

The Nature of Enforcement of Criminal Environmental Laws in Administration of Coastal Areas of Makassar City

by Mirnawati Wahab

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The Nature of Enforcement of Criminal Environmental Laws in Administration of Coastal Areas of Makassar City

Muliati Pawennei, Hamza Baharuddin, Ahyuni Yunus & Mirnawanti Wahab

Faculty of Law, Indonesian Muslim

University Doctoral Student in Law, Muslim University of Indonesia

ABSTRACT: The purpose of this study is to analyze and discover the nature of criminal law enforcement in the arrangement of coastal areas, South Makassar City, along Jalan Metro Tanjung Bunga, Tamalate District and Mariso District, Makassar City covering an area of 1000 Ha. Research is *interdisciplinary*, so the method used is a survey, interview and questionnaire distribution so that all field phenomena can be observed in their entirety and comprehensively (*comprehensive-integral*). The results of the study show that the nature of criminal law enforcement (PHLK) in the structuring of coastal areas (PWP), when viewed from the three indicators used, has proven not to show and *trends* positive because it does not protect the interests/rights of the community, community acceptance (*socially acceptable*) program PWP has caused a lot of conflicts, especially arable land disputes. While seen from an economic perspective (*economical yountable*) the initiator is more *profit-oriented* and ignores the interests of the local community. No valid data and information were found for the empowerment program as an economic safety net that can improve the welfare of the community, including providing capital in a scheme *corporate social responsibility* (CSR), which is more important, from environmental aspects (*ecologically sustainable*), PWP is carried out without calculation and valuation mature environment, frequent flooding, changing water flow patterns, the area of the pool of water is getting higher and wider. Green open space (RTH) is still below 20 per cent of the total area according to the mandate of the PPLH Law 32 of 2009, and the process of handing over public facilities and urban utilities (PSU) has not been carried out to the City Government. The case of the Barombong Stadium and the CPI reclamation polemic were strong evidence that the PWP program caused many environmental problems.

Keywords: Environmental Law, Coastal Areas, Makassar City

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I. INTRODUCTION

The geostrategic condition of Makassar City is in a very strategic position due to several factors namely; First; in the intercultural relations of the Makassar Strait, it becomes an international traffic lane or the Indonesian Archipelago Sea Channel (ALKI) for peaceful traffic and for military purposes (Subagyo, 2002). Second, nationally it becomes an indicator of inter-regional development equality (KTI), the facts show that currently there is a widening gap between regions. Third, the government service centre of South Sulawesi, business, services and education, transportation and transportation. The four centres for cultural and tourism development are four ethnic groups; Bugis, Makassar, Mandar, and Toraja as the basis for local wisdom. In the era of regional autonomy, local wisdom (*local wisdom*) is something that determines the success of development programs (Nurjaya, 2006).

To support the roles and functions of the city as mentioned above, and to be optimal in meeting basic demands and needs.

the community in the form of housing facilities, industrial centres, and commercial areas such as warehouses and factories, as well as home industries and other micro and medium scale industries, Makassar City Government strives and works hard to revitalize the existing potential.

On the one hand, the need for land continues to increase due to population growth, birth and urbanization factors, and migration. On the other hand, the interest of the business community to invest is considered quite large, while the availability of land is increasingly diminishing. Both of these things encourage the City Government to convert productive land in the South Coast region into a new independent city. The rearrangement of the area is precisely to become a "*new city-independent*" which has been considered as the best alternative to the existing dilemma conditions.

After going through various important stages such as planning, socialization, AMDAL study, the area was started to be built. As is common in the structuring of coastal areas in the country, development activities

begin with beach reclamation, procurement of transportation infrastructure; roads and bridges, drainage, office facilities, business centers / hypermarkets, residential centers, accommodation for tourists (hotels and restaurants), public spaces for sports and recreation, sufficient electricity and clean water supply, clear regulations or regulations, firm and transparent, and environmental management.

Geographically, Makassar's physical environment is very unique because it has a long beach, there are a number of small islands, flanked by two large rivers namely the Jeneberang River in the South and the Tallo River in the North. Both of these rivers are natural rivers that have characteristics; morphology is not maintained and has an irregular cross-section. Disposal of liquid waste to the watershed is also irregular, both in terms of quality and distance of entry.

Research by Masrevaniah (2006) states that rivers that are natural rivers have become recipient bodies of solid waste originating from waste and liquid waste from industry, agriculture, and the population. Residential and industrial areas are generally not equipped with sanitation and waste treatment facilities (*water treatment plans*). That causes the burden of pollution on rivers to exceed dangerous levels.

In the Makassar City land area, relatively lower or equal to seawater surface (in the intertidal zone, tides) with a slope of between 5 -10°, such conditions are categorized prone to flood disasters mainly in the rainy season with moderate to high intensity. Livelihoods of residents who live along the south coast, still depend on the capture fisheries sector and smallholder farmers with limited land area.

Demographically the average population growth rate is 1.64 per cent per year. According to BPS records, in 2000 the population of Makassar City was recorded 1,110,019 people, and became 1,193,434 years in 2005 or increased 83,415 people in five years, which means that every year 16,683 people need clothing, food and housing spread over 14 subdistricts and 143 villages. Other potentials that need to be touched are ecotourism, especially cultural tourism in the form of pre-independence relics, and religious tourism in the form of old buildings from the entry of Islam, and the graves of fighters such as Sheikh Yusuf, Sultan Hasanuddin and Pangeran Diponegoro.

According to Matulada (1994), before the Portuguese conquered Malacca in 1511 the commercial port in the Makassar area was already crowded. At that time, trade relations were not only between islands in the archipelago such as Java, Borneo (Kalimantan), Maluku, but also Malacca, Siam and even to Pegu in the Philippines. The Bugis-Makassar merchants control the trade routes of the Indonesian Archipelago Sea Seafarers from this area have a reliable trade fleet and war fleet

Historically the Portuguese, Spanish and Dutch tried hard to take control of Makassar City, intending to cut and seize the spice trade route.

The territorial control efforts carried out by the Dutch East Indies Government experienced various obstacles. According to Sumalyo (2005) by deploying all strategies, strengths and resources possessed, it was only on June 24, 1669, that Admiral Speelman succeeded in taking control of Sumba Opu, the biggest fortress at that time. Then the Dutch chose Fort Rotterdam as its headquarters, because of the natural conditions, and its strategic location, very suitable for the port.

Figure 1.1: Map of the location of the Makassar coastal area



Geostrategic conditions and abundant resource potential along the coastline, caused the Netherlands to build the City of Makassar by utilizing local advantages that are owned and not too much different from the

current conditions, the arrangement of coastal areas does not take into account environmental aspects, the trend continues to this day.

At present, the growth of "small cities" naturally around the waters, the port / Bandar Makassar and coastal areas to the estuaries of the Jeneberang River and Tallo River, integrated industrial zones (KIMA), is characterized by increasingly dense housing and offices, and activities reclamation. These conditions unwittingly threaten and undermine the sustainability of coastal ecosystems. Development that does not consider ecological factors has the potential to damage the bio-physical balance in the region.

Other specific issues are container seaports, coastal reclamation, expansion of industrial areas, manufacturing of docks, and so on. Environmental and land issues generally include; waste disposal into the sea, the presence of urban forests, crack levees, turbidity of the water, environmental conservation efforts, and the accumulation of industrial products in coastal areas. The participatory and integrative planning process is an absolute requirement in the strategy for developing a sustainable plan.

Based on the description above, it is important to review the effectiveness of the application of Law Number 32 the Year 2009 concerning Environmental Protection and Management (PPLH). Not only in the aspects of administration and/or civil aspects but more important is the criminal aspect. Criminal Law Enforcement is the keyword for efforts to protect and manage the environment.

In every development effort, including the arrangement of coastal areas, it should consider carefully the environmental aspects. Environmental calculations must be prioritized, bearing in mind the impact of damage to ecosystems greatly affects the conditions of natural balance both on land and at sea.

II. RESEARCH METHOD

The research approach is descriptive - qualitative using mapping and survey models to find various problems in the field. Environmental criminal law policy research is part of law *policy research*. Research Sites in the South Coastal Region of Makassar City, along Jalan Metro Tanjung Bunga, Tamalate District and Mariso District, Makassar City cover an area of 1000 Ha.

III. DISCUSSION

In outlining the nature of criminal law enforcement in structuring coastal areas as the formulation of the first problem, it first needs to be distinguished between law enforcement environmental law on the one hand, and structuring of coastal areas on the other.

To measure the nature of the success of the arrangement of coastal areas, the main indicator lies in the understanding of **areas** that have the main function of protection or cultivation as listed in Law Number 27 of 2007 and amended in Law Number 1 of 2014.

Regions are part of the Coastal Areas and Small Islands which has certain functions that are determined based on criteria of physical, biological, social and economic characteristics to be maintained. Along with this understanding, the indicators are described as follows;

First socially acceptable, which means that the activities of the coastal area structuring must be acceptable to all citizens, both urbanites or newcomers, as well as local communities that inhabit the area hereditary. Local communities who live around the coastal area have *collective memories* with the region.

One of the objects of the problem in the arrangement of coastal areas is the permanent damage to marine ecosystems, both caused by land conversion, as well as the impacts caused by coastal reclamation activities. Citing the UN report with the title; *The Intergovernmental science-policy Platform on Biodiversity and Ecosystem Services* (IPBES), which was signed by more than 132 member countries, was published Monday (07/04/2019), that now "one million species on earth are threatened with extinction". The report was compiled for more than 3 years, and involved 145 scientists and researchers and reviewed 15 thousand studies, and sources to complete the report. The UN publication emphasizes several key aspects;

a) urges world governments to address the global decline of biodiversity (*mega-biodiversity*), and
b) urges governments around the world to commit together to deal with human-induced climate change. It is further reported that from 1980 to 2000, there were as many as 100 million hectares of tropical forest have been lost. And argues that land-use change has had the most negative impact since 1970.

In the past 50 years, the earth's population has doubled to 4.5 billion people, the global economy has grown almost 4 (four) times, and global trade has grown 10-fold and has jointly increased energy and material demands (Tristarmagazine.com)

The global community through the United Nations has called for the importance of cooperation between scientists, governments and NGOs in tackling environmental degradation. Managing Director of the United Nations Environment Program (UNEP) *Erik Solheim* said that science and policy are at a crossroads, and require effective treatment to promote good interaction.

Sundari further discusses the meaning of Article 8 paragraph (1) of the UULH and Articles 8-10 of the UUPLH, where the government takes actions that encourage, take various steps and establish environmental

management programs, both at the centre and in the regions. Government policies and actions are regulated by statutory regulations, including by setting environmental policies. (kompas.com)

From the facts stated above, the writer submits his argument, that all the efforts and policies referred to are fair law enforcement, both between communities of a country and in cooperation between countries, specifically the issue of North-South dialogue who often experience *deadlocks*.

In connection with that Siti Sundari Rangkuti proposed a *state of the art* national environmental legislation which is currently being discussed hotly in various forums. There is a difference in principle between the words "implementation" ("*uitvoering*" or "*implementation*") with "law enforcement" ("*handhaving*" or "*law enforcement*"). Completion and harmonization of the UULH –UUPH implementation regulations will determine the phase of law enforcement (Rangkuti, 2005)

Amid the struggle to uphold the criminal law environment, it is necessary to internalize the meaning of person goes **criminal responsibility** as a process through as a consequence of criminal actions committed against the environment. A criminal offence can occur due to deliberate (*opzet*) or mentality (*culpa*).

Criminal acts can be criticized through violations of formal criminal law (formal offence), but criminal acts can also be distinguished by the criterion that there must be a result (*result*) of an act committed (*action*) commonly referred to as causal criminal relations. (kompas.com).

In that regard, the opinion, NHT Siahaan, which states that "criminal acts on an environment," is also referred to as an **Environmental Delict**. If this can be agreed upon, then the following principles need to be analyzed for the application of environmental criminal law:

1. The principle of legality, the existence of legal certainty and clarity and sharpness in making the formulations of criminal law, and the formulation of sanctions
2. the principle of sustainable development (*sustainable development*), does not sacrifice the rights of future generations to enjoy a healthy environment.
3. The principle that if there is a danger or threat of serious and damage *irreversible*, the lack of scientific certainty should not be used as a reason to delay effective actions to prevent environmental damage (*precautionary principle*)
4. the main principle to achieve the goal of punishment is to educate the public about moral errors related to illicit behavior and prevent potential offenders from behaving irresponsibly to the environment
5. The *principle of restraint*, as one of the conditions for criminalization, that criminal sanctions should only be used when civil and other administrative sanctions are not effective in handling environmental problems (Rangkuti, 2005)

Based on the description above, and by the research objectives, then the important thing to do in structuring coastal areas is the fulfilment of all licenses as requirements in starting a business or activity.

Environmental Impact Analysis has been developed since 1970 by several developed countries under the name of **Environmental Impact Analysis** or **Environmental Impact Assessment**, abbreviated as **EIA**. An AMDAL is required to conduct a feasibility study for two reasons, namely:

1. Government laws and regulations require this. The proponent's obligation to prepare an AMDAL is regulated in full in Law Number 32 of 2009 concerning PPLH, starting from Article 22 to Article 33 (as many as 11 articles). This is intended to be more effective in **forcing the proponents** (project owners, entrepreneurs) to pay close attention to the quality of the environment and not only think about the benefits of the project (*provided oriented*),
2. AMDAL must be carried out so that the quality of the environment is not damaged by the operation of the project both infrastructure projects and production projects. Thus, humans to meet the needs and improve welfare perform activities that do not cause damage even though making changes to the environment. Initially, environmental changes are often not a problem, but after the change through the structuring process, impacts begin to occur outside the tolerated threshold, and the changes begin to cause harm.

Project proponents are required to make an AMDAL with the consequence of increasing costs that have to be incurred costs. The responsibility of preparing AMDAL documents does not have to be carried out by the proponent but can delegate to other parties (consultants) according to recommendations and suggestions from the government. Nevertheless, the initiator of the project and/or business activities remain responsible, not the private consultant making the AMDAL.

In the Authorizing Regulations Number 51 of 1993 four types of AMDAL studies were determined, namely:

1. Project AMDAL, which is an AMDAL that applies to an activity that is within the authority of a sectoral agency. For example, a textile factory activity plan that has the authority to give permission and evaluate its AMDAL study is with the Ministry of Industry.
- 2 Integrated / Multisectoral AMDAL, is an AMDAL that applies to an integrated development activity plan, namely the existence of linkage in terms of planning, management and production processes, as well as being in one ecosystem unit and involving the authority of more than one agency. An example is a unit of pulp and paper mill activities whose activities are related to the industrial plantation forest (HTI) project for the

supply of raw materials, steam power plants (PLTU) to provide energy and ports for the distribution of production. Here we can see the involvement of more than one agency, namely the Ministry of Industry, the Department of Forestry, the Department of Mining and the Department of Transportation.

3 Regional AMDAL, which is an AMDAL that is intended for a development activity plan that is located in a single ecosystem area and involves the authority of an agency. An example is the planned industrial estate development activities. In this case, each activity in the area no longer needs to make its AMDAL, because it is already covered by an AMDAL for the entire region.

4 Regional AMDAL is an AMDAL intended for development activity plans whose activities are interrelated in terms of planning and timing of their activities. This AMDAL involves the authority of more than one agency, is in one ecosystem unit, an area development plan according to the Regional Spatial General Plan. An example of a Regional AMDAL is the construction of new cities.

The legal basis for the need to prepare an AMDAL document Government Regulation No. 27 of 1999 concerning Environmental Impact Analysis. AMDAL is a study of the large and important impacts for the decision making of planned business and/or activity on the environment required for the decision making process regarding the conduct of a business and/or activity. In essence, AMDAL is a study of large and important impacts on the environment, made at the planning stage, and used for decision making (tuzere.blogspot). For the AMDAL to be carried out effectively as expected, its supervision is linked to the licensing mechanism. Government regulations on AMDAL clearly state that AMDAL is one of the licensing requirements where decision-makers must consider the results of AMDAL studies before the business/activity licensing process is issued. AMDAL documents must be prepared by the initiator (candidate) of a business plan and / or activity. In preparing the AMDAL study, the proponent can request the services of a consultant to prepare an AMDAL document. One of the prerequisites for the AMDAL document drafting team must be to have an AMDAL drafting certificate and experts in their fields. The minimum standard provisions on the scope of AMDAL preparation material are regulated in the Decree of the Head of Bapedal No. 09 of 2000.

Furthermore, it is explained that in addition to the AMDAL documents, there is also an AMDAL Appraisal Commission container, namely the commission in charge of evaluating AMDAL documents. At the central level the EIA commission is located at the Ministry of Environment, and at the Provincial level is located at Bapedalda or the Provincial Environmental Management Agency, and at the Regency / City level is located at the Regency / City Environmental Management Agency.

Other elements of the government concerned and affected members of the community are seeking to be represented in this Appraisal Commission. The working procedures and membership composition of the AMDAL Appraisal Commission are regulated in a Decree of the State Minister for the Environment, while members of the AMDAL Appraisal Commission in the provinces and districts/cities are determined by the Governor and Regent or Mayor.

Based on the Decree of the Head of BAPEDAL No. 08 of 2000, the proponent is obliged to announce the planned activities during the time specified in the regulation, respond to the input provided, and then consult the community first, before preparing the KA-ANDAL. The preparation of KA-ANDAL is a process to determine the scope of the problems to be studied in the ANDAL study (scoping process).

After completion, the proponent submits the KA-ANDAL document to the AMDAL Appraisal Commission for evaluation. Based on these regulations, the maximum time for KA-ANDAL assessment is a maximum of 75 days beyond the time required by the compiler to improve/refine its documents.

Based on the description above AMDAL is very important for developing countries like Indonesia, because infrastructure development activities are so dynamic, so development can cause an overall ecosystem imbalance due to the many changes that occur, with the AMDAL, the changes can be predicted.

The impact of activities on the environment can be either positive or negative impacts, it is almost impossible that in an activity/development there are no negative impacts. Negative impacts that are likely to occur must have been previously known to occur. Based on data and facts that are complete and accurate, events that will occur can be predicted its impact tendencies. Also, AMDAL discusses ways to overcome/reduce negative impacts. To increase the number of people who can feel the results of development, a positive impact needs to be developed in the AMDAL.

Government policies in environmental management are based on **ADA**) or **and Control (Command and Control (CAC)** Regulation(blogsopot.com). The government together with the DPR / DPRD make laws (UU) which are followed by government regulations (PP), presidential decrees (Keppres), and ministerial decrees (Kepmen), and in the regions by regional regulations (Perda). In the ADA approach.

The AMDAL function is essentially a study of large and important impacts on the environment, made at the planning stage, and used for decision making. Matters reviewed in the AMDAL process include all aspects, including physical-chemical, ecological, socio-economic, socio-cultural, and public health aspects as a complement to the feasibility study of a business plan and/or activity.

The analysis of environmental impacts has two sides, the first side is part of a feasibility study to carry out a business plan and/or activity, the second side; is a requirement that must be met to obtain a license to conduct business and/or activity.

Only based on a complete and in-depth analysis can we know more clearly what impacts will result from the coastal area structuring program. The advantages of AMDAL can predict not only the positive impacts that will arise, but the negative impacts will be seen clearly and transparently.

EIA that is carried out correctly, precisely and accurately will be able to minimize all risks that may arise, for example;

- environmental disputes and evictions by communities and non-government organizations such as Walhi, SCW, AJI, and local and national media.
- demonstrations of anarchist nature,
- closure of projects by the masses,
- the dispute over ownership status of land/land,
- mass rage and burning of public facilities.

To measure or determine the large and significant impacts, among others, criteria regarding:

a. a large number of people who will be affected by the planned business and / or activity (not just physical impacts, but more importantly psychological and material impacts);

b. the extent of the area affected;

c. the intensity and duration of the impact;

d. the number of other environmental components that will be affected;

e. the cumulative nature of the impact (social, economic, cultural, traditions, local wisdom);

f. turn(reversible)or irreversibility(irreversible)impacts (eg floods in every rainy season, a disastrous fire in every dry season).

From the facts and data, every development is often constrained by an incomplete compensation process. There are still parties who are profiting from the suffering of others, as a result, development continues to run, but the people who have to pay very expensive. Though development should be for the people, not the people for development.

From the description above it is clear that an accurate and transparent AMDAL is a very important instrument in uncovering the nature of environmental law enforcement in structuring coastal areas in Makassar City. Through the correct and appropriate AMDAL preparation process, various community interests do not rub against each other and collide, especially between the community and the initiators (entrepreneurs, companies, developers), who have been given authority by the government (because they already have various permits) to carry out reclamation, infrastructure development structure and other public facilities.

The project proponent must make an AMDAL with the consequence that he must incur costs. The responsibility of the EIA organizer does not mean that the project proponent must carry the project himself. He can make this arrangement available to private consultants or other parties on the advice of the government. responsible, not the private consultant making the AMDAL.

After the entire mechanism for the preparation of AMDAL documents is completed, and reviewed by the AMDAL Assessment Team, the next step is to submit various types of licensing to the authorities. And when the licensing procedure is obtained, the initiator of the activity/business begins to carry out development accreditation.

At this stage often creates new problems, because the AMDAL drafting team was not involved in the execution of the various projects being undertaken, it is also possible that the AMDAL documents were not taken into consideration in working on development by the project leader so that social, economic and ecological impacts still occur.

IV. CONCLUSION

The nature of criminal law enforcement in the structuring of coastal areas, when viewed from the three indicators used, has proven not to show and *trends* positive. From the aspect of the environment (*ecologically sustainable*), in general, the arrangement of coastal areas is carried out without consideration and calculation of a mature environment, still frequent floods, directly or indirectly due to changing water flow patterns, giving rise to the extent of standing water in the rainy season. Green open space (RTH), which is still below 20 per cent of the total area, is also part of the lack of concern for sustainable environmental aspects. The surrender of public facilities and social facilities as well as utility facilities to this day still causes polemics because after being managed and built for more than one year, there has been no good intention from the developer to hand over to the city government, resulting in constrained maintenance of public facilities and detrimental to the community. The case of the Barombong Stadium and the Reclamation of the Losari Coast Area is clear evidence that the coastal area structuring program has caused many environmental problems.

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