulates new provisions regarding an environmental due diligence team formed by the central government's environmental due diligence agency. Amendments to Article 24 Paragraph (3) of the Job Creation Law state that the environmental due diligence team consists of elements from the central government, regional government and certified experts. Furthermore, Paragraph (4) of the same article stipulates that the central government or local government shall make a decision on environmental feasibility based on the results of an environmental feasibility test.

## 6. Cancellation Based on Court Decision

The Job Creation Law also removes provisions regarding cancellation of environmental permits by courts. Initially, this provision was regulated through Article 38 of the Environmental Law which stated that, in addition to the provisions referred to in Article 37 paragraph (2), environmental permits can be canceled through a decision of the state administrative court.

These changes caused a lot of debate, the government argued, the changes were intended to facilitate investment and increase economic competitiveness in Indonesia. However, a number of parties are of the opinion that increasing competitiveness and investment cannot be carried out by setting aside important elements in environmental permits.

Based on the description of the problem in the introduction above, the authors focus on the study of the role of public participation in the preparation of the *Amdal*, so this paper is intended to answer a problem formulation, namely the urgency of public participation in the preparation of the *Amdal*. This paper aims to find out how far public participation is needed in the process of preparing the EIA/*Amdal*, as well as the impact of these changes that have occurred after the enactment of Law Number 11 of 2020 concerning Job Creation.

### **Materials and Methods**

This is normative legal research, because the focus is on studying written law from various aspects, such as theory, history, philosophy, structure and composition, scope and material, article by article and general explanation, formality and binding force of a law and the legal language used (Marzuki, 2010). The legal materials used are primary legal materials, secondary legal materials and tertiary legal materials.

### **Results and Discussion**

Environmental Impact Assessment (*AMDAL*) is the most commonly recognized, used, and widespread environmental planning and management tool globally, with the Strategic Environmental Assessment (SEA) or *KLHS* also gaining increasing momentum over the past decades. The aim is to ensure that all information important for predicting future impacts on the environment is provided and considered in the decision-making process. While the *AMDAL* assesses the planned physical development, the *KLHS* targets the strategic planning level, such as government plans, programs or policies. Both aim to avoid implementing activities or strategic planning documents that have a negative impact on the environment (United Nations Environment Programme, 2018).

Public participation in environmental management is recognized and protected in the 1992 Rio Declaration (Rio Declaration, 1982), 10 principles of this declaration says:

“Environmental issues are best addressed with the participation of all concerned citizens, at the relevant levels. At the national level, individuals should have appropriate access to information regarding the environment held by public authorities, including information about hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States should facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative processes, including redress and remedies, must be provided”

Principle 10 stipulates three basic rights, namely access to information, access to public participation, and access to justice, as the main pillars of sound environmental governance. The right of access is very important in promoting transparent, inclusive and accountable environmental governance. Access to information empowers citizens and encourages them to participate in decision making and policy processes in an informed way. Public participation

is increasingly seen as an important part of addressing environmental issues and achieving sustainable development by encouraging governments to adopt policies and make laws that take the needs of society into account. Access to justice provides the basis of the “right of access”, as it facilitates the ability of the public to uphold their right to participate and to receive information (United Nations Environment Programme, 2016).

In Indonesia, public participation is explained in Law Number 23 of 1997 concerning Environmental Management as an explanation of principle 10 of the Rio declaration. Article 5 of Law No. 23 of 1997 states:

1. Everyone has the same right to a good and healthy environment.
2. Everyone has the right to environmental information related to their role in environmental management.
3. Everyone has the right to play a role in the framework of environmental management in accordance with the applicable laws and regulations.

This regulation regarding public participation is then increasingly clear in Law Number 32 of 2009 concerning the Protection and Management of the Environment (UU PPLH). Article 65 specifically states that:

1. Everyone has the right to a good and healthy environment as part of human rights.
2. Everyone has the right to receive environmental education, access to information, access to participation, and access to justice in fulfilling the right to a good and healthy environment.
3. Everyone has the right to submit suggestions and/or objections to planned businesses and/or activities that are expected to have an impact on the environment.
4. Everyone has the right to play a role in the protection and management of the environment in accordance with statutory regulations.
5. Everyone has the right to file a complaint due to allegations of environmental pollution and/or damage.
6. Further provisions regarding procedures for complaints as referred to in paragraph (5) are regulated by a Ministerial Regulation.

Public participation is a basic element of EIA/*AMDAL* and also the key to accurate and effective environmental assessment. The process of public participation in the EIA/*AMDAL* review should have been placed as early as possible from the activity planning, scoping and review, to monitoring (follow-up) stages by involving massive and holistic representation of all parties with an interest in the project that will be and has been built (Indonesian Center for Environmental Law, 2020). In addition, in this process, broad representation of public participation is important in its efforts to fill the gap between policy makers and affected parties.

The right to environmental information is a logical consequence of the right to play a role in environmental management based on the principle of transparency. The right to environmental information will increase the value and effectiveness of participation in environmental management, in addition to opening up opportunities for the community to actualize their right to a good and healthy environment. The environmental information in question can be in the form of data, statements, or other information relating to the protection and management of the environment which according to its nature and purpose is indeed open to the public, such as environmental impact analysis documents, reports and evaluation of the results of environmental monitoring, both compliance monitoring and monitoring of changes in environmental quality and spatial planning.

Public participation in the preparation of EIA/*AMDAL* documents must be carried out by the initiator and the government considering that public participation is an obligation of the initiator and the government besides being a good right of the community (Sastro, 2006). This is because the law does not only originate from but also encompasses other actors who

have an interest in the existence of the law. This is in line with what was stated by William Chamblis and Robert B. Seidman through the theory of the working of law in society (Rahardjo, 1979).

In this context, the subjects referred to are regulatory agencies, institutions implementing regulations, role holders, and social-personal forces. Even though the community's demands have been set forth in the form of norms by regulatory agencies, these demands have also been forced by regulatory agencies to be carried out by implementing agencies and role holders, but the implementation of the law is still inseparable from feedback from role holders and social pressure personal (Sudarwanto and Ciptorukmi, 2021).

So that in the concept of the environment it can be understood that the community and environmentalists are representatives of public participation as holders of social-personal roles and strengths. Communities and environmentalists are the target of a rule or law that is connected with the hope of protecting the community itself.

Public participation is also very important, because as stated in Article 2 of Law Number 32 of 2009 concerning Environmental Protection and Management, that environmental protection and management is implemented based on participatory principles. This means that every member of society is encouraged to play an active role in the process of making decisions and implementing environmental protection and management, both directly and indirectly. This is to ensure that the principles of sustainable development have become the basis and are integrated in the development of a region and/or policies, plans and/or programs.

In addition, public participation is also very important because in essence everyone has an interest in the environment, so everyone also has the right to participate in every decision related to the environment. "butterfly flapping wings in the amazon forest caused a big storm in Texas", this is the reason why everyone should take an important role in environmental issues. Because it is in line with the principles in the Rio declaration, that awareness is that in essence the earth is a common home for all living things. Environmental damage in Kalimantan's forests could have an impact that can be felt as far as Yogyakarta.

Of course we all agree that the economic progress of a country is in line with the improvement of the investment climate in that country. but that doesn't mean the government "justifies" all kinds of ways for the sake of investment. How is it possible that the government wants to take advantage of an improvement in the investment climate but on the other hand forgets the harm that will arise from this regulation, in this case environmental damage. In Islam, a rule has developed, which reads "dar'ul mafasid muqaddamun ala jalbil mashalih" (Darwis, 2012), which means that avoiding harm must take precedence over achieving benefit.

## Conclusion

There have been many changes to provisions regarding Environmental Impact Analysis (*Amdal*) in Law Number 11 of 2020 concerning Job Creation, with what was previously regulated in Law Number 32 of 2009 concerning Environmental Protection and Management. Such as the definition of EIA/*Amdal*, the Role of Environmental Observers, Elimination of Objections and Community Involvement, Amdal Assessment Commission, Due Diligence Test Team, and Cancellation Based on Court Decisions.

Changes in provisions related to the role of environmentalists and the elimination of community involvement are the reasons why Law Number 11 of 2020 concerning Job Creation is considered to have reduced public participation by limiting the number of people who can participate in the *Amdal* preparation process. This has the potential to worsen the quality of EIA/*Amdal*, which in turn has a direct impact on greater environmental damage.

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