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Legal Supervision And Enforcement In Environmental Law Under The Law Number 32 Year 2009 On Environmental And Protection Management

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Abstract: With Law supervision and enforcement in Environmental Law, elements of the environment can be resolved, including elements of conservation, social culture and physical. Element of conservation (biotic) is element of the environment that consists of a living creature, such as a human, animals, plants and microorganisms. Social and Cultural Element is a social-cultural environment created by human beings which is a system of values, ideas and beliefs in behavior as social beings. Physical Elements (abiotic) consists of non-living objects including soil, water, air, climate and other elements. The three elements must be maintained and preserved from environmental damage and pollution. Government is responsible for the welfare of his people and has a fundamental responsibility in realizing the formation of environmental conservation. Protection and Management of law includes Planning, Utilization, Maintenance Controlling, Monitoring and Law Enforcement.

Keywords: Law Supervision and Enforcement.

1. INTRODUCTION

Environment is something s outside or around living creatures. Environment Experts provide definitions that environment (or habitat) is a complex system in which various factors influence a reciprocal one another and with community of plants. Forestry Encyclopedia states that Environment is the total amount of non-generic factors that affect the growth and reproduction of trees. It covers a very wide range of things, such as soil, moisture, weather, the influence of pest and disease, and sometimes human intervention.

The importance or influence of environmental factors on plants varies at different times. A factor or several factors are critical if at a certain time greatly affect the life and growth of plants. This can be at a minimum, maximum or optimal level, according to the limits of tolerance of the plants or their respective societies. Environment is divided into two: Biotic and Abiotic with the following explanations:

a. Biotic component (living things Component) e.g animals, plants, and microbes.
b. Abiotic component (components of non-living things) e.g water, air, soil and energy.

Under the terms of the tropic or nutrients, biotic components of the ecosystem are composed of two types:

a. Autotrophic component. Autotrophic comes from the words *autor* means comes from the word itself, and *tropikos* means to provide food. This is organisms that provide or synthesize its own food in the form of organic material with the help of chlorophyll and primary energy in the form of solar radiation. Therefore, organisms containing chlorophyll belong to autotroph group and are generally plant species. Binding of solar radiation energy and synthesis of inorganic materials into complex organic materials occur in it.
b. Heterotrophic component. This comes from the word hetero meaning different or another, and trophikos means provides food. Heterotrophic component include organisms whose lives always use organic materials as food ingredients, while the organic material used is provided by other organism. Therefore, this component obtains food from autotrophic component. Some members of this component breaks the organic material complex into the form of organic material. Thus, animals, fungi and microorganisms belong to the class of heterotrophic component.

Odum (1993) suggested that all ecosystems, from its basic structure, consists of four components. Similar statement was also delivered by Rososoedarmo et al. (1986) that the ecosystem consists of four components: abiotic, biotic component include producers, consumers and decomposers. Each of the components are described as follows: abiotic component (or non-living) is a chemical and physical component consisting of soil, water, air, sunlight, and other form of medium or substrate for life. According to Setiadi (1983), abiotic component of an ecosystem may include compounds of inorganic elements e.g, water, calcium, oxygen, carbonate, phosphate and blended organic bonds. In addition, there are also physical factors involved, for example steam, water and solar radiation.

Producer component, autotrophic organisms is generally green plants. Producers use sun radiation energy in photosynthesis process, so as to assimilate CO and H2O resulting in *komia* energy stored in carbohydrates. This chemical energy is a rich source of energy of carbon compounds. In the photosynthesis process, the oxygen released by the green plant is then used by all living beings in the process of respiration.

Consumer component is a heterotrophic organism, for example human and animal who eat other organisms. So, a consumer is all the organisms in the ecosystem that uses a synthesis product (organic material) from other the manufacturer or from organisms. Based on the category, consumer is all kinds of animals and humans in an ecosystem. Consumers can be

classified into First, Second, Third and micro consumers (Resosoedarmo Setiadi et al 1986 and 1983).

The First Consumer is herbivore including animals consuming green plants e.g insects, rodents, rabbits, deer, cattle, buffalo goat, zooplankton, crustaeeae and mollucas.

The Second Consumer is a group of small carnivores and large omnivore and eat other living animals e.g dogs, cats, jungle dogs, *prenjak*, starlings and crows. Omnivores are organisms that eat herbivores and plants such as humans and sparrows.

The Third is large carnivores (high level) consuming a small carnivore such as tiger, wolf and eagle.

Micro consumers are plants or animals that live as parasites, scavengers, and saprobes. Plant and animal parasites depend on food sources from their host. While scavenger and saprobe live by eating carrion.

From the description in the introduction, the author conducted a research entitled SUPERVISION AND ENFORCEMENT IN ENVIRONMENTAL LAW UNDER THE LAW NUMBER 32 YEAR 2009 ON ENVIRONMENTAL AND PROTECTION MANAGEMENT

2. RESEARCH METHODOLOGY

Normative juridical approach is applied in the present research. The approach is carried out from legal aspects of laws and regulations on supervision and enforcement of law and sourced from library data which is then associated with the existing cases in environmental issues.

3. DISCUSSION

A. DEFINITION OF ENVIRONMENTAL LAW

Environmental law (Mileurecht) is a law related to inner environment (Naturlijk Milieu) in the widest sense. Its scope is related and determined by the scope of environmental management. Thus environmental law is a juridical instrumentation for the management of the environment whose management is carried out primarily by the government; therefore, environmental law largely consists of governmental law.

Environmental Law by Law no. 32 Year 2009 is the unity of space with all things, power, circumstances, and the living creatures including human beings and behavior that affect nature itself, the continuity of human lives and livelihoods as well as other living creatures.

a. Protect and manage the environment

b. Protect the territory of the Unitary State of the Republic of Indonesia from pollution and or environmental damage
c. Ensure safety, health and human life
d. Ensure the survival of living beings and the preservation of ecosystems
e. Maintain environmental function
f. Achieve harmony and environmental balance
g. Ensure the fulfillment of the nations of present and future generations
h. Ensure environmental compliance and protection as part of human rights
i. Control the utilization of natural resources
j. Achieve sustainable development
k. Anticipate global environmental issues

Legal Protection and Management include:

1. Planning
2. Utilization
3. Control
4. Maintenance
5. Supervision
6. Law enforcement

Supervisors and Law Enforcement Supervision:

1. Minister, Governor, or the Regent/Mayor in accordance with his/her mandatory is obliged to supervise responsibility for a business and/or activities on the conditions set out in the legislation in the field of environmental protection and management.
2. Minister, Governor, or Regent/Mayor may delegate to supervise the statement of the party responsible for the business and / or activity on the provisions stipulated in the laws and regulations in the field of environmental protection and management
3. In conducting supervision, Minister, Governor or Regent/Mayor shall stipulate environmental monitoring officer assigned as functional official
4. Minister, Governor, or Regent/Mayor in accordance with their authority shall be obliged to supervise the compliance of the party responsible for the business and or activity on environmental permit
5. Minister may supervise the compliance of the party responsible for the business and/or activities whose environmental permit is issued by the regional government if the government considers serious violation in the field of environmental protection and management.

Official of environmental supervisor as referred to in Article 71 paragraph (3) shall have the authority to:

a. conduct monitoring;
b. ask for information;
c. copy documents and/or make necessary notes;
d. enter a certain place;
e. photographing;
f. make audio visual recordings;
g. take sample;
h. check equipment;
i. check the installation and/or tools transportation; and/or
j. stop certain offenses.
k. coordinate with civil servant investigators.
l. party responsible for the business and/or activities is prohibited from blocking execution of the official duties

Law enforcers can be classified into 3 categories, they are:

a. Environmental law enforcement related to Administrative Law/State Administration.
b. Environmental law enforcement related to Civil Law
c. Environmental law enforcement related to the Criminal Law

Government's effort in imposing administrative sanctions is consistent with the authority to maintain environment preservation, in this respect, enforcement of administrative sanction is the frontline in the enforcement of environmental law (Primum Remediumn). If sanctions are not effective, criminal sanctions as the ultimate weapon (ultimum Remedium).
This means that criminal law enforcement on environmental criminal act can only be started if: The affluent apparatus has imposed administrative sanctions and has prosecuted violators by dropping an administrative sanction. However, it was not able to stop violations. For companies that committed violation, dispute resolution mechanism has been proposed outside the court in the form of discussion/negotiation/ mediation, yet it was deadlocked and continued through civil courts, yet the effort is also not effective, thus, instruments of Environmental Criminal Law enforcement is imposed.

Government authority to regulate is something that has been established by the Act. From administrative law, this authority is called by attribution authority (Atributive bevoeghdheid), which is authority attached to government agencies gained from Act. The government agencies thus have authority to apply the provisions of Article 8 of Law No. 23 of

1997. Accordingly, the authorized government agencies have particularly legitimacy (authority to act in political scope) t run the jurisdiction.

Legitimacy is a matter of authority to impose sanctions such as supervision and sanction mandated by the law. Supervision is carried out by a special institution formed by the government. Administration sanctions can be delegated to the Regency/City Government. This is stated in article 25 of Law No. 23 of 1997 on Environmental Management.

Damage to the environment is a side effect of human action to achieve a goal that has consequences on the environment. Environmental pollution is the result of the ambiguity of human action. The obligation of the entrepreneur to control the pollution of the environment is a requirement in granting a business license that the entrepreneur can be held accountable if they neglect their obligations. There are some typical sanctions sometimes used by the government in environmental law enforcement, including *Bestursdwang*.

Bestuursdwang (governance coercion) is outlined as concrete actions by employers to end a situation prohibited by an administrative law rule or (if still) conducts what the citizen is supposed to be abandoned because it is against the law. Profitable (subsidy, payment permit) Decision recall (Decision). The recall of a verdict does not necessarily need to be based on legislation. It is not included when the decision) is valid for an indefinite time and according to its nature of 'can be terminated' or withdrawn (Permit, periodic subsidies).

3) Factor inhibiting environmental law enforcement in Indonesia

a. Lack of socialization to the public regarding environmental law

According to Hamzah, in general problem begins at one point of the occurrence of violations of environmental law. It is started by individual members of the community, victims of law enforcement who know immediately the occurrence of violations without any reports or complaints. Bapedal NGOs or environmental organizations is a place to make report for civil avenues, especially the demands of unlawful acts, may bring their own lawsuit to civil judges on behalf of the public (striped algemen, stripes maatschappelijk).

If they cannot bear the cost of the case, under Article 25 of Presidential Decree No. 55 of 1991, they can forward to prosecutors who will sue civil in the name of public interest or public interest. In the prosecutor's office there is a special field for this, namely the Deputy Attorney General of Civil and State Administration. In addition, community members, victims, NGOs, environmental organizations, even anyone can make criminal reports to the police. Anyone witness a crime is required to report to the investigator. From the police, they can request juridical prosecutor's instruction. The is is clearly a criminal law. However, prosecutors can still settle on the basis of the principle of opportunity, whether on condition or unconditionally.

If violation have been serious and offensive to all dimensions, for example violating the terms of a license causing financial loss to a person or society, and even a recidivist has inflicted injuries or death, law enforcement should do his duty. In order for the sanctions imposed do not overlap, for example fines (based on administrative and criminal sanctions), law enforcement need to consult that action is taken each well-coordinated.

b. Obstacles in proof

Development activities undertaken by the Indonesian nation not only provide a positive impact, but also negative impacts (e.g the occurrence of pollution). Manufacturers do not incorporate externalities as cost elements in its activities, thus the other party loses. This will be an obstacle to the take-off era, as this condition is concerned with protecting the right to enjoy healthy environment. This pollution problem, if not addressed well, will threaten the preservation of environmental functions.

This difference indicates that environmental issues are complex in terms of proof and application of the article, and the subjectivity of decision makers is high that it needs a medium to simplify, facilitate and minimize the element of subjectivity.

c. Law Enforcement Infrastructure

The main difficulty frequently expressed by the government or law enforcement officers in dealing with forest fires is the lack of monitoring apparatus, or the lack of evidence. In the case of being caught, the snared are operators who are daily workers. Companies can always escape the law. The state should have the power to revoke operating licenses or concessions on companies in the region with hotspots. There are only two possibilities in case of fire within a forest or plantation concession, i.e they are deliberately burned or they are not seriously keeping their area free from fire.

If such government power presence, it can be ascertained the number of forest burning will drop drastically. Thus, we need rule of law in the form of Government Regulation because the existing law is not adequate.

d. Poor Law Culture

In some cases, environmental crimes occur because of the strong culture of corruption, collusion and nepotism between corporations, governments and the House of Representatives. Illegal lobbying is still common. For example, procurement of goods and services project in Sidoarjo Environment Agency (BLH) budget year. It is not an easy job to eradicate corrupt practices that often occur, but it is not impossible.

4. Environmental Impact Assessment (EIA/EIA)

Environmental Impact Assessment (EIA) is a study of major and significant impacts of a business and/or planned activities on the environment necessary for the decision making process regarding business and/or activities in Indonesia. This is made when planning a project that is expected to have an impact on the surrounding environment.

An environmental impact analysis emerged in response to concerns about the negative impacts of human activities, particularly environmental pollution caused by industrial activities in the 1960s. Since then EIA has become a major tool for carrying out clean environmental management activities and is always attached to sustainable development goals.

EIA was first introduced in 1969 in the United States. According to Law no. 23 of 1997 on Environmental Management and Government Regulation no 27/1999 on Environmental Impact Analysis, Indonesia has an Environmental Impact Assessment (EIA) to be created if one wants to establish a project that is expected to have a major and significant impact on the environment. EIA is a study of the major and significant impacts of a planned business and/or activity in the living environment necessary for decision-making processes concerning the conduct of business and/or activities.

The basis of EIA law is Government Regulation no. 27 of 2012 on 'Environmental Permit'. EIA itself is a study of the positive and negative impacts of an action plan or project, which the government uses in deciding whether an activity or project is feasible or not environmentally feasible. The study of positive and negative impacts is usually prepared by considering the physical, chemical, biological, socio-economic, socio-cultural and public health aspects.

An activity plan can be declared not environmentally feasible, if based on the results of an EIA study, the negative impacts that its impact cannot be overcome by available technology. Likewise, if the costs necessary to combat the negative impacts are greater than the positive impacts that will be generated, then the activity plan is deemed unsuitable for the environment. An activity plan that is decided not environmentally feasible can not continue its development.

EIA mandatory criteria is only required for projects that have a significant impact on the environment, which is generally contained in the planned activities, large-scale, complex and located in areas with a sensitive environment.

Basically Environmental Impact Assessment (EIA) is the overall process that includes successive preparation as stipulated in Government Regulation No. 27 of 2012, the form of the EIA study results in the form of EIA documents consist of five (5) documents, namely:

1. Document of Terms of Reference of Environmental Impact Analysis (KAANDAL)

2. Document of Environmental Impact Analysis (ANDAL)
3. Document of Environmental Management Plan (RKL)
4. Document of Environmental Monitoring Plan (RPL)
5. Executive Summary Document

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

KA-ANDAL is a document containing the scope and depth of the ANDAL study. The scope of the ANDAL review includes determining the significant impacts to be studied in more depth in ANDAL and ANDAL study limit. The depth of the study is concerned with the determination of the methodology to be used to assess the impact. Determining the scope and depth of this study is an agreement between the Activity Proponent and the EIA Appraisal Commission through a process called scoping process.

b. Analysis on Environmental Impact (EIA).

ANDAL is a document that contains a careful review of the important impact of an activity plan. Important impacts that have been identified in KAANDAL documents are then examined more carefully using agreed methodologies. This study aims to determine the magnitude of the impact. Once the magnitude of the impact is known, further determination of the nature of the impact is important by comparing the magnitude of the impact on the important impact criteria set by the government. The next assessment phase is an evaluation of the linkages between impacts with each other. This impact evaluation aims to determine the basics of impact management that will be undertaken to minimize negative impacts and maximize positive impacts.

c. Environmental Management Plan (RKL)

RKL is a document containing efforts to prevent, control and mitigate the negative environmental impacts and maximize the positive impacts of an activity plan. These efforts are formulated based on the results of the baseline of impact management resulting from the ANDAL study.

d. Environmental Monitoring plan (RPL)

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

In relation to the procedures of EIA, the Government Decree Number 27 of 2012 has established the following mechanisms:

1. The proponent develops a Terms of Reference (KA) for the preparation of EIA documents. Subsequently submitted to the EIA Commission. The Terms of Reference are processed for 75 business days from receipt by the EIA commission. If within the time specified, the EIA Commission does not provide responses, the said Terms of Reference document becomes valid for use as a basis for the preparation of the ANDAL.
2. The proponent prepares the Environmental Impact Analysis (ANDAL) document, the Environmental Management Plan (RKL), the Environmental Monitoring Plan (RPL), then submitted to the agency responsible for processing by submitting the document to the EIA assessment commission for assessment
3. The result of the evaluation of the EIA Commission shall be returned to the agency responsible for issuing the decision within 75 days. If within the time period provided, it has not been decided by the responsible agency, then the document is not environmentally feasible.
4. If within a specified period of time, it appears that the agency responsible for issuing the rejection decision because it is deemed not to meet the EIA technical guidelines, then the initiator is given an opportunity to fix it.
5. The results of the amendment of the EIA document by the proponent shall be re-submitted to the agency responsible for processing in decision making in accordance with Article 19 and Article 20 of Government Regulation No. 27/1999.
6. If EIA document can be concluded that negative impacts cannot be overcome based on science and technology, or the cost of mitigating negative impact is greater than the positive impact.

Article 16 of the UULH states that "Every plan that is expected to have significant environmental impacts shall be supplemented by an analysis of impacts environment whose implementation is regulated by government regulation ". From the provisions of article 16 UULH can be concluded two things:

a. Environmental impact assessment is part of the process of planning and decision-making instruments.
b. Not all planned activities shall be supplemented by an analysis of environmental impacts, which shall be supplemented by an analysis of environmental impacts only those having significant environmental impacts.

To measure or determine the major and important impacts such criteria are used on:

1. The number of people who will be affected business and/or activities plans
2. area affected

3. Intensity and duration of the impact
4. The number of environmental components that will be affected
5. The cumulative nature of the impact
6. Reversible or irreversible impact

According to PP. 27 Year 1999 Article 3 paragraph (1), business and or activity which may cause major and important impact to the environment include:

1. The form of conversion of land and landscape
2. Exploitation of natural resources both renewable and non-renewable
3. Processes and activities that could potentially lead to waste, pollution and environmental degradation, and the deterioration of natural resources in their utilization
4. Processes and activities which may affect the natural environment, built environment, as well as the social and cultural environment
5. Processes and activities which may affect the preservation and conservation of resources/or protection of cultural heritage
6. Introduction of plant species, animal species, and types of microorganisms

The types of business plans and/or activities that must be supplemented by EIA can be seen in the Decree of the State Minister of the Environment Number 17 of 2001 on the Type of Business and/or Activities Required with EIA. Type of business and/or activity must EIA such as defense and security, agriculture, fisheries, forestry, health and others - others.

Environmental Impact Analysis Function

The EIA serves as the determination of decision-making as stated in Article 1 paragraph 1 of PP 27/1999, the EIA is a study of the major and significant impacts of a planned business and / or activity on the environment required for the decision-making process concerning the operation of the business and / or activities. Decision-making is the process of choosing an alternative way of acting with an efficient method according to the situation.

The objective of EIA in general is to maintain and improve the quality of the environment and reduce pollution so that the negative impact becomes as low as possible. EIA is an environmental management instrument that is expected to prevent environmental damage and ensure conservation efforts. The results of the EIA study are an important part of the project development plan itself.

The objective of EIA is To ensure that a business and/or development activity can operate sustainably without damaging and sacrificing the environment or in other words the business or activity is feasible from the environmental aspect. In essence, it is expected that through the EIA study, the environmental feasibility of a business plan and / or development

activity is expected to optimally minimize the possibility of negative environmental impacts, and can utilize and manage natural resources efficiently. EIA is part of a system's overall development; the EIA does not stand alone. The usefulness and benefits of the EIA can be seen from several approaches, they are:

1. Usefulness and benefits for the community

EIA can have usefulness and benefits for the community, because EIA is a study that also involves the community in providing input or information on the EIA study. So the planning of development in the region can be informed from the positive and negative aspects. For example the positive aspect, which can help the area around the development planning in the absorption of labor so that it can open employment, the existence of facilities and infrastructure of roads and electricity so as to assist in the existence of means of transportation on the region and others.

2. Usability and benefits of EIA for decision makers

EIA is helpful for decision makers as an input in the direction and control of development so as to avoid unwanted side effects and adverse. In addition, decision makers can know impact exceeded the limit tolerance, impacts on communities, impacts on other development activities, wider environmental influences. It is as also reference in research in the field of science and utilization technology; as a comparison of other EIA implementation and as a prerequisite in the round of funding projects and licensing.

3. Usability and benefits of EIA in environmental monitoring

EIA study results expressed in terms of the Environmental Management Plan (RKL) and Environmental Monitoring Plan (RPL). With the RKL and RPL, the implementation of development activities will be legally bound to implement the management and monitoring of its environment, because in RKL and RPL there is a procedure for developing positive impacts and mitigating negative impacts, as well as environmental monitoring procedures.

Environmental Impact Assessment Law in Indonesia, the legal basis for the Environmental Impact Assessment (EIA) is provisions of Article 16 of Law No. 4 of 1982 whose implementation is regulated in Government Regulation no. 29 of 1986 on Environmental Impact Analysis. The formulation of Article 16 of Law no. 4 of 1982 is as follows: "Any plans expected to have an impact important to the environment shall be supplemented by an Environmental Impact Analysis whose implementation is governed by a Government Regulation ".

To implement Government Regulation no. 29 of 1986 above, it has been stipulated five Decree of the Minister of State for Population and Environment on June 4, 1987, one day before

the effective enactment of Government Regulation N0. 29 Year 1986. As for the decisions as the following:

a. KEP-49 / MENKLH / 6/1987 on Guidelines of Important Impact Assessment,
b. KEP-50 / MENKLH / 6/1987 on Guidelines for the Preparation of Analysis Regarding Environmental Impacts,
c. KEP-51 / MENKLH / 6/1987 on Guidelines for the Preparation of Evaluation Studies Regarding Environmental Impacts,
d. KEP-52 / MENKLH / 6/1987 regarding the Deadline for the Preparation of the Evaluation Study Regarding Environmental Impacts,
e. KEP-53 // MENKLH / 6/1987 on Guidelines for the Membership Arrangement and Working Procedures of the Commission.

The above mentioned legislation is no longer valid since the issuance of the new Law in the form of Law no. 23 of 1997 on Environmental Guidelines. Similarly, the Government Regulation no. 29 of 1986 has been revoked by the enactment of Government Regulation No51 of 1993 on Environmental Impact Analysis on October 23, 1993. As a follow-up of Government Regulation no. 51 of 1993 has been established six (6) Decree of the State Minister of Environment on 19 March 1994 and one decision of Head of BAPEDALDA on March 18, 1994.

The Sixth Ministerial Decree on Environment are:

f. KEP-10 / MENKLH / 3/1994 on the Revocation of Decree of the Minister of State for Population and Environment No. KEP-49 to KEP-53 mentioned above.
g. KEP / 11 / MENKLH / 6/1994 on Business Types and Activities Required to be Completed with Analysis About Environmental Impacts.
h. KEP-12 / MENKLH / 3/1994 on the General Guidelines for Environmental Management Efforts and Environmental Monitoring Efforts.
i. KEP-13 / MENKLH / 3/1994 on Guidelines for Membership Arrangement and Work Procedure EIA Commission.
j. KEP-14 / MENKLH / 3/1994 on Guidelines for Preparation of Analysis About Environmental Impacts.
k. KEP-15 / MENKLH / 3/1994 on the Establishment of Komisis Analysis on Integrated Environmental Impacts

With the enactment of Law no. 23 of 1997 on the Management of the Environment it is necessary to make adjustments to the Government Regulation no. 51 of 1993 on EIA, therefore

the Government Regulation No. 51 of 1993 was sown, with the enactment of Government Regulation no. 27 of 1999 which became effective on 18 November 2000.

Relation of Environmental Impact Analysis with Environmental Permit Certain businesses or activities cannot be performed without the permission of the authorized governmental organs. That fact is understandable because things are often related to activities to be performed by the applicant permit. Permit a tool rights and obligations of the applicant to carry out a business or particular activity. As said in the background, environmental permission is one of the requirements to obtain a business license or activity. Business license or permit required activities such environments is an activity or business activity shall be obligatory EIA or UKL and UPL.

Article 1 paragraph 35 states that "environmental permit is a license granted to any person doing business and / or activities that are mandatory EIA or UKL- UPL in the framework of environmental protection and management as a prerequisite for obtaining a business license and / or activity".

Environmental permits contained in the Law-PPLH incorporate the process of handling environmental feasibility decisions, liquid waste disposal permits, and hazardous waste toxic waste permits (B3). At the enactment of Law no. 23 of 1997, environmental feasibility decisions are administered at the beginning of business activities. The mining sector, for example, was taken care of before construction of the mine. After construction is completed, the entrepreneur must take care of the discharge permit of liquid waste and B3. Now the three licenses are merged, being taken care of once into an environmental permit. The requirement is clear, that the environmental impact assessment (EIA) or environmental management efforts (UKL) and environmental monitoring efforts (UPL). Without these three documents, environmental permits will not be granted.

Based on Article 123 UU-PPLH, "All permits in the field of environmental management issued by the Minister, governor or regent / mayor in accordance with their authority shall be integrated into the environmental license no later than 1 (one) year since the Law is stipulated" .Elucidation to article 123, "Permit in this provision, such as permits for the management of B3 waste, permits to discharge of wastewater into the sea, and discharge permits to water sources". The determination of this Article is then questioned by the environmental entrepreneurs, especially the mining entrepreneurs .

Actually, the provision of environmental permit in the period of Law no. 23 of 1997 already exists, but not yet united as Article 123 UU-PPLH.Environmental permit at the time of Act no. 23 of 1997 is granted separately and "as if" does not bind the entrepreneur to carry

out. This is due to unclear legal relationship between environmental permits with business license or other activities. Environmental permit is an administrative legal instrument provided by an authorized official. Environmental permit serves to control the concrete acts of individuals and businesses that do not damage or pollute the environment. As a form of direct regulation, environmental permits have the function to foster, direct, and discipline the activities of individuals or legal entities in order not to pollute and / or damage the environment. Therefore, environmental permit is an essential environmental policy instrument in preventing and mitigating pollution and/or environmental damage. The main function of environmental permit is preventive, ie the prevention of pollution which is reflected from the obligations listed as permit requirements, while other function is repressive that is to overcome pollution and / or environmental damage which is realized in revocation of permit.

In contrast to the two previous environmental laws, the Law-PPLH-2009 has been granted limited understanding of environmental permits. The definition of environmental permit is provided in Article 1 number 35 which reads:

Environmental permit is a license granted to any person doing business and / or activities that are mandatory EIA or UKL-UPL in the framework of environmental protection and management as a prerequisite for obtaining a business license and/or activity.

From this understanding there are two important things that need to be explained. First, that the environmental permit is not necessary for all business licenses and/or activity, but only obliged to businesses and/or activities that are mandatory EIA or UKL-UPL. This is in harmony with the function of environmental permits to control businesses and / or activities that have an impact on the environment. Second, environmental permits are a prerequisite for obtaining business licenses and/or activities.

This provision is a more progressive novelty of the two previous environmental laws. Environmental permit has been combined with business license. Authority Issuance of Environmental Impact Analysis The authority of the government in the management of the environment is constitutionally based on the provisions of Article 33 Paragraph (3) of the 1945 Constitution of the State of the Republic of Indonesia which reads:

"The earth and the water and the natural wealth which is contained therein are controlled by the state and used for the greatest prosperity of the people".

The above provision asserts existence "right to harness the state "over the earth, water and natural resources contained therein .

Through this right the state is empowered to regulate the use and management of the earth, water and natural resources in order to be used for the greatest prosperity of the

people. This authority may be fully implemented by the government or partly submitted to the region, depending on the system of government adopted. Along with the demands of reform, since the enactment of Law no. 22 of 1999 on Regional Government, which is now replaced by Law no. 32 of 2004 on Regional Government Article 10 paragraph (1), there has been a paradigm shift of centralist government system to be decentralized. Since then there has been a reversal of power from center to region. Unfortunately, this provision is itself countered by Article 11 paragraph (1) that out of the six government affairs which are the most rapid authorities, it will be administered jointly between the center and the regions based on the criteria of externalities, accountability and efficiency (concurrent).

On the basis of the nature of concurrent authority that is held the division of authority as regulated further in Government Regulation no. 38 of 2007 on the Division of Government Affairs between the Government, Provincial Governments and District / City Governments. Based on this PP, there are 31 matters of government that become joint affairs, comprising compulsory and optional affairs .

Affairs in the field of environmental management are included in the obligatory affairs group, meaning that it must be implemented by all regions. While that is optional, depending on the condition, uniqueness, and potential seed of the region concerned. On this basis, then each region does not necessarily have the same authority. Therefore regional authority must first be determined by each region through local regulations (Perda).

5) Legislation

l. Law no. 23 of 1997 on Environmental Management (as umbrellas for other people related to the environment).

m. Law No.32 of 2009 on Protection and Management of Environment (Substitute of Law no. 23 of 1997).

n. Minister of Environment Decree No. SIlIvIENLWl } llggs on Quality Standards Liquid Waste for Indusfii Activities.

o. Government Regulation no. 27/1999 on Anatisis on Impact Living environment.

p. Hinder Ordonantie (HO): Act No. 1926 No. 226.

q. Government Regulation No. 82/2001 on Water Quality Management and Pollution Control Water

r. No. 9 of 2000 on Guidelines for Preparation of EIA

4. CONCLUSION

The minister, governor or regent/mayor in accordance with their authority shall be obliged to supervise the compliance of the party responsible for the business and/or activity on the environmental permit. Solving environmental disputes can be done through in or out of court. Environmental dispute resolution options are voluntary by the related parties. Judicial proceedings can only be made if the dispute resolution efforts outside the selected court are declared unsuccessful by one or the parties to the dispute.

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