The Nature of Government Legal Responsibility towards Environmental Pollution

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ABSTRACT

The purpose of the research was to know and discover, of the Government's legal responsibility towards pollution of the environment. This research is using normative juridical research method. The results of this research that, the nature of the responsibilities of the Government against the pollution of the environment is very big because they have to pay attention to some aspects such as strategic environment study and illustrate that the government responsibility against environmental pollution is enormous because it must pay attention to several aspects such as strategic environmental assessment, environmental quality standard, environmental damage criteria and environmental impact analysis. It recommended that the government should be careful to assign permission against the activities or plants relating to the environment.

Keywords: Responsibility, Government, Pollution, Environment

Introduction

The threat to environmental sustainability today is increasing.¹ Pollution, destruction and environmental damage is a very serious problem for the environment.² Today environmental issues are no longer national issue. But it has become global consumption, so all countries and the government conducts guidance So all countries and the government conduct guidance at once providing protection against any possible destruction (*natural resource depletion*)³ and/or

pollution (*environmental pollution*).⁴ This is important to be understood, because good and healthy environment is basic human right and constitutional right for every Indonesian citizen.⁵

In this regard, the state and the government shall be obliged to foster, maintain, regulate, create policies and protect the preservation of good environment and healthy from any possibility of destruction and/or pollution which resulted from an act or an act of breaking the law. So the law as a means to regulate the order in society.⁶

¹ Kartono. (2009). Penegakan Hukum Lingkungan Administratif Dalam Undang-Undang Perlindungan dan Pengelolaan Lingkungan Hidup, *Jurnal Dinamika Hukum*, 9 (3). p.247

² Rhiti, H. & dan Pudyatmoko, Y.S. (2016). Kebijakan Perizinan Lingkungan Hidup Di Daerah Istimewa Yogyakarta, *Jurnal Mimbar Hukum*, 28 (2), p.264

³ Stewart, R. & and Krier, J.E, (1978). *Environmental Law and Policy*, The Bobbs Merrill Co, Indianapolis, New York, p. 3-5.

⁴ Rahmadi, T. (2015). *Edisi Kedua; Hukum Lingkungan di Indonesia*, Raja Grafindo Persada, Jakarta, p.1.

⁵ Putra, G.E, (2012). *Himpunan Undang-undang Lingkungan Hidup & Amdal*, Permata Press, Jakarta, p. 57.

⁶ Mulyani, S, (2016). "Adjudication Of Misdemeanor Based On Legislation In Current Perspectives", *Jurnal De Jure*, 16 (3), p.342, see to, Djanggih, H., & Saefudin, Y. (2017). The Judge Considerations on Pre-Trial Judgment: Study of Verdict Number: 09/PID. PRA/2016/PN. Lwk on Investigation

Environmental law enforcement is a very important issue because it is a part of the environmental setting cycle.⁷ So, law enforcement and justice will be interestingly discussed in case of violations of administrative law in the environmental field, and authorized administrative officer (Environment Agency) does not take action against violators of the law. But, secretly allowing the violation of the law to continue, for example; a business activity plan according to the administrative environmental law shall be obliged to do Environmental Impact Assessment (Amdal), but in fact, the activity is still standing or operating without going through the Environmental Impact Assessment process and the authorized officers are still issued business license for the activity.⁸

In this regard, ex officio needs to be done the law enforcement of administrative environment which is preventive. Example; ensure obeying of licensing requirements, quality standards, Environmental Impact Assessment (Amdal), and could be repressive to enforce obedience, such as through the implementation of administrative sanctions. However, it can also be done through a lawsuit to the state administrative court.⁹ The lawsuit, addressed to the Environmental Agency as a decision maker.

Then, according to the development of state administrative law in Netherlands, America and Indonesia, every citizen is given the opportunity to be able to file state administrative lawsuit to the authorized official. Or in other words, that if there is a state administrative official in the field of the environment allegedly committing acts or acts violating the norms and rules of applicable law, then the concerned can file a lawsuit of state administration in accordance with the provisions of the law stipulated in Law Number 32 of 2009 on Protection and the Management of Environment (State Gazette of the Republic of Indonesia of 2009 Number 140, Supplement to the State Gazette of the Republic of Indonesia Number 5059), shall be sued through administrative lawsuit.

With the right to sue state administrative officials (Environment Agency) to the citizens, on the grounds for allegedly violating environmental law. This means the state administrative officer

concerned, has the legal obligation to account for decisions that have been issued and harmed the people

Research Method

This research is normative legal research using secondary data obtained from library material formed from several legal materials, such as primary legal materials, secondary and tertiary.¹⁰ Legal research is basically problem solving activity. The way problem solving is done by the researcher by identifying and qualifying facts and looking for applicable legal norms, then taking the conclusion based on the facts of law norm.¹¹ This study uses normative law approach to understanding the application of legal norms to facts about government responsibility to the environment. Therefore, which is analyzed is good legal norms contained in the literature and legislation.

Result and Discution

The Nature of Government Responsibility on Environmental Pollution

Environmental damage in Indonesia, the more worrisome the day. In fact, it has endangered human life. Though Indonesia is one of the countries that participated in Konvesni Stockholm in Sweden 1972 which had committed to environmental development.¹² The responsibility of environmental management lies with the government in this case is the Environment Agency which underlines the consequences to the government institutions and authorities for environmental management. In law therefore environmental management becomes a part of Law of State Administration.

In the modern era, it can be said that a country is very relevant and ideal if all series of state activities are based on clear legal mechanism.¹³ As administrative law with

Termination of Criminal Act of Money Politic). *Jurnal De Jure*. 17 (3), p.1

⁷ Herliana, (2011). Peranan Koordinasi Penyelesaian Permasalahan Lingkungan Hidup Dalam Menyelesaian Sengketa Lingkungan Di DIY, *Jurnal Mimbar Hukum*, 23 (1). p.99

⁸ Rahmadi, T. (2015). *Op Cit*, p. 224.

⁹ Akib, M. (2014). *Hukum Lingkungan Perspektif Global dan Nasional*, Raja Grafindo Persada, Jakarta, p. 206-207.

¹⁰ Soekanto, S. & Mamudji, S. (2003). *Penelitian Hkum Normatif, suatu tinjauan singkat*, Grafindo Persada p.13.

¹¹ Brotosusilo, A. et.al (1994). *Penulisan Hukum; Buku pegangan Dosen*, Jakarta Konsersium Ilmu Hukum. p.8

¹² Alamruzi, M.F., (2011). Upaya Penegakan Hukum Lingkungan Melalui Penerapan Asas Strict Liability, *Jurnal Masalah-Masalah Hukum*, 40 (4), p.454

¹³ Simamora, J. (2014). "Tafsir Negara Hukum dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945", *Jurnal Dinamika Hukum*, 14 (3). P. 548. See Djanggih, H., & Ahmad, K. (2017). THE EFFECTIVENESS OF INDONESIAN NATIONAL POLICE FUNCTION ON

instrumental nature, the prominent function in the environmental law of administrative law is preventive in the form of prevention of pollution and/or environmental damage. In Article 13 Paragraph (1) of the Law on Environmental Protection and Management (UUPLH) it is mentioned that pollution control and/or environmental damage is implemented in the framework of conservation of environmental functions. Then, in paragraph (2) it is mentioned that pollution control and/or environmental damage as referred to in paragraph (1) includes: (a) prevention; (b) countermeasures; and (c) recovery. In paragraph (3) it is mentioned that those implementing pollution control and/or environmental damage as referred to in paragraph (1) implemented by the Government in this case is the Environment Agency.

To carry out its duties the Government conducts environmental management is more preventive than repressive. In Law No. 32 of 2009 there are some strengthening of government instruments in the prevention of pollution and/or environmental damage as mentioned in Article 14 of Law No. 32 of 2009 which consists of:

1. Strategic Environmental Assessment (SEA)

The emergence of Strategic Environmental Assessment was first found in Law No. 32 of 2009. The definition of Strategic Environmental Assessment is mentioned in Article 1 Number 10 of Law No. 32 of 2009 that Strategic Environmental Assessment is the series of systematic analysis, the messenger and partisipatif to ensure that the principle of continuity development has become the basis and integrated in the development of a region and/or policies, plans and/or programs. Therefore, the existence of Strategic Environmental Assessment is the strengthening of pollution prevention instruments and/or environmental damage.

The strengthening of Strategic Environmental Assessment in Law No. 32 of 2009 is as follows:

Article 15 of Law No. 32 of 2009

- (1) Government and regional government shall make SEA to ensure that the principles of sustainable development have become the basis and integrated in

sustainable development have become the basis and integrated in the development of a region and/or policy, plan or program.

- (2) Government and regional government shall implement SEA as referred to in paragraph (1) in the preparation or evaluation:
 - a. The spatial plan of the region and its detailed plans, long-term development plans, and National medium-term development plans, provincial and regency/municipality and
 - b. Policy plan and/or programs that have potential to create environmental impacts and/or risks.
- (3) Strategic Environmental Assessment is implemented by mechanisms:
 - a. Assessing the influence of policies, plans and/or programs on environmental conditions in a region;
 - b. Formulation of alternative policy enhancements, plans and/or programs, and
 - c. Recommendations for improvement to take policy decisions, plans or programs that integrate the principles of sustainable development.

To see the substance of Strategic Environmental Assessment has been formulated in Article 16 UUPPLH which includes the study, among others:

- a. Capacity of environmental carrying capacity and capacity for development
- b. Estimates of environmental impacts and risks
- c. Service performance/climate ecosystem services, and
- d. Endurance level and potential for biodiversity.

The purpose of SEA preparation has been stated in Article 17 UUPPLH as follows:

- (1) The SEA results as referred to in Article 15 paragraph (3) form the basis for development policies, plans and/or programs within a region.
- (2) If the SEA result as referred to in paragraph (1) states that the carrying capacity and carrying capacity have been exceeded;
 - a. Policies, plans, and/or development program shall be improved in accordance with SEA recommendations and,
 - b. All efforts and activities that have exceeded the carrying capacity and capacity of the environment are not allowed anymore.

BANGGAI REGENCY POLICE INVESTIGATION (Investigation Case Study Year 2008-2016). *Jurnal Dinamika Hukum*, p..152. and see to Mamulai, M., Djanggih. H & Wahab, M. (2017). Strength of Evidence of Electronic Media (Teleconference) In The Criminal Justice System. *VRIJSPRAAK*, International Journal of Law, 1 (1),p.1

In the preparation of environmental studies, community and stakeholder strategies are also involved as mentioned in Article 18 of Law No. 32 of 2009

- (1) The Strategic Environmental Assessment as referred to in Article 15 Paragraph (1) shall be implemented by involving the community and stakeholders.
- (2) Further provisions concerning the procedures for conducting Strategic Environmental Assessment are regulated in Government Regulation.

UUPPLH requires the government and regional government to make Strategic Environmental Assessments to ensure that the principle of sustainable development has become the basis and integrated in the development of a region and/or policy, plan or program. In other words, SEA results should be the basis for a development policy, plan or program within a region.

SEA documents as stated in Article 16 of Law No. 32 of 2009, contains study on: capacity carrying capacity and environmental capacity for development; estimates of environmental impacts and risks; service performance of ecosystem utilization efficiency of natural resources; level of vulnerability and adaptation capacity to climate change, and endurance level and biodiversity potential.¹⁴

According to Law No. 32 of 2009 on Protection and Management of the Environment that Strategic Environmental Assessment should be undertaken in the preparation and evaluation of regional spatial plans, medium and long term development plans, policies and programs that have potential to impact and or risk to environment. The SEA implementation mechanism covers assessment the influence of policies, plans and programs on environmental conditions in a region, the formulation of alternative improvements to policies and programs and recommendations for improvement for policy decision making and programs that integrate the principles of sustainable development.

Strategic Environmental Assessment itself according to the provisions should include study on capacity of carrying capacity and the capacity of environment for development of concerns about impacts and risks to environment. Utilization of Strategic

Environmental Assessment as supporting instrument for the realization of sustainable development is more important to consider that environmental degradation is generally cross-regional and inter-sectoral quality.

The deterioration of environmental quality cannot be held through partial approach. It requires an environmental management instrument that allows for the settlement of tiered problems (from center to region), cross-regional, inter-sectoral/institutions. Besides the importance of the instrument of the comprehensive approach mentioned above, another important thing to understand is that the degradation of environmental quality is closely linked to issues of policy formulation, plans and development programs that are not environmentally friendly. Thus, the source of the problem of degradation of environmental quality starts from the decision-making process. Therefore, the effort to overcome the degradation of environmental quality starts from the decision-making process of the development plan.

As an instrument of environmental management, the implementation of Strategic Environmental Assessment is in decision making cycle process, in this case the implementation is focused on spatial planning. The fact shows that awareness of the degradation of natural resources and environmental degradation has prompted various developed countries to implement SEA which is later followed by Asian countries. SEA implementation generally begins with a variety of trials which the results are used as materials to compile the legal framework which is required as legitimation of the implementation of Strategic Environmental Assessment.

2. Spatial

Spatial is form of space and spatial structure are arranged nationally, regionally, and locally. Nationally called National Spatial Plan, which is elaborated into Provincial Spatial Plan and Spatial Plan is set out in the Regency/Municipality Spatial Plan.

According to Article 1 number 5 Law Number 26 of 2007 on Spatial Planning stated that "spatial arrangement is a system of spatial planning process, space utilization, and control of space utilization. Spatial planning is one of the policies of the government in the context of environmentally sound development that puts pressure on sustainable development. where this development illustrates the alignment and

¹⁴ Siombo, M.R. (2014). Tanggung Jawab Pemda Terhadap Kerusakan Lingkungan Hidup Kaitannya Dengan Kewenangan Perizinan Di Bidang Kehutanan dan Pertambahan, Jurnal Dinamika Hukum, 14 (3) p.398

harmony of some activities related to the use and management of "living space".

Various problems concerning the motherland and the utilization of other natural resources have emerged due to overlapping development implementation and uncoordinated, thereby decreasing the quality of space utilization. In the maintenance and utilization of the management of land, water, air, forest, mining excavations cannot stand alone but must be pursued in an integrated manner through the efforts of spatial planning.

The legal basis of spatial arrangement arranged in Law Number 26 of 2007 on Spatial Planning. Related to spatial planning as instrument of pollution prevention and environmental damage mentioned in Article 19 UUPPLH as follows:

- (1) To maintain the preservation of environmental functions and public safety, every spatial planning must be based on Strategic Environmental Assessment.
- (2) Spatial planning as referred to in paragraph (1) shall be determined by taking into account the carrying capacity and carrying capacity of environment.

The provision of Article 19 of UUPPLH is evident that the spatial plan is only continuation of the Strategic Environmental Assessment instrument, where between SEA and spatial are interconnected. So that its environmental instruments in terms of spatial planning are in Strategic Environmental Assessment.

According to Law Number 26 of 2007 on spatial planning, that the authority of the government to do the spatial arrangement consists of three main activities, namely; a. Spatial planning, b. Spatial utilization, c. Spatial control. According to Article 1 number 13 of Law No. 26 of 2007 that spatial planning is a process to determine spatial structure and spatial pattern that includes the preparation and determination of spatial plan. In spatial planning, steps are taken; determine the direction of development to be achieved in terms of economic, social, cultural carrying capacity and environmental capacity as well as defense functions and security. Identify potentials and development issues within a planning area, formulation of spatial planning, determination of spatial plan.

Spatial utilization according to Article 1 paragraph 14 of Law No. 26 of 2007 stated that the utilization of space is effort to realize the space structure and spatial pattern in accordance with the spatial plan through preparation and implementation of the program and its financing. Furthermore,

regarding the spatial control according to Article 1 Number 15 of Law Number 26 of 2007 stated that controlling of Spatial utilization is effort to realize the orderliness of spatial and is done through the determination of zoning regulations, licensing, giving incentives and disinsetif, and the imposition of sanctions. The same thing was put forward by David Silalahi¹⁵ (1995:90) that spatial control is any intended activity to maintain the activity of Spatial utilization with or without building, implemented in accordance with the spatial plan. These control activities may include licensing stages concerning the issue of location permits, building permits and building permits. After that, newly held supervision of spatial utilization activities in the field. Against deviation symptoms of the plan are subject to reprimands and necessary corrective actions.

The above description in the spatial planning of the spatial plan is very important. Plan as legal picture of the relationship of administrative law to modern social law can no longer be eliminated from thought. Plans are found in various areas of government activity, such as the spatial plan. Similarly, planning is also very important role in the implementation of government. It is realized by various development efforts and policies taken by state administrative agencies and officials related to each other and has one mutually influential and overlapping financial consequence and primarily and efficiency in terms of financing.

3. Environmental Quality Standard

The environmental quality standard is mentioned in Article 1 Number 13 UUPPLH that the environmental quality standard is the measure of limits or the levels of living things, substances, energies or components present or there must be contaminant element tolerated in a particular resource as element of the environment.

The Environmental quality standard can be used for various purposes, as follows:

- a. As evaluation tool for authorized agencies on the quality of the environment of a region or particular department such as the quality that occurs has been different from the desired thing so that an action is needed to improve the quality of the environment itself
- b. Useful as administrative law arrangement tool for the parties related to

¹⁵ Silalahi, D.(1995). Amdal dalam sistem lingkungan Indonesia, Mandar Maju, Bandung, p. 90

environmental management (such as industrial companies, agribusiness, fishery, livestock and others to control the level of pollution, so can be implemented preventive efforts.

- c. Useful for the implementation of Environmental Impact Assessment (AMDAL) which is the concept of environmental control since early stage.
- d. As control tool to facilitate the management and monitoring of licensing (for example, the parameters have crossed the tolerated threshold, so it is considered to have violated the provisions of licensing.
- e. Useful for determining the occurrence of violations of criminal law, especially in the determination of offenses formal offense.

The environmental quality standard will vary from region, region, zone to area one to another, either patterns, characteristics, or environmental capabilities differ from one another, including management systems by one region to another. In addition, the environmental quality standard will also vary by time, because the time process also affects environmental conditions and capacities. Therefore, at certain time the determination of environmental quality standard should be reviewed.

a. Forms of Environmental Quality Standard

(1) Waste Quality Standard

To determine the benchmarks of whether the waste from an industry/factory has caused pollution or not, two waste quality standards are used, namely:

- a. Setting a effluent standard is the maximum waste content which is permitted to be disposed of into environmental media, such as water, soil and air. The maximum content of pollutants contained in the waste is determined when the waste leaves the factory/industry.
- b. Establish the provisions on stream standard namely the determination of the limits of pollutant materials on certain resources, such as river, lake, reservoir, coastal water and others.

(2) Water Quality Standard

Water quality standard is determined based on the water use for the benefit of health, household, fishery or livestock, agriculture and industry.

Water at the water source is divided into four classes, namely:

First class, water used for drinking water quality standard and/or other designations that require water quality the same as usability.

Secondary class, water that is used for infrastructure, water recreation, cultivation of freshwater fish, livestock, irrigate crops and other designations that require water quality the same as usability.

Third class, water used for the cultivation of freshwater fish, livestock, irrigating crops and/or other designations that require water quality the same as usability.

Fourth class, water which is used to irrigate crops and/or other designations that require water quality the same as usability.

While, water quality management efforts are conducted on water sources contained within the protected forest, springs located outside protected forest and water aquifers in the ground.

(3) Sea Water Quality Standard

Sea water quality standard is established based on: tourism areas, marine biota, marine parks and conservation areas, raw materials and mining and industrial processes and cooling water sources for mining and industrial activities.

Sea water quality standard and standard sea damage criteria are set by the environment minister by considering input from other ministers and other non-ministerial directors. As for the status of sea quality is determined based on the inventory or research of sea water quality data and conditions of sea damage that affect the mbien that must be the quality of the sea.

b. Preparation of Environmental Quality Standard

Setting environmental quality standards used various techniques approach which is a process consisting of several steps. In connection with that, Gunawan Suratmo in Muhammad Erwin (2011: 56) describes it as follows:¹⁶

¹⁶ Erwin, M. (2011). Hukum Lingkungan dalam sistem perlindungan dan pengelolaan

1. Identification of the use of resources or ambient media that must be protected.
2. Formulate the formulation of criteria using the collection and processing of various scientific information.
3. Formulate the ambient quality standard from the results of criteria preparation.
4. Formulate the waste quality standard which may be released into environment that will produce ambient quality standard that has been set.
5. Assist the monitoring program and gather information to refine or improve the data that has been used in the previous steps also serves as feedback to assess whether the objectivity that has been set can be achieved.

Environmental quality standard can determine the level of environmental factors optimally its presence will cause interference which cannot be justified, such as noise levels that can cause deafness and some sulfur substances contained in the air which result in direct danger to human health. Thus, science can set boundaries of danger. Under any circumstances, this limit should not be violated, viewed from the point of view of technology and economic interests.¹⁷ In connection with increasing disturbance to be suffering. Witsen states that according to the fact the boundary between the disturbance according to the science measure lies between the danger and the optimum point which are technologically and economically possible.¹⁸

Regarding legislation is very important as Witsen said that setting limits is political decision that lies in the hands of the authorities. With the provision of if it has reached the limit of interference that level can not be justified, then the hazard limits under any circumstances should not be exceeded. The regulation of the determination of boundary values is a key element in environmental legislation. Determination of noise limit namely the upper limit of tolerable disturbance is the authority of the ruler.

One of the difficulty factors in setting standards is where the degree of risk is too

high (high risk) when compared with the benefits to be gained, sometimes even uncertain, involving many disciplines. From this angle, it is clear that the need for information and data on various aspects and environmental issues to set the quality standard.¹⁹ To know the environmental capability must be known all components, composition or system environment, conditions and all things related to the environment completely. Those are the main factor to know, while other factors are the nature, style, characteristics, potential or ability to affect the quality of the environment as measured by specific units. For example, for land can be known and determined its ability based on the factors mentioned earlier, that is based on physical properties, chemistry, and the process, such as landform, closure and plants, thick humus ground water, mineral resources, salinity (salt), ecosystem stability and productivity.

4. Criteria of Environmental Damage Standard

The Environmental Protection and Management Law states that the Criteria of Environmental Damage Standard is measure of the limits of changes in the physical, chemical and/or biological of the environment that can be tolerated by the environment in order to preserve it. Criteria of Environmental Damage Standard is instrument to determine the occurrence of environmental damage include criteria of ecosystem damage standard and the standard criteria for damage caused by climate change. Criteria of ecosystem damage standard include:

- a. Criteria of land damage standard for biomass production;
- b. Criteria of coral reef damage standard;
- c. Criteria of environmental damage standard related to forest fires and/or land;
- d. Criteria of mangrove damage standard;
- e. Criteria of seagrass beds damage standard;
- f. Criteria of peat damage standard;
- g. Criteria of karst damage standard;
- h. Criteria of other ecosystems damage standar according to the development of science and technology.

The standard criteria for damage caused by climate change based on parameters such as; (a) temperature rise; (b) sea level rise; (c) storm; (d) drought.

5. Environmental Impact Assessment

lingkungan hidup di Indonesia, refika Aditama, Bandung. p 56.

¹⁷ Rangkuti, S.S.(1996). Hukum Lingkungan dan Kebijakan lingkungan nasional, Airlangga University Press, Surabaya p.5

¹⁸ *Ibid* p. 105

¹⁹ Silalahi, D. (1992), Hukum Lingkungan dalam Sistem Penegakan Hukum Lingkungan Indonesia, Alumni, Bandung hal 71-73.

Environmental Impact Assessment (AMDAL) is study of about the big impact and important a business or activity that is planned and required for the decision-making process concerning the conduct of a business or activity. This Environmental Impact Assessment (AMDAL) is made when planning a project that is expected to have an impact on the surrounding environment.

According to Article 1 Number 11 UUPPLH it is formulated that Environmental Impact Analysis hereinafter called AMDAL is study of the significant impacts of a business and/or activity planned on the required environment for the decision-making process on the conduct of business and/or activity.

Furthermore, in Article 22 UUPPLH formulated as follows:

Paragraph (1) Any business and/or activity which have an important impact on the environment must have Environmental Impact Analysis (AMDAL).

The amount of population that will be affected by the business plan and/or activity Paragraph (2) Important impacts are determined based on the criteria:

- a. The amount of population that will be affected by the business plan and/or activity;
- b. Area of impact spreading;
- c. Intensity and duration of impact;
- d. The number of other environmental components that will be affected;
- e. The cumulative nature of impact;
- f. Reversed or non-reversed impact;
- g. Other criteria correspond to the development of science and technology.

Furthermore, in Article 23 UUPPLH mentioned that the criteria of business and/or activity are:

Paragraph (1) Criteria of business and/or activities that have important impacts that must be accompanied by Environmental Impact Analysis (AMDAL) consist of:

- a. Changing landforms and landscapes;
- b. Exploitation of natural resources, both renewable and non-renewable;
- c. Process and activities potentially may elicit

Paragraph (2) pollution and/or environmental damage as well as waste and loss of natural resources in its utilization;

- a. Processes and activities which results can affect the artificial environment as well as the social environment and culture;
- b. Processes and activities which results will affect the conservation of natural resources conservation areas and/or protection of cultural heritage;

- c. Introduction of plants, animals and microorganisms;
- d. Creation and use of biological and non-biological substances;
- e. Activities that have high risk and/or affects the state's defense;
- f. Implementation of technology that is estimated to have great potential to affect the environment.

The function of (Environmental Impact Analysis) AMDAL assessment documents is the basis for determining environmental feasibility decisions as contained in Article 25 of the UUPPLH determines that the AMDAL documents contain the following:

- a. Assessment of impact of the business plan and/or activity;
- b. Evaluate activities around the location of the business plan and/or activity;
- c. Feedback suggestions and community responses to the business plan and/or activities;
- d. Forecasts of the magnitude of impacts and the significant nature of the impacts that occur if the business plan and/or activities are implemented;
- e. Holistic evaluation of the impacts that occur to determine the feasibility or unfavorability of the environment;
- f. Management plan and environmental monitoring.

The arrangement of Environmental Impact Analysis documents is undertaken by the initiator of the activity by involving the community who are affected, environmentalists or the community who are affected by any decision in Environmental Impact Analysis process. The initiator who compile Environmental Impact Analysis (AMDAL) document or other parties commissioned by the initiator for compile Environmental Impact Analysis (AMDAL) must have competency certification of compilers Amdal that published by the compilers certification institution which is stipulated by the Minister of Environment.

To perform its duties, the Environmental Impact Analysis (AMDAL) Appraisal Commission is assisted by a technical team consisting of independent experts who conducted technical review and the secretariat formed for it. Independent experts and secretariat are defined by the Minister, the governor or Regent/ Mayor according to their authority. The result of the assessment of AMDAL Appraisal Commission is decision on environmental feasibility or ineligibility of planned activities. In UUPPLH

provide strengthening of EIA (Environmental Impact Analysis) concerning three things, namely: (1) The implementation of competency certification of compilation of AMDAL document; (2) The implementation of legal sanctions against violators of EIA; (3) EIA/AMDAL as the main prerequisite in obtaining environmental license.

The authority to review or assess the documents of the Terms of Reference of EIA, Environmental Management Plan, Environmental Monitoring Plan are on EIA Appraisal Commission. EIA Appraisal Commission consists of Central EIA Appraisal Commission which was established by the Minister of Environment, Provincial EIA Appraisal Commission which formed by the Governor and EIA Appraisal Commission of Regency and Municipalities which formed by Regents or Mayors. The Central EIA Appraisal Commission assesses EIA documents for businesses or activities that are of a national strategic nature. The Provincial EIA Appraisal Commission assesses EIA documents for businesses or activities that are provincial strategic and/or located more than one regency/municipality within province. The Regency/Municipality EIA Appraisal Commission evaluates EIA documents for business and/or activity which are strategic of regency/municipality and not strategic and in the sea area furthest one third of the marine area of Provincial authority.

The EIA Appraisal Commission submits the recommendation of EIA and Environmental Management Plan-Environmental Monitoring Plan assessment results to the Minister, Governor or Regent/Mayor in accordance with their authority. Recommendations of the results of the assessment of EIA and Environmental Management Plan-Environmental Monitoring Plan can be in the form of environmental feasibility recommendation or environmental dishonest recommendations. The least recommendations include precise forecasts of the magnitude and nature of the impacts of the chemical, social, economic, cultural, spatial and public health aspects of biogeophysical aspects at the pre-construction, construction, operation and post-operational stage of business and/or activity, the results of holistic evaluation of all important hypothetical impacts as an interrelated and mutually influencing entity. So, it is known that the balance of positive impact is positive with negative nature.

6. Environmental Management Efforts and Environmental Monitoring Efforts

Environmental Management Efforts and Environmental Monitoring Efforts are not part of the Environmental Impact Assessment, so they are not assessed by the EIA commission. Environmental Management Efforts and Environmental Monitoring Efforts are directed directly by technical agencies in charge of and responsible for business development or activities through a technical directive in accordance with the type of business or activity.

Environmental Management Efforts and Environmental Monitoring Efforts are specific to each type of business or activity associated with impacts it caused. Therefore, Environmental Management Efforts and Environmental Monitoring Efforts technical guidelines are determined by the responsible agency (sectoral) for each type of business or activity and is directly related to the technical activity of the business or activity concerned. The initiator of business or activity is bound to the document which has been completed and signed, and becomes the terms of granting of business or activity license.

The function of Environmental Management Efforts and Environmental Monitoring Efforts are the reference compiling of technical guidelines for environmental management efforts and environmental monitoring efforts for departments/government agencies non-departmental sectoral. The Reference compiling of Environmental Management Efforts and Environmental Monitoring Efforts for the initiator. If the Environmental Management Efforts and Environmental technical guidelines of the sector have not been published, and binding instrument for the initiating party to carry out environmental management and monitoring.

7. Licensing

One of the means of Administration Law to control environmental pollution is through Environmental Licensing as stipulated in Article 36 Paragraph (1) UUPPLH is²⁰ "Any business and/or activity that are required to have EIA or Environmental Management Efforts and Environmental Monitoring Efforts shall have environmental license." This licensing institute arises from the background that between government and society is established reciprocal relationship. On the one hand the public affects the government in carrying out its duties. On the other hand, the government gives certain influence on society.

Furthermore, the environmental license arrangement is formulated in the

²⁰ UUPPLH Psl 36

legislation of the implementation of the Government Regulation Number 27 of 2012 on Environmental License. In a license authorized officer pours the terms or provisions in the form of orders or any restrictions that must be obeyed by the company. Therefore, License is law arrangement of individual level or subjective law norms because it has been linked certain law subjects. Licensing has preventive function in the sense of instrument for preventing the occurrence of problems due to business activities. In the context of environmental law, licensing is within the jurisdiction of the administrative environment. In the law system of Indonesia before the coming into force of UUPPLH of 2009 there are various types of license that can be categorized as licensing in the field of environmental management on the basis of the criteria that such licenses are intended or functioned for the prevention of pollution or environmental disturbance, prevention of environmental destruction caused by natural resource extraction and spatial planning. Spatial planning is part of the environmental management.

Academically, the concept of integrated environmental license can be seen from two aspects. First, concerned to the granting of authority to issue license to one institution only, so that it is no longer divided into two or more institutions such as the current situation. Second, concerned to the question of what type of business activity the environment license is applied, whether applied to business activities that may cause environmental pollution (brown issues) or also to business activities that may cause environmental damage (green issues).

This is in line with Helmi's statement that environmental licensing is expected to fulfill the needs of the present and not threaten the preservation of the environment for the needs of future generations. To realize the principle, the principle of early prevention, biodiversity principle, and internalization of environmental cost must take precedence.²¹

8. Environmental Economic Instrument

The law protection and environmental management are stated that environmental prevention instrument, added through economic instrument that must be developed by the Government. That intended with

environmental economic instrument is a set of economic policies to encourage government, regional government, or everyone toward the preservation of environmental function.

"The economic instrument is as an effort to realize sustainable development that provides protection to the environment through approach that is in line with the rules of the economic market, so that environmental management efforts do not disrupt the growth of business sector and macro economy in general."²² This environmental economic instrument is nothing but in order to preserve the function of environment, government and regional government shall develop and apply environmental economic instrument. Environmental economic instruments include:

- a. Development planning and economic activities;
- b. Environmental funding and
- c. Incentives and/or disincentives.

Development planning instrument and economic activities include instruments and the following steps:

- a. The balance sheet of natural resources and the environment;
- b. The compiling of gross domestic product and gross regional domestic product covering natural resources and environmental damage;
- c. The mechanism of compensation/reward of interregional environmental services; and
- d. Internalize environmental costs.

Environmental funding instrument include instruments as follows:

- a. Funds of environmental dignification guarantee;
- b. Funds of pollution tackling and/or environmental damage;
- c. Funds of trust/assistance for conservation.

Incentives and disincentives include instruments or steps as follows:

- a. Procurement of goods and services that are environmentally friendly;
- b. Implementation of taxes, levies, and environmental subsidies;
- c. Development of trading system of waste disposal license and/or emissions;
- d. Development of payment system for environmental services;
- e. Development of environmental insurance;
- f. Development of an environmentally friendly label system;

²¹ Helmi, (2011).Membangun Sistem Perizinan Terpadu Bidang Lingkungan Hidup Di Indonesia, Jurnal Dinamika Hukum, 11 (1), p.145

²² Rahmadi, T. 2011, Hukum lingkungan Indonesia, Raja Grafindo Persada, Jakarta p 121

- g. Development of performance awards system in the field of environmental protection and management.

The current government has prepared government regulations on environmental economic instruments such as the implementation of the compensation of the rewards of environmental services. Implementation of internalization of environmental costs, obligations of environmental license holders to provide funds of environmental dignification guarantee, emergency response funds of pollution tackling and/or environmental damage; implementation of taxes, levies, and environmental subsidies.

9. Environmental Risk Analysis

Environmental risk analysis is an instrument previously not regulated in UULH 1982 and UULH of 1997. Article 47 paragraph (1) UUPPLH of 2009 stated, "Every business and/or activity that has the potential to have significant impacts on the environment, threats to ecosystems and livelihood and/or human health and safety shall undertake an environmental risk analysis".²³ Furthermore Article 47 paragraph (2) stated the analysis of environmental risks include; (a) risk assessment, risk management and risk communication. If seen from the definition of environmental risk analysis function is very close to the function of EIA. If EIA is basically study of impacts that may occur due to an activity, risk analysis also the study of events that may occur as the result of an activity. Therefore, what is the main difference between the two seems to only be clearly identified if the government regulation implementation of Article 47 UUPPLH is published.

Current field has been using environmental risk analysis is the release of Genetic Engineering Products causes risks to environmental safety has been set in Government Regulation No. 21 of 2005 on Release Arrangements and Distribution of Engineering Products will be discussed in the utilization of natural resources and control of environmental damage on the third issue.

Conclusion

Based on the problems and research results can be drawn a conclusion as follows: the nature of government responsibility against environmental pollution is enormous because it must pay attention to several aspects such as Strategic Environmental Assessment,

Environmental Quality Standard, Criteria of Environmental Damage and Environmental Impact Analysis. Pollution control and environmental damage are the control of environmentally sound development and prevention of pollution and environmental damage.

Suggestion

1. Because of the magnitude of government responsibility to the environment, then the government must be careful to give license to activities or plans related to the environment.
2. All parties, both government and society need to preserve the environment because of the immense influence on the lives of all living things that exist on this earth.
3. Government should be selective in the granting of environmental license especially those related to biological resources as they can affect all living things. If the handling is not in accordance with the license given it.

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²³ UUPPLH pasal 47 ayat (1)

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