

CONTROL OF ENVIRONMENTAL IMPACTS THROUGH LICENSING TO ACHIEVE SUSTAINABLE DEVELOPMENT

Dr. Nuria Siswi Enggarani, SH., MHum¹

¹Law Faculty of UMS
Jl. A Yani Pabelan Surakarta 57102

Email: Nse178@ums.ac.id

Abstract

Control of environmental impacts need to be implemented by maximally utilizing licensing instruments. Licensing becomes the supervisor and an instrument control of development program that can be implemented in accordance with applicable regulations. Moreover, in order to preserve the function and balance of the environment due to any national economic development as mandated by the Constitution Republic of Indonesia 1945, it should be held based on the principle of sustainable development that meets the needs of the present without undermining the ability of future generations to meet their needs with the people who live within the confines of a mutually supportive environment.

Keywords: Environment, Licensing, Sustainable Development

Presenting Author's Biography



Dr. Nuria Siswi Enggarani, S.H., M.Hum. was born in 28 December 1981, a lecturer of Law Faculty of UMS and the Vice Dean for student affairs, she graduated from UMS for both S1 (Bachelor's) and S2 (Master's), and continued her doctoral program in Sebelas Maret University.

1. Introduction

The Constitution of Republic Indonesia 1945 states that good and healthy environment is a human and constitutional right of every citizen of Indonesia and all forms of national economic development as mandated by the Constitution of Republic Indonesia 1945 should be held based on the principle of sustainable development and environmentally vision.

Development activities require more on natural resources. However, developments also contain the risk of pollution and environmental damage. This condition may result in the carrying support, capacity, and environmental productivity that eventually decline and become a social burden. Therefore, the state, the government, and all stakeholders are obliged to undertake environmental protection and management in the implementation of sustainable development to ensure that Indonesian environment can remain as a source of life and support for Indonesian people and other living creatures.

Indonesian environment must be protected and managed based on the principle of state responsibility, the principle of sustainability, and fairness. In addition, environmental management must be able to provide the benefit of economy, social, and culture that is based on the precautionary principle, environmental democracy, decentralization, and the recognition and appreciation of local knowledge and wisdom of the environment. Protection and management of the environment requires the development of an integrated system in the form of a national policy of environmental protection and management that should be implemented in strict principles and consequences from the central government to local governments.

Science and technology have improved the quality of life and changed humans' lifestyles. The use of chemical-based products has increased the production of hazardous and toxic waste. It demands the development of safe disposal systems with little risk to the environment, health, and survival of humans and other living creatures. Similarly, in addition to producing products that are beneficial to society, industrialization also had similar effect of producing hazardous wastes and toxic materials, which if discharged into the environment, can threaten and damage the environment, health, and survival of humans and other living creatures.

Preventive measures in order to control environmental impacts need to be implemented by maximally utilizing instruments on supervision and licensing. In terms of pollution and environmental damage that has occurred, it is necessary to apply repressive form of effective law enforcement, consistent, and consistently against pollution and environmental damage occurred.

The Constitution Act 1945 has set the ground rules concerning the use of natural resources need to be protected for the prosperity of the people, in accordance with Article 33, paragraph 3, which reads: "Earth and water and natural resources contained therein controlled by the state and used for the people's welfare." While the principle of its operations is in the People's Consultative Assembly Decree No. IV / MPR / 1999, on the Guidelines of State Policy in Chapter IV, H of Natural Resources and Environment stated: "Harnessing natural resources for the greatest prosperity of the people to pay attention to preservation and environmental balance, sustainable development, economic and cultural interests of local communities and city planning stipulated in the Act."

The policy of using land is intended to prevent illegal land use that contravenes the public interest and the interest of development. In order to achieve the realization of the ideal construction, it needs instruments that can be used as a benchmark or guidelines that can guarantee the rights and obligations which are considered as legal instruments that are designated as legislation in its implementation and also for the sake of supervision and to control on planned development program. It can be implemented in accordance with applicable regulations, which in turn would not be any conflict of interest that may be detrimental to the parties concerned and in order to preserve the function and environmental balance. As an instrument, licensing serves as the spearhead of legal instruments as advisors and designers for prosperous society to be created. Even though in reality, there are certain forms of violations and irregularities in the construction only for commercial business that intends to simply make source of revenue but they do not pay attention to the impact of a development on the environment.

2. Discussion

1) Licensing in UUPPLH/Law No 32 of 2009

According to Sjachran Basah, licensing is one manifestation of government's authority in organizing community life. He believes that it serves as the spearhead of the legal instrument to apply the rules concretely in diverse sectors of life (Sjachran Basah, 1993: 25).

Marcus Lukman (Ridwan HR, 2002: 163) states that the government's authority in the field of licensing is discretionary power or free authority, in a sense that the government is authorized to consider, on the basis of their own initiative, some matters relating to licensing, for example, the consideration of :

1. What are the conditions that allow for a license can be granted to the applicant;
2. How to consider these conditions;

3. The juridical consequences that may arise from the provision or denial of licensing restrictions associated with the legislation;
4. What procedures must be followed or prepared during and after the decision given either acceptance or refusal to grant a license.

As giving a license is a preventive juridical instrument, then the function of law (Philip M. Hajon, 1995: 1):

- a) Directing/controlling certain activities
- b) Preventing the dangers
- c) Protecting certain object
- a) Adjusting the distribution of rare objects
- b) Selecting particular people or activities.

Related to the above matters, Roscoe Pound put forward the concept of the function of the law as “a tool of social engineering,” meaning that the function of law as a tool engineer (transforming society) is to create changes in social life and to be progressive. The law in its function is carrying out social engineering, is to pose certain conditions that lead to the achievement of law as priority. Even one can control the social life of the people who planned towards a better life. The function of law as a means of social engineers, intending to eliminate the existence of laws generally identical to “*het recht hinkt Achter defeiten aan*” or the law do not hobbled to follow the development of society (Roscoe Pound in Marwan Mas, 2004: 82-83).

In issuing licenses, one should be able to control the behavior of society in accordance with its intended purpose. They are expected to apply the law as a function of rules to regulate and issue a permit. License is given related to the construction of a project or business activity that may cause interference, which is done by using Hinder Ordinance (HO). HO is a nuisance permit, containing the prohibition of any person to build a building on a place or a particular region that can cause interference (*hinder*), damage (*schade*) or danger (*gevaar*) on private property, companies, or local public health. Licensing can also be used for a project with large and significant impacts on the environment required for environmental impact assessment (EIA). Licensing is also needed to the disposal of waste into the environment.

Law No. 32 of 2009 on the Protection and Management of the Environment (UUPPLH) administrative instruments relating to AMDAL Article 22 paragraph one and two states that any business and/or activities that have an important impact on the environment must have AMDAL. On the Law, significant impacts are determined based on some criteria. They are: a) large number of residents who will be affected by the business plan and/or activities; b) area affected; c) the intensity and duration of the impact; d) the number of other environmental components that will be affected; e) the cumulative impacts on the nature; f) turning or irreversibility of the impact; and/or other criteria in accordance with the development of science and technology.

For a business or activity that does not require having AMDAL, it must have UKL-UPL. In Article 35 paragraph one and two of Law No. 32/2009, it mentions that businesses and/or activities that are not mandatory AMDAL is not included in the category of micro businesses must be equipped UKL-UPL with the obligation to make a statement of management’s ability and environmental monitoring. Further provisions of UKL-UPL and a statement of the ability of management and environmental monitoring are set by regulation of the Minister.

In addition, it is necessary to have environmental permits mentioned in Article 36 of Law No. 32/2009, stating that (1) every business and/or activities that are required to have an environmental impact analysis or UKL-UPL is required to have an environmental permit; (2) environmental permit issued on the basis of environmental proper decision or recommendation of UKL-UPL; (3) the environmental permit is required to include the requirements contained in the environmental properness decision or recommendation of UKL-UPL; and (4) the environmental permit is issued by the Minister, the governor or regent/mayor in accordance with their authority.

In Article 37 paragraph one of Law No. 32/2009 states that Minister, governor or regent/mayor in accordance with the authority shall reject the application for an environmental permit if the license

application is not equipped with AMDAL or UKL-UPL. Paragraph two also mentions that environmental permit can be canceled if a) the requirement in the permit application is flawed, consisting of some errors, misuse, and untruth and/or falsification of data, documents and/or information, b) publication without complying the requirements as stated in the decision commission on environmental properness or recommendation of UKL-UPL, or c) the obligations set out in the AMDAL or UKL-UPL document is not implemented by those responsible for the business and/or activity.

In addition to the provisions referred to Article 37 paragraph two of Law No. 32/2009 mentions that environmental permits may be canceled by the decision of the State Administrative Court (Administrative Court). In this case, the Administrative Court has the authority to impose administrative sanctions through administrative decision or settlement. A person or legal entity who felt their interests harmed by a decision of state officials can be filed to the administrative court's decision that the state officials declared void or invalid with or without compensation or rehabilitation.

Administrative sanctions provisions in the Act No. 32/2009 in Article 76 paragraph one and two, which states that Minister, governor or regent/mayor may apply administrative sanctions to the person in charge of business and/or activities if one found violations of environmental permits in the supervision. Administrative sanctions consist of a written warning, government coercion, environmental license liquidation, and revocation of environmental permits. Further, coercion sanctions according to Article 80 paragraph one can be: a) a temporary liquidation of production activities, b) transfer of production facilities, c) the closure of the water channel or emissions, d) unloading, e) confiscation of goods or equipment that could potentially cause breach, f) temporary suspension of all activities, or g) other actions aimed at stopping violations and actions to restore environmental functions.

In Article 80 paragraph two mentioned that imposition of coercive government can be imposed without prior warning if the violation causes: a) a very serious threat to humans and the environment, b) a greater and wider impact if not immediately stopped the pollution, and/or c) more loss of the environment if not immediately stopped the pollution.

Sanctions against environmental offenses are still not final because it is still possible for other legal solution that is done by an appeal against the decision of administrative sanctions toward higher officials/government agencies. If the case is forwarded through the administrative court, it will wait until there is a decision that binds legal force imposed by the Administrative Court (Rachmadi Usman, 2003: 216).

According to RM. Gatot P. Sumartono, the administrative sanctions in pollution case, the government tends not impose administrative sanctions due to some concerns that it could cause social unrest as a result of the closure of the company and firing workers. The revocation of a license should be a final penalty after other forms of administrative sanctions are applied (RM. Gatot P. Sumartono, 1996: 68-69).

2) Community and sustainable development

In general, violations and irregularities against the urban development actually started from government policy. This means that the local government in charge of city planning is less consistent in implementing urban development. The main cause of these irregularities are lack of effective city planning (with indicators of the presence of various irregularities), lack of coordination between departments/agencies, and lack of community involvement; therefore, aspiration of the people is also less coordinated for the city development plan. According to Simmie (*Citizens in conflict*, 1974), many people are not only seen as a group that would receive and utilize the facilities provided, but they are also involved as one of the components that participate in dispensing policy and planning program concerning the fate of their own. "The most determinant factor in planning is power" (Eko Budihardjo, 1993: 203).

The effort to realize the idea of sustainable urban development required the participation of all levels of society in urban planning and environmental management. Brundtland (1987) (in Eko Budihardjo, 1993: 203) states that "sustainable development is development that meets the needs of the present

without undermining the ability of future generations to meet their needs with the people who live within the confines of an environment of mutual support.” A policy without being followed by the control will face difficulty in implementation (diseffectivity) (N.H.T Siahaan, 2004: 185).

John L. Taylor and David G. William mention some factors that should be considered in urban planning in developing countries as “generating factors” or cause factors. Generating factors are divided into six categories, namely demography, economy, politics, social, technology, and environment. Planning is described as the process of balancing the interests of various groups/classes in the urban community in allocating limited resources. And this is no longer the role of licensing as an instrument of coercion but in order to maintain the balance of interests proportionally namely government’s interest, public and private sector in achieving sustainable development.

Housing development policy and trade has always emphasized on the approach of supply (supply) and not on the approach of needs (demand). As a result, many cases arise unsold housing, construction of which is to change its purpose, which is actually in the city plan, it is for green zones or reforestation area but it becomes trade zone without considering the impacts towards the environmental impacts that might occur. Maintenance of ground water and environment in general should be included and be an integral part of urban city planning and execution of the development of neighborhoods. It also needs to be translated into real action for the sake of the success of developing sustainable urban development. Lastly, it is important to conduct these acts in order to improve people's welfare in general.

3. Conclusion

1. Licensing is one manifestation of government’s authority in organizing community life. Licensing in his view is the spearhead of legal instrument to apply the rules of concrete sectors of life. Conducting and issuing license should be able to control the behavior of society in accordance with its intended purpose. It is also important to apply licensing for projects with large and significant impacts on the environment. Thus, there are several articles in the UUPH governing such as AMDAL “environmental permit” UKL-UPL and also the administrative sanctions.
2. In an effort to realize the idea of sustainable urban development, it ultimately requires the participation of all levels of society in city planning and environmental management because sustainable development is development that meets the needs of the present without undermining the ability of future generations to meet their needs with the community live within the confines of a mutually supportive environment.

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