

# The Importance of The Role of The Community in Amdal For The Goal of Environmentally Sound Sustainable Development (Case Study of Constitutional Court Decision No. 91/PUU-XVIII/2020 Concerning Judicial Review Law NO. 11 OF 2020 Concerning Job Creation)

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## KEYWORDS

Community Role; Amdal Permit, MK Decision; UUPPLH; Job Creation Law

## ABSTRACT

The State of Indonesia could be a nation that, in its improvement, puts forward the concept of good and solid natural perspectives recorded within the Structure Article 28H passage (1) and Article 33 passage (4) of the 1945 Structure. In this manner, Indonesia's natural administration and protection concept must have a Allow. Amdal. One of the things within the Work Creation Law No. 11 of 2020 that raises a problem is the expulsion of the article with respect to the commitment for an Natural Allow; within the Work Creation Law, Natural Grants are not entirely directed. In any case, to get a business allow, the candidate must get a choice with respect to natural feasibility. The substance of the Natural Allow contained within the UUPPLH has been changed to gotten to be an natural assention within the Work Creation Law. The issues contained in this article examine natural things contained within the Work Creation Law, look at issues of natural authorizing related to human rights, and give recommendations for advancements with respect to the environment within the Work Creation Law based on MK Choice No. 91/PUU-XVIII/2020, with the comes about of the trial uncovering the truth that the arrangement of the Work Creation Law did not give space for open cooperation. Indeed in spite of the fact that the Work Creation Law remains conditionally valid, if within 2 a long time the Work Creation Law does not make enhancements, the Work Creation Law will be declared unconstitutional. So, the modification of the Work Creation Law after the Sacred Court's choice with respect to the environment must organize human rights and maintainable improvement that's ecologically sound, especially by obliging environmental permit obligations in the form of an Amdal.

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## 1. Introduction

Indonesia is very famous for its abundant natural resources. The amount of natural wealth can be utilized, one of which is the existence of development activities. Development itself requires natural resources (Natural Resources) on a large scale, and development must consider environmental impacts, considering that they can threaten environmental damage (Sholikin, 2018).

Environmental damage due to development can affect human survival. So, development planning must analyse environmental impacts (AMDAL) on development. AMDAL is needed so that development activities do not have a negative impact on the environment and society and can provide positive benefits. So, regulation is needed to protect environmentally sound and sustainable development. An environmental impact analysis is needed from the beginning before developing activities (Febriyanti et al., 2021).

Development activities that continue to increase have the risk of pollution that causes damage to the environment, so the basic structure and function of the ecosystem that supports life can be damaged. So, pollution and the destruction of the environment will become a social burden, and in the end, the government and society must bear the cost of recovery. The responsibility carried out by the government means that it is not handed over to citizens or becomes Civil Law. However, the responsibility for environmental management lies with the government, which has consequences for institutions and the authority of the government to conduct administrative law. Development with the application of sustainable and environmentally sound principles in implementing development from the beginning can be carried out so that it does not cause adverse impacts, and the development of positive impacts can be prepared. As an administrative law, it is preventive in preventing pollution and environmental damage. Article 13, paragraph 1 of Law No. 32 of 2009 concerning Environmental Protection and Management (UUPPLH) states that pollution control and/or environmental damage is carried out to preserve environmental functions. Paragraph 2 states what are the controls on the environment as referred to in paragraph 1, including; Prevention, countermeasures, and recovery.

The birth of Law Number 11 of 2020 concerning Job Creation (Job Creation Law), which aims to establish the Law to bring new toboggan in the concept of forming laws and regulations in Indonesia. However, the latest Job Creation Law did not get a positive response from the public. Public dissatisfaction with the Job Creation Law brought the law to the Constitutional Court (MK) for judicial review (Retaduari, 2022). With the results issued on Thursday, November 25, 2021, the Constitutional Court read the results of Decision Number 91/PUU-XVIII/2020 (2020a) related to the submission of judicial review of the Job Creation Law. In the Amar, the Judgment explained that the Job Creation Law is contrary to the Constitution of the Republic of Indonesia Year 1945 (1945 Constitution) and has no conditionally binding legal force as long as it is not interpreted as "no improvement has been made within 2 (two) years since this decision was pronounced", then the Constitutional Court also ordered the framers of the law (President and DPR) to make improvements with a maximum period of 2 (two) years since the Constitutional Court decision was pronounced. If, within the grace period given, no improvement is made, Law No. 11 of (2020b) concerning Job Creation will become permanently unconstitutional (BPSDM Hukum dan HAM, 2022).

The issue that continues to be wrestled with in the Job Creation Law is related to the environment. According to the community and activists who carry out movements concerned about environmental issues, the Job Creation Law does not create regulations that refer to environmental

friendliness and does not guarantee the preservation of nature. The Job Creation Law has amended and established new rules related to business licensing regulated in Law Number 32 of 2009 concerning Environmental Protection and Management (UUPPLH) (Hidayat, 2020).

The purpose of the study is to analyze the role of the community in the AMDAL process related to environmentally sustainable development, Evaluate the impact of Constitutional Court Decision No. 91/PUU-XVIII/2020 on AMDAL regulations and community participation, Investigating the effectiveness and challenges of community participation in AMDAL after Law No. 11 of 2020 on Job Creation., Provide policy recommendations to increase community involvement in the AMDAL process to support sustainable development.

## **2. Materials and Methods**

The research method used is the normative juridical method, which uses a statutory and conceptual approach. The legislative approach is carried out by reviewing all laws and regulations related to legal issues related to human rights and the environment.

The research used consists of primary and secondary legal materials. The primary legal materials used are binding legal materials, such as laws and regulations, basic norms, judges' decisions, notes on the Job Creation Law, and court decisions in this case are Constitutional Court decision No. 91/PUU-XVIII/2020 concerning judicial review of the Job Creation Law. The secondary legal material used comes from all forms of publications regarding legal journals and books whose nature is to clarify or explain primary legal material.

## **3. Result and Discussion**

### **Environmental Issues in the Job Creation Law**

In the Job Creation Law, there are problems related to the amended Environmental impact analysis tentau, including (Hakim, 2021):

- 1) Environmental impact analysis made by certified initiators or Amdal compilers is used as the basis for environmental feasibility tests in implementing businesses and activities; environmental feasibility tests are carried out by a team formed by the central government environmental feasibility test agency. Elements of the central government, local government, and certified experts form the team. The output of the due diligence is in the form of recommendations regarding environmental feasibility or unworthiness. From the recommendations submitted, the central government or local government determines a decision and determines the feasibility of the environment. Environmental feasibility is used to determine the conditions for issuing business permits. The concept differs from the previous provisions stipulated in the Environmental Protection and Management Law (UUPPLH), namely, Amdal is the basis for determining environmental feasibility decisions for business and activity operations. The UUPPLH states that the Amdal Assessment Commission first assesses environmental impact analysis, which is formed by the minister, governor, or mayor/regent according to the authority. If there is no Amdal recommendation, an environmental permit will not be issued.
- 2) The provisions in the latest Job Creation Law narrow society's definition. The community in question is only the community directly affected. Meanwhile, in UUPPLH, the community referred to is the community that experiences impacts, environmentalists, and/or is affected by all forms of decisions in the Environmental impact analysis process.

3) Regarding changes to the objection mechanism for Amdal, the UUPPLH provides space for people who object to Amdal documents to be able to file objections or legal remedies. In contrast to the latest Job Creation Law, which is not regulated regarding the objection mechanism for Amdal as in the UUPPLH, the Job Creation Law removes provisions regarding the provisions of the Amdal assessment commission contained in Article 29, Article 30, and Article 31 of the UUPPLH. The absence of an objection mechanism to Amdal certainly raises new problems in the community because, with the objection mechanism to Environmental Impact Analysis, it is essential to ensure environmental sustainability, especially to keep Amdal documents from being made carelessly and just a formality.

Changes contained in the Job Creation Law amend the provisions of Law Number 32 of 2009 concerning Environmental Protection and Management, especially regarding Amdal and environmental permits, which are considered to weaken and threaten the preservation of nature. The fundamental analysis of environmental impacts to determine low- and high-risk projects has not found any bright spots in the rules. This creates concern that the change in the regulation has the potential for Amdal to be applied only to keep the Amdal document from being made a formality because it is considered that the process of issuing an environmental impact assessment is carried out without any control from the community. As appropriate, community participation becomes part of the issuance of environmental impact assessments.

With respect to the criminal sanctions contained in Article 102 of Law Number 32 of 2009 concerning Natural Assurance and Administration, individuals arranging of B3 squander without consent are charged a greatest jail sentence of 3 a long time with a greatest fine of Rp3 billion. Be that as it may, Article 102 of the Work Creation Law has been annulled (Sulaeman et al., 2018; Yanti & Fitri, 2022). Likewise, there are changes to Article 109 of Law Number 32 of 2009 concerning Environmental Protection and Management, which originally criminalized people who carry out activities without having an environmental permit. Meanwhile, amending Article 109 without environmental permit approval is not necessarily criminal. The formulation in the latest Article 109 (Job Creation Law) can be punished if business activities are carried out without environmental permits if they cause casualties or damage to safety, public health, and the environment (Ady, 2021a).

The Work Creation Law has the potential to harm timberlands and other situations. Intemperate feasible improvement can affect changes in permitting systems, frail checking or observing of natural compliance, open meeting, and sanctions frameworks. The Amdal allow contained within the Job Creation Law is now not an outright necessity for issuing natural licenses, and the licenses issued are as it were authoritative archives.

### **The impact that arises in the preparation of Amdal if it does not involve the community**

Basically, the process of assessing Amdal or examining Environmental Management and Environmental Monitoring Efforts (UKL-UPL) is an integral part of the process of applying and issuing environmental permits based on Article 1 point 11 of Law Number 32 of 2009 concerning Environmental Protection and Management and in PP No. 27 of 2012 as a substitute for PP No. 27 of 1999 concerning Amdal writes that Amdal is one of the administrative instruments that business actors must fulfil in obtaining their business licenses (Subki, 2020). However, the Amdal issue contained in the Job Creation Law is that all business activities of entrepreneurs only need to take

care of business licensing. Previously, the company had to take care of various kinds, with one of them related to the environment. However, the Job Creation Law no longer contains articles about companies being required to take care of environmental permits before operating.

To correctly manage environmental permits, several parties other than the government must be involved, namely, communities, affected communities, environmentalists, and affected parties, for all forms of decisions in the Amdal process. However, the Job Creation Law does not fully involve these parties; it only involves empowerers (business actors) and affected communities. So, the issuance of Constitutional Court Decision No. 91 / PUU-XVIII / 2020 concerning the Judicial Review of the Job Creation Law. In the trial, revealing the facts of the framer of the law does not provide maximum space for participation by the community. Article 70 Paragraph (1) of UUPPLH affirms that the community has equal and broadest rights and opportunities to protect the environment in sustainable development actively. Law Number 32 of 2009 concerning Environmental Protection and Management has outlined the recognition and benefits of the role of the community and other parties in environmental management (Hamdani et al., 2022; Lembaga Kajian dan Advokasi Independensi Peradilan, 2021).

Amendments to Law Number 32 of 2009 concerning Environmental Protection and Management through the Job Creation Law limit community involvement in the Amdal preparation process, namely only directly affected communities, while environmentalists and affected communities are not involved. This can result in a lack of environmental protection after sustainable development. The existence of a community that is active in the environment can control whether the project is intended for the public interest or not so that the environmental ecosystem is maintained after sustainable development.

**Table 1 Comparison of the role of the community according to the UUPPLH and the Job Creation Law**

No	Thing	Law No. 32 of 2009	
		About Environmental Protection and Management	Job Creation Law of 2020
1.	Stages in sustainable development	<ol style="list-style-type: none"> <li>1. Document the process of Environmental Management Efforts and Environmental Monitoring Efforts or Environmental Impact Analysis</li> <li>2. Environmental Approval (communities affected by sustainable development)</li> <li>3. Environmental Permit (permission from the community and environmental observers)</li> <li>4. Business License</li> </ol>	<ol style="list-style-type: none"> <li>1. Document the process of Environmental Management Efforts and Environmental Monitoring Efforts or Environmental Impact Analysis</li> <li>2. Environmental Approval (communities affected by sustainable development)</li> <li>3. Business license</li> </ol>
2.	Initial licensing process	Pay attention to both things that impact sustainable development for the environment and things that do	Pay attention to high-risk, medium-risk, and low-risk

		not significantly impact the environment.	
3.	Environmental Impact Assessment Assessor	Minister, Governor or Mayor/Regent in accordance with their authority	Central Government
4.	Communities involved in the Amdal assessment	<ul style="list-style-type: none"> <li>- Communities directly affected by sustainable development</li> <li>- environmentalists</li> <li>- Communities involved or influential in all forms of Environmental Impact Assessment decisions</li> </ul>	Communities directly affected by sustainable development
5.	Violations that occur	Consequences of Environmental Permits	Consequences for business licenses

The existence of new provisions from the Job Creation Law where environmental approvals make it easier for business actors to carry out their business activities has the potential to cause negative impacts on environmental protection due to loose regulations. This makes the community unable to make the object of dispute in the State Administrative Court as a form of resistance if there is a violation or damage to the environment. This makes the regulation a rollback from long-term environmental protection efforts that protect human rights from time to time.

An example can be seen from the case that occurred in Wadas, Central Java, where the community rejected the construction of a dam project because they considered it could damage the environment. They consider that the project carried out can threaten the balance of nature. Not only that, but the Wadas community is worried that mining carried out for the construction of dams will have an impact on the health of local people who depend a lot on natural products. Constitutional Law expert Prof. Asep Warlan Yusuf said that there is indeed an interpretation that is not the same as the intention of the Constitutional Court with the Government and the House of Representatives regarding the Job Creation Law mathematical test decision, Prof. Asep considered that what the Constitutional Court decision meant was not about its activities but its policy formation (Retaduari, 2022). This is in line with the lawsuit case of the Job Creation Law, which the Constitutional Court partially granted. Given this, parties who carry out dam construction efforts must accommodate the aspirations of the community and remember the judicial review decision of the Job Creation Law that every policy formation and implementation must be transparent, participatory, and clear in its purpose and formulation.

### **Regarding the improvement of environmental provisions in the Job Creation Law After the Constitutional Court Decision Number 91 / PUU-XVIII / 2020**

The Constitutional Court, through a ruling issued, has suspended all policies and actions with broad and strategic consequences, including environmental provisions. So, the things that the Job Creation Law must improve regarding environmental provisions are Amdal provisions; in the Job Creation Law, environmental permits are not expressly regulated regarding Amdal provisions where

parties who try to establish a business without having to get a decision on environmental feasibility (Ady, 2021b).

Changes contained in the Job Creation Law amend the provisions of the UUPPLH, especially regarding environmental permits, which are considered by several environmental activists to be weakening and threaten environmental sustainability. This condition only puts development in a short-term perspective because it cannot apply the environment to economic development. The bold step taken by the government is to simplify permits, which can allegedly facilitate investment without sacrificing spatial planning and environmental quality. If the Job Creation Law ignores the environment and there are no changes regarding environmental permits, it puts business actors in legal uncertainty. Precisely if the business activities are carried out by business actors and the environmental permit does not involve environmental observers and other communities. At any time, the business can be closed if it does not carry out environmental management and causes environmental pollution. Environmental permits must be carried out in environmental impact analysis because environmental permits are a means for the government to detect the impact of business activities on the environment and government supervision of business activities (Zakariya, 2022).

Article 3 of PP No. 22 of 2021 concerning the Usage of Natural Security and Administration states that natural endorsements alluded to in Article 2 letter must be claimed by each commerce and movement that has an basic or insignificant affect on the environment. What is contained within the Work Creation Law is that natural licenses are coordinates into commerce licenses, to be specific, in Article 1 Section 35 of the Work Creation Law with respect to the environment. In the event that, concurring to the controls of UUPPLH, each trade that impacts the environment must inquire for an natural allow and plan an Amdal, After the Amdal has been adequately prepared and completed, it'll as it were be evaluated for possibility by the important offices. After endorsement, the Natural Administration Arrange (RKL) and Natural Observing Arrange (RPL) will be made. In any case, after the proclamation of the Work Creation Law, the stages will alter; natural grants have changed to natural endorsements. Hence, the appraisal of Amdal records was too misplaced because the Amdal Evaluation Commission was annulled within the Work Creation Law.

#### **4. Conclusion**

The Work Creation Law related to natural impacts caused does not have the drive of authoritative law conditionally as long because it isn't deciphered. No advancement has been made inside two a long time of the Sacred Court choice No.91/PUU-XVIII/2020 related to the accommodation of legal audit issued on November 25, 2021, the Work Creation Law can be pronounced illegal.

From an environmental point of view, if the direction of improvement related to the environment is not made immediately as an absolute condition related to Amdal, there will be a weakening of the job creation regulations themselves. There is no legal certainty, so environmental permits need to involve the community and environmental observers so as not to have an impact on damage to the environment or health. Long-term safety of society and the environment.

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