



Public Participation as a Constitutional Right in the Process of Preparing Environmental Documents

Partisipasi Publik sebagai Hak Konstitusional dalam Proses Penyusunan Dokumen Lingkungan

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Abstract

This study aims to explore the legal concerns associated with limitations on public involvement in the preparation of environmental documentation under the Job Creation Law. This research is doctrinal and conducted using statutory, conceptual, and philosophical approaches. The results of the research and analysis conclude that public participation is a constitutional right. Therefore, limiting public participation, particularly for individuals who are directly impacted by a proposed business plan and/or activity, constitutes a constitutional violation. Restrictions on participation can potentially create antinomies or conflicts of norms between articles or even regulations within a law. Furthermore, in a broader scope, restrictions on public participation conflict with the principles of international environmental law, especially procedural environmental law.

Abstrak

Penelitian ini berupaya untuk menjawab persoalan hukum terkait pembatasan partisipasi publik dalam proses penyusunan dokumen lingkungan di dalam Undang-Undang Cipta Kerja.. Penelitian ini merupakan penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan, pendekatan konseptual dan pendekatan filosofis. Hasil penelitian dan analisa terhadap hasil penelitian menyimpulkan bahwa partisipasi publik merupakan hak konstitusional, sehingga pembatasan terhadap partisipasi publik hanya bagi masyarakat yang terdampak secara langsung dari suatu rencana usaha dan/atau kegiatan merupakan bentuk pelanggaran konstitusional; pembatasan partisipasi berpotensi menimbulkan antinomi atau konflik norma antara satu pasal dengan pasal lainnya dalam satu peraturan perundang-undangan dan antara satu undang-undang dengan undang-undang yang lain; dan dalam lingkup yang lebih luas, pembatasan partisipasi publik juga bertentangan dengan prinsip hukum lingkungan internasional, khususnya hukum lingkungan yang bersifat prosedural.



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A. INTRODUCTION

1. Background

The constitution guarantees the right of every citizen to acquire a good and healthy living environment.¹ The constitutional guarantee of a good and healthy environment for every citizen is generally related to two aspects forming the right to the environment, namely the substantial aspect and the procedural aspect.² The substantive aspect related to the right to the environment is in the form of the right to a good and healthy environment, while the procedural aspect related to the right to the environment includes the right to access environmental information, the right to participation and the right to participate.³

A good and healthy living environment is the right of every citizen, the fulfillment of which is guaranteed by the constitution, including the right to participate in creating a good and healthy living environment. Legal problems related to the constitutional rights of the community in the process of preparing environmental documents emerged following changes to the provisions of Article 25 letter c and Article 26 of Law of the Republic of Indonesia Number 32 of 2009 concerning on Environmental Protection and Management (hereinafter written Law 32 of 2009).

Table 1. Comparison of Provisions on Community Involvement in Environmental Impact Assessments between Law 32 of 2009 and Law 6 of 2023

Law 32 of 2009	Job Creation Law
Article 25 letter c: Emphasizes the importance of incorporating community suggestions and feedback regarding plans for businesses and/or activities.	Article 22 number 4 Letter c: suggestions, inputs, and responses from the community directly affected that are relevant to the business plan and/or activities;
Article 26: letter 26 (1) The environmental impact assessment document, mentioned in Article 22, shall be compiled by the project initiator with the inclusion of community participation. (2) The involvement of the community should adhere to the principle of delivering transparent and comprehensive information, with prior notification given before the commencement of the activity.	Article 22 letter 5: (1) The Environmental Impact Assessment document, as referred to in Article 22, is prepared by the initiator involving the community. (2) The preparation of the Environmental Impact Assessment document is carried out by involving the community directly affected by the business plan and/or activities.

¹ Indonesia, "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (1945) Article 28H Paragraph (1).

² Hario Danang Pambudhi dan Ega Ramadayanti, "Menilai Kembali Politik Hukum Perlindungan Lingkungan dalam UU Cipta Kerja untuk Mendukung Keberlanjutan Ekologis," *Jurnal Hukum Lingkungan Indonesia* 7, no. 2 (20 September 2021): 312, <https://doi.org/10.38011/jhli.v7i2.313>.

³ Jonas Ebbesson et al., *The Aarhus Convention: An Implementation Guide, Interactive*, 2nd ed. (Geneva: United Nations publication, 2014), 15; Malgosia Fitzmaurice, *Contemporary Issues in International Environmental Law* (Cheltenham: Edward Elgar Publishing, 2009), 69. Accessed September 12, 2022

- (3) The community referred to in paragraph (1) includes:
- a. those affected;
 - b. environmental observers; and/or
 - c. those influenced by any decision made in the environmental impact assessment process.
- (4) The community referred to in paragraph (1) may submit objections to the environmental impact assessment document.
- (3) Further provisions regarding the process of community involvement as referred to in paragraph (2) are regulated in the Government Regulation.

Source: Law No. 32 of 2009 and Law No. 6 of 2023.

The provisions of Article 25 letter c principally regulate the substance that must be included in the Environmental Impact Analysis (Analisis Mengenai Dampak Lingkungan/AMDAL) document, where one of the content that must be included in the AMDAL document is suggestions for input and public responses to business plans and/or activities. The substance of Article 26 of Law 32 of 2009 in principle regulates: first, the parties involved in preparing the AMDAL document other than the initiator, namely: the affected community, environmental observers and parties affected by all forms of decisions in the AMDAL process; second, community involvement must be based on the principle of providing transparent and complete information and being notified before activities are carried out; and third, the public can submit objections to the AMDAL document.

The provisions of Article 25 letter c and Article 26 of Law 32 of 2009 are amended by the provisions of Article 22 number 4 and Article 22 number 5 of Law of the Republic of Indonesia Number 6 of 2023 concerning Stipulation of Government Regulations in Lieu of Law Number 2 of 2022 concerning Copyright Work Becomes Law (hereinafter written Job Creation Law). The provisions of Article 22 point 4 of the Job Creation Law in letter c state that: "input suggestions and responses from the community directly affected are relevant to business plans and/or activities." The changes to Article 26 of Law 32 of 2009 substantively include three things, namely: first, removal of provisions stating that community involvement must be based on the principle of providing transparent and complete information and being notified before activities are carried out; second, changes regarding the parties involved in the process of preparing AMDAL documents "only" for communities directly affected by business plans and/or activities; and third, the removal of provisions governing the public's right to submit objections to the resulting AMDAL documents.

The changes to these two articles are interesting to be studied considering that the legal politics of Law 32 of 2009 are to correct various weaknesses contained in Law of the

Republic of Indonesia Number 23 of 1997 concerning Environmental Management (Law 23 of 1997). These weaknesses broadly include 3 (three) things, namely: inconsistent and weak law enforcement caused by various interpretations of the norms in Law 23 of 1997; the many policies that are pro-investment but ignore environmental preservation; and weak public participation in efforts to preserve environmental functions.⁴ With the amendment of Article 25 and Article 26 of Law 32 of 2009, the substance of which is an improvement on previous laws and regulations, there appears to be an antinomy because the substance of article 22 number 4 and article 22 number 5 of the Job Creation Law is actually no better compared to the provisions of Article 25 and Article 26 of Law 32 of 2009, especially when related to the community's right to be involved in the process of preparing environmental documents. Based on this description, this research was conducted to answer legal issues related to changes to Article 25 and Article 26 of Law 32 of 2009, namely what are the constitutional rights of the community in the process of preparing environmental documents after changes to Article 25 letter c and Article 26 of Law 32 of 2009 .

2. Research Questions

This research was conducted to answer the problem formulation: How does the amendment to Article 25(c) and Article 26 of the Law of the Republic of Indonesia Number 32 of 2009 on Environmental Protection and Management ensure the fulfillment of citizens' constitutional rights to a healthy and sustainable living environment?

3. Research Methods

This research is doctrinal legal research. The object of this research is law which is conceptualized as statutory rules as is the doctrine adhered to by the positivism school of law.⁵ The approach used is a statutory approach,⁶ Conceptual approach,⁷ and philosophical approach.⁸

The technique for collecting legal materials is carried out through the following stages:⁹ *first*, the inventory stage of legal materials; *Second*, the stage of identifying legal materials; *Third*, classification of legal materials; and *Fourth*, systematization of legal materials. Analysis of legal materials is carried out through legal interpretation and construction

⁴ Sekretaris Jenderal D P R RI, "Naskah Akademis Rancangan Undang-Undang Tentang Pengelolaan Lingkungan Hidup" (Jakarta, 2009), 1.

⁵ Soetandyo Wignjosoebroto, "Ragam-Ragam Penelitian Hukum," in *Metode Penelitian Hukum; Konstelasi dan Refleksi*, ed. oleh Sulistyowati Irianto dan Shidarta, 1st ed. (Jakarta: Yayasan Pustaka Obor Indonesia, 2017); Soetandyo Wignjosoebroto, *Hukum: Paradigma, Metode, dan Masalah* (Jakarta: ELSAM & HUMA, 2002); Bernard Arief Sidharta, "Penelitian Hukum Normatif: Analisis penelitian Filosofikal dan Dogmatikal," in *Metode Penelitian Hukum; Konstelasi dan Refleksi*, ed. oleh Sulistyowati Irianto dan Shidarta, 1st ed. (Jakarta: Yayasan Pustaka Obor Indonesia, 2017).

⁶ Peter Mahmud Marzuki, *Pengantar Ilmu Hukum*, 1st ed. (Jakarta: Kencana, 2009), 102.

⁷ Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*, 1 ed. (Yogyakarta: Pustaka Pelajar, 2010), 186.

⁸ Fajar dan Achmad, *Dualisme Penelitian Hukum Normatif & Empiris*.

⁹ Suratman dan Philips Dillah, *Metode Penelitian Hukum* (Bandung: Alfabeta, 2015), 82-86.

of legal materials.¹⁰ Interpretation is one of the means of legal discovery (*rechtsvinding*) which aims to interpret legal materials, especially primary legal materials, whether in the legal materials there is a legal vacuum, antinomy (norm conflict) or unclear legal norms.¹¹

B. DISCUSSION/ ANALYSIS

1. Public Participation as a Constitutional Right

Rights refer to the interests that are upheld by legal provisions¹² while the constitution is a set of highest principles or guidelines established in the framework of the functioning of an organization, whether in the sense of a state organization or other organizations.¹³ The constitutional rights are as stated in the Explanation to Article 51 paragraph (1) of Law of the Republic of Indonesia Number 24 of 2003 concerning the Constitutional Court¹⁴ are the rights regulated in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945).

Parallel to the definition of constitutional rights as defined in the Explanation to Article 51, paragraph (1), Number 24 of 2003 concerning the Constitutional Court, the Constitutional Court discusses the Icon of Constitutional Rights of Citizens, mentioning 66 constitutional rights whose fulfillment is underpinned by the 1945 Constitution of the Republic of Indonesia. These 66 constitutional rights are categorized into three groups: individual rights, encompassing 34 rights; collective rights, including 29 rights; and temporarily vulnerable rights,¹⁵ comprising 3 rights. Komnas Perempuan, through its official website, reveals that there are 40 (forty) constitutional rights whose fulfillment is guaranteed by the constitution contained in the 1945 Constitution of the Republic of Indonesia. These forty constitutional rights are divided into 14 (fourteen) groups, namely: the right to citizenship; the right to life; the right to self-development; the right to independence of thought and freedom of choice; the right to information; the right to work and a living worthy of humanity; property and housing rights; the right to health and a healthy environment; family rights; the right to be free from threats of discrimination and violence; the right to protection; the right to fight for rights; and the right to government.¹⁶

The description of constitutional rights and various other rights contained in the Constitution of the Republic of Indonesia, when linked to the substance of Article 25(c) and

¹⁰ Suratman dan Dillah, *Metode Penelitian Hukum*.

¹¹ Sudikno Mertokusumo dan A. Pitlo, *Bab-Bab Tentang Penemuan Hukum* (Bandung: Aditya Citra Bhakti, 1993), 13–20.

¹² Achmad Muchsin, "Hak Konstitusional Peserta Didik dalam Perspektif Undang-Undang Perlindungan Konsumen," *Jurnal Penelitian* 11, no. 2 (2014): 276.

¹³ Jimly Asshiddiqie, "Konstitusi dan Konstitusionalisme (Materi 24)" (Jakarta: Pusdik MKRI, 2020). Accessed September 13, 2023.

¹⁴ Law of the Republic of Indonesia Number 24 of 2003 concerning the Constitutional Court has undergone several changes, the first change through Law Number 8 of 2011, the second change through Law Number 4 of 2014, and the third change through Law Number 7 of 2014 2020.

¹⁵ Mahkamah Konstitusi, "Ikon Hak Konstitusional Warga Negara (i-HKWN)," 2021.

¹⁶ Komnas Perempuan, "40 Hak Konstitusional Setiap Warga Negara Indonesia Dalam 14 Rumpun," diakses 10 September 2023, <https://komnasperempuan.go.id/instrumen-modul-reFER-pemantauan-detail/40-hak-konstitusional-cepat-warga-negara-indonesia-dalam-14-rumpun>.

Article 26 of Law No. 32 of 2009, demonstrates that the provisions of the aforementioned articles have a strong foundation in the constitution. The constitutional basis can be described as follows:

- a. Article 25 of Law No. 32 of 2009 fundamentally outlines the essential elements that must be included in the Environmental Impact Assessment (Amdal) document. These elements range from environmental impact studies at the planning stage, evaluations concerning the location, community feedback on proposed businesses or activities, to plans for environmental management and monitoring. The provisions of this article are solidly rooted in the constitution, particularly in Article 28F and Article 28H(1). Article 28F guarantees the right to communicate and access information, fostering personal and societal development, while Article 28H(1) enshrines the right to a healthy and conducive living environment. The requirements for the content of the Amdal document, as specified in Article 25 of Law No. 32 of 2009, aim to prevent, minimize, mitigate, and/or compensate for the impacts of businesses and/or activities. This objective aligns with Principle 17 of the Rio Declaration, which states: "Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority."¹⁷
- b. Article 26 paragraph (1) specifies that the Environmental Impact Assessment (Amdal) documents, as referred to in Article 22, are to be prepared by the project proponent with the involvement of the community. This engagement is crucial for gathering suggestions and feedback. The mandates outlined in Article 26 paragraph (1) significantly correlate with the constitutional rights of citizens to express their opinions and attitudes in accordance with their conscience, as stipulated in Article 28E paragraph (2), and the right to a healthy and conducive living environment, as enshrined in Article 28H paragraph (1).
- c. Article 26, paragraph (2) states, 'Community involvement must be executed based on the principle of providing transparent and complete information and ensuring notification before activities are undertaken.' The norms detailed in Article 26, paragraph (2) align with the constitutional rights of citizens to access information, as articulated in Article 28F of the 1945 Constitution of the Republic of Indonesia, which declares, 'Everyone has the right to communicate and obtain information to develop their personal and social environment...'. The concept of 'obtaining information,' as mentioned in Article 28F, encompasses at least three fundamental prerequisites: the right to have one's opinion heard (right to be heard), the right to have one's opinion taken into account (right to be considered), and the right to receive a response or explanation to one's input (right to be explained).

¹⁷ United Nations, "Report of the United Nations Conference on Environment and Development," *Rio de Janeiro*, vol. A/CONF.151 (Rio de Janeiro, 1992), <http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>.including the right to socio-economic development on a sustainable basis.

- d. Article 26, paragraph (3) specifies that 'The community, as referred to in paragraph (1), includes: a. those affected; b. environmentalists; and/or c. those impacted by any decisions within the Amdal process.' The term 'community' in Article 26, paragraph (3), is inclusively defined to encompass not only those directly or indirectly affected but also environmentalists. This inclusive definition underscores that the community at large holds equitable rights concerning all decisions pertaining to the Amdal process. Such equitable rights to legal decisions resonate with the principles outlined in Article 27, paragraph (1), and Article 28D, paragraph (1), of the 1945 Constitution of the Republic of Indonesia, affirming the equality of all citizens before the law and their right to fair legal treatment.
- e. Article 26, paragraph (4) delineates that 'The public, as mentioned in paragraph (1), has the right to express objections to the Amdal document. Such objections can be formally presented through a lawsuit as detailed in Attachment III of the Regulation of the Minister of the Environment Number 17 of 2012, which outlines Guidelines for Community Involvement in the Environmental Impact Analysis (EIA) and the Environmental Permit Process.' This clause aligns with the constitutional guarantee provided in Article 28G, paragraph (1), of the 1945 Constitution of the Republic of Indonesia, which affirms, 'Every person has the right to protection for himself, his family, honor, dignity, and property under his control..'

The foregoing discussion highlights that both the detailed requirements specified for the Environmental Impact Assessment (Amdal) document and the framework for community engagement in its preparation are deeply anchored in constitutional principles.¹⁸ Given their constitutional foundation, the stipulations regarding the Amdal document and the community participation guidelines possess a constitutional character. This signifies that the specified requirements and community engagement principles, as outlined in Articles 25 and 26 of Law Number 32 of 2009, establish certain rights and duties.¹⁹ The community is entitled to participate and have their input considered in the Amdal document's preparation process. Conversely, there is an obligation on the part of businesses to adhere to these formal requirements and ensure community involvement during the document's preparation phase. Moreover, the government has a responsibility to safeguard the community's rights concerning the Amdal document preparation process.²⁰ Furthermore, the state is tasked with offering legal avenues for individuals to uphold their constitutionally guaranteed rights

¹⁸ Tatiek Sri Djamiati, "Perizinan Sebagai Instrumen Yuridis Dalam Pelayanan Publik; Pidato Pengukuhan Jabatan Guru Besar dalam Bidang Hukum Administrasi Negara pada Fakultas Hukum Universitas Airlangga di Surabaya pada Hari Sabtu tanggal 24 November 2007" (Surabaya: Universitas Airlangga, 2007), 3 Accessed September 12, 2022.

¹⁹ Arya Rema Mubarak, "Conflict of Interest antara Usaha Perlindungan Lingkungan Hidup dengan Kemudahan Berinvestasi dalam Peraturan Pemerintah Nomor 24 Tahun 2018," *Jurnal Hukum Lingkungan Indonesia* 5, no. 2 (2019): 290, <https://doi.org/10.38011/jhli.v5i2.98>.

²⁰ Herdi Munte dan Christo Sumurung Tua Sagala, "Perlindungan Hak Konstitusional di Indonesia," *Jurnal Ilmiah Penegakan Hukum* 8, no. 2 (2021): 185.

should infringements arise. These legal avenues may include recourse through judicial mechanisms or alternative, non-judicial processes.²¹

2. Legal Politics of Amendments to Article 25 and Article 26 of Law 32 of 2009

The background to the amendments of Article 25 and Article 26 of Law 32 of 2009 through Article 22, numbers 4 and 5, of the Job Creation Law cannot be separated from the broader context of the Job Creation Law's inception. Efforts to simplify business permit requirements began with the issuance of Presidential Regulation Number 91 of 2017 concerning the Acceleration of Business Implementation. A year later, the government issued Government Regulation Number 24 of 2018 concerning Electronic Integrated Business Licensing Services. However, in its implementation, this regulation faced various obstacles, including its hierarchical position below laws or Government Regulations in Lieu of Law, which limited its binding force to only the statutory regulations subordinate to it. Additionally, the authority to grant permits was still entrenched in sector-specific and regional statutory regulations.²² Therefore, the steps taken by the government to improve the investment ecosystem, simplify business regulation, and accelerate national strategic projects involved adjusting various regulatory aspects through legislation. These efforts, known as the omnibus law method,²³ led to changes in 79 (seventy-nine) laws and regulations,²⁴ including Law 32 of 2009.

Amendments to Law 32 of 2009 began with the change in nomenclature from environmental permits ('izin lingkungan') to environmental approval ('persetujuan lingkungan'). From the perspective of environmental licensing law ('hukum perizinan lingkungan'), this change represents a simplification²⁵ of statutory regulations. This simplification can be understood through the legal construction of environmental approvals, which are now prerequisites for obtaining business permits. This contrasts with the previous legal framework under Law 32 of 2009, which required environmental permits as prerequisites for obtaining business and/or activity permits. Previously, environmental permits could only be issued based on an Environmental Feasibility Decree (Surat Keputusan

²¹ Meirina Fajarwati, "Upaya Hukum Untuk Melindungi Hak Konstitusional Warga Negara Melalui Mahkamah Konstitusi," *Legislasi Indonesia* 13, no. 3 (2016): 326.

²² Wicipto Setiadi, "Simplifikasi Peraturan Perundang-Undangan Dalam Rangka Mendukung Kemudahan Berusaha," *RechtsVinding Media Pembinaan Hukum Nasional* 7, no. 3 (2018): 321-34.

²³ According to Jimly Asshiddiqie, the omnibus law method is a technique for forming laws to change and combine regulations regarding matters that are considered interrelated originating from many laws at once in one law. Look: Jimly Asshiddiqie, *Omnibus Law dan Penerapannya di Indonesia*, ed. oleh Pan Mo-hamad Faiz, 1 ed. (Jakarta: Konstitusi Press, 2020), 7.

²⁴ "Academic Manuscript of the Draft Job Creation Law," 127-131. Apart from making changes, the Job Creation Law also repeals two statutory regulations, namely: Law Number 3 of 1982 concerning Mandatory Company Registration and Staatsblad Provisions of 1926 Number 226 jo. Staatblad of 1940 Number 450 concerning the Nuisance Law (Hinderordonnantie). See: Article 110 and Article 116 of the Job Creation Law.

²⁵ Simplification of statutory regulations is the fastest method for simplifying statutory regulations by analyzing, evaluating and reviewing as well as restructuring (reconstructing) the system of statutory regulations carried out by the makers of the statutory regulations themselves. Look: Setiadi, "Simplifikasi Peraturan Perundang-Undangan Dalam Rangka Mendukung Kemudahan Berusaha."

Kelayakan Lingkungan Hidup/SKKLH) or a recommendation for Environmental Management Effort (Upaya Pengelolaan Lingkungan Hidup/UKL) and Environmental Monitoring Effort (Upaya Pemantauan Lingkungan Hidup/UPL).²⁶

The legal politics of changing the terminology from environmental permits to environmental approvals, as stated in the academic text of the Draft Job Creation Law, are as follows:

“One of the legal policies in drafting the Job Creation Law Draft is to adjust the licensing nomenclature contained in each law with a general formulation, thereby providing government flexibility in anticipating societal and global dynamics.”²⁷

The reason for the flexibility inherent in changing the terminology from environmental permits to environmental approvals, which has legal implications for all related nomenclature, is detailed in the legislative changes. Articles 36 and 40 of Law 32 of 2009 were removed because mandatory AMDAL and UKL-UPL for businesses and activities, in practice, require a long time and substantial costs to complete these environmental documents. Furthermore, Article 40 of Law 32 of 2009 was deleted on the grounds that an environmental permit should not be a prerequisite for issuing a business permit.²⁸

If we closely examine the changes in environmental permit terminology and the deletion of Articles 36 and 40 of Law 32 of 2009, it can be concluded that these changes and deletions are not solely for reasons of flexibility. This conclusion stems from the inclusion of considerations for fulfilling environmental documents—because these documents are considered costly and time-consuming—into the legal arguments for the deletion of Articles 36 and 40. The inclusion of cost and time considerations in the process of completing environmental documents indicates that the deletion of the aforementioned articles is based not only on flexibility but also on efficiency considerations. This efficiency rationale then has legal implications not only for changes in the legal construction of environmental permits but also for changes to other legal instruments related to environmental permits, including regulations regarding AMDAL and UKL-UPL. Based on efficiency, public participation, an important instrument in the process of preparing AMDAL documents, is no longer extended to the public at large but is limited only to communities directly affected and relevant to business plans and activities.

The explanation above demonstrates that the legal politics of changing Articles 25 and 26 of Law 32 of 2009, which regulate public participation in the process of preparing AMDAL documents, are intrinsically linked to the legal politics of changing the nomenclature of environmental permits to environmental approvals. In a broader context, this change in the Job Creation Law is part of a strategy to simplify the basic requirements for business

²⁶ Republik Indonesia, “Undang-undang Nomor 32 Tahun 2009 tentang Perlindungan dan Pengelolaan Lingkungan Hidup” (2009). Article 36 paragraph (2) .

²⁷ “Naskah Akademik RUU Cipta Kerja.”

²⁸ “Naskah Akademik RUU Cipta Kerja.”

permits. The ultimate goal of simplifying these requirements is to boost investment and, thereby, encourage economic growth.

3. Substance of Amendments to Article 25 letter c and Article 26 of Law 32 of 2009

The fundamental change to AMDAL regulations involves limiting public participation in the process of preparing AMDAL documents to only communities directly affected and relevant to business plans and/or activities. This provision is stated in Article 22, point 4 of the 2023 Job Creation Law, which specifies that the AMDAL document contains 'input suggestions and responses from communities directly impacted that are relevant to business plans and/or activities.' This is an amendment to the provisions of Article 25 letter c of Law 32 of 2009, which stated that the AMDAL document should include 'input suggestions and community responses to business plans and/or activities.' The addition of the phrase '...affected by relevant direct impacts...' indicates that the 2023 Job Creation Law views public participation as a factor inhibiting investment. This perspective is aligned with the Academic Text of the 2023 Job Creation Bill, which notes, 'Some parties consider community involvement to be a factor inhibiting investment, so care needs to be taken in the formulation of this article so that community rights are not immediately lost.'²⁹

Apart from amending the provisions of Article 25 letter c of Law 32 of 2009, the 2023 Job Creation Law also amends the provisions of Article 26 of Law 32 of 2009 with Article 22 number 5. The amendments to Article 26 of Law 32 of 2009 are carried out by:

- a. Deleting the provisions of Article 26 paragraph (2), which states that 'Community involvement must be carried out based on the principle of providing transparent and complete information and being notified before activities are carried out.'
- b. Limiting community involvement in the preparation of AMDAL to only those directly affected by business plans and/or activities. Before these changes, the communities involved in the AMDAL preparation process, as outlined in Article 26 paragraph (3), included: a) affected communities; b) environmental observers; and c) communities impacted by all decisions within the AMDAL process.
- c. Deleting the provisions of Article 26 paragraph (4), which regulates the community's authority in submitting objections to AMDAL documents.

4. Legal Implications of Amendments to Article 25 letter c and Article 26 of Law 32 of 2009 on Community Constitutional Rights in the Process of Preparing Environmental Documents

From the preceding discussion, public participation is not only a constitutional right guaranteed by law but also a fundamental aspect of democratic processes. The limitations imposed on public participation in crafting environmental documents, as outlined in Article 22, point 4, and Article 22, point 5, of the Job Creation Law, stand in stark contrast to

²⁹ "Naskah Akademik RUU Cipta Kerja."

constitutional guarantees. Such restrictions not only violate the constitution but also risk inciting disorder within the domain of administrative law due to their incompatibility with established legal principles and norms. From the viewpoint of international environmental law, these limitations contravene Principle 10 of the Rio Declaration, which asserts, 'Environmental issues are best handled with the participation of all concerned citizens, at the relevant level.'³⁰ The issues in administrative law and the contradictions to international environmental law principles are explained as follows:

- a. Contrary to the Participatory principle as stated in Article 2 letter k of Law 32 of 2009 which states that: "every member of society is encouraged to play an active role in the decision-making process and implementation of environmental protection and management, both directly and indirectly."
- b. Contrary to the principles of good governance as intended in Article 2 Letter m of Law 32 of 2009, what is meant by "principles of good governance" is that the protection and management of the environment is imbued with the principles of participation, transparency, accountability, efficiency, and justice.
- c. Give rise to antinomies (conflicts of norms) between one article and another in a legal regulation. Restrictions on public participation as stated in Article 22 number 4 and Article 22 number 5 of the Job Creation Law have the potential to give rise to antinomies (conflicts of norms) because they conflict with the principle of community participation in environmental protection and management as regulated in Article 70 of the Law 32 of 2009 which states that:
 - (1) The community has the same and broadest rights and opportunities to play an active role in environmental protection and management.
 - (2) Community roles can take the form of:
 - a. social supervision;
 - b. providing suggestions, opinions, suggestions, objections, complaints; and/or
 - c. delivery of information and/or reports.
 - (3) The community's role is to:
 - a. increase awareness in environmental protection and management;
 - b. increasing independence, community empowerment and partnerships;
 - c. developing community capabilities and pioneering;
 - d. developing community responsiveness to carry out social supervision; And
 - e. develop and maintain local culture and wisdom in the context of preserving environmental functions.
- d. In a broader context, restrictions on public participation in the AMDAL document preparation process are contrary to the principle of openness of public information as regulated in Law of the Republic of Indonesia Number 14 of 2008 concerning Openness of Public Information.

³⁰ United Nations, "Report of the United Nations Conference on Environment and Development." including the right to socio-economic development on a sustainable basis.

- e. Contrary to the principles of international environmental law. In the context of international environmental law, public participation is part of procedural rights to the environment and is an important component of sustainable development as intended in Article 10 of the Rio Declaration.³¹ As part of the procedural rights to the environment,³² Public participation can encourage the realization of substantial environmental rights.³³

Based on these five legal arguments, it can be stated that limiting public participation in the process of preparing AMDAL documents is inappropriate. This limitation is not only contrary to the constitution but also has the potential to cause chaos in the field of administrative law. Additionally, restrictions on public participation in the process of preparing AMDAL documents contradict the procedural principles of international law. Therefore, this research recommends that public participation in the process of preparing AMDAL documents should not be limited only to communities directly affected.

C. CONCLUSIONS

The research yields several key conclusions. Firstly, public participation, as mandated by Articles 25 and 26 of Law Number 32 of 2009, is a constitutional right, obligating the state to ensure its fulfillment. Secondly, the limitations on public participation in drafting environmental documents are unconstitutional and create norm conflicts within the same law and between different laws. These conflicts arise because the amendments to Articles 25 and 26 are not aligned with Article 70 of Law 32 of 2009, which outlines public participation mechanisms, and they clash with the principles of public information openness in Law Number 14 of 2008. Thirdly, these restrictions violate international law principles, specifically Principle 10 of the 1992 Rio Declaration. Based on these conclusions, the study recommends that the Government and the House of Representatives rescind the amendments made by Article 22(4) and Article 22(5) of the Job Creation Law and restore the original provisions of Articles 25 and 26 of Law Number 32 of 2009. Reinstating these articles is crucial to upholding the constitutional guarantee of a healthy living environment for the community.

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³¹ United Nations.including the right to socio-economic development on a sustainable basis. (b

³² Procedural environmental rights consist of the right to information, public participation in decision making and access to justice (access to environmental information, public participation in decision-making and access to justice). Ebbesson et al., *The Aarhus Convention: An Implementation Guide*; Fitzmaurice, *Contemporary Issues in International Environmental Law*.

³³ Abdurrahman Supardi Usman, "Lingkungan Hidup Sebagai Subjek Hukum: Redefinisi Relasi Hak Asasi Manusia dan Hak Asasi Lingkungan Hidup dalam Perspektif Negara Hukum," *Legality* 26, no. 1 (2018): 10.

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