

Environmental Impact Assessment Discourse on Environmental Law Enforcement to Support Creative Tourism Industry: Overview from Indonesia and Spain

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Abstract

Activities in the creative tourism business can have a significant detrimental effect on the environment, including depletion of natural resources, pollution, and the physical impact of tourism. Environmental impact analysis, also known as EIA, and environmental law enforcement are critical to the creative tourism business. The EIA is a tool for preventing environmental pollution and/or damage, and enforcing environmental law is strongly tied to the apparatus's ability and citizens' compliance with applicable legislation, which covers three areas of law. The EIA is designed to keep environmental conditions at a certain level of quality to enable development continuity. EIA is one of the concrete

tools for achieving and sustaining sustainable development. Since law enforcement is an attempt to ensure public order, as well as how crucial it is to comply with environmental law provisions to suppress the negative effects generated by environmental damage and pollution with the existence of tourism industry activities. This study is a normative legal study with applied statutory approach and conceptual approach. A literature review was undertaken to support the creative tourism industry, using primary and secondary legal documents in the form of legislation and legal literature that discuss EIA and environmental law enforcement.

KEYWORDS *Environmental Impact Assessment (EIA), environmental law enforcement, creative tourism industry, Indonesia, Spain*

Introduction

The creative tourism business is the sector that earns the most foreign exchange for the country while also fostering the growth of the people's economy. The creative tourism business has the potential to create jobs, attract foreign tourists, and entice foreign investors to invest in Indonesia. Based on Article 1 paragraph (9) of Law No. 10 of 2009 concerning Tourism "*The tourism industry is a collection of firms that are interrelated to generate goods and/or services to suit the demands of tourists in arranging tourism*".

The International Recommendations for Tourism Statistics 2008 published by the United Nations World Tourism Organization (UNWTO), the global tourism organisation operating under UN auspices, list the following as components of the tourism industry: visitor lodging, food and beverage service, passenger transportation, travel agency and reservation services, cultural activities, sporting events, and entertainment.¹ Tourism industry activities carried out in various forms of business and or activities can have an impact on the environment, and contain the risk of pollution and environmental damage. The declining quality of the environment certainly threatens the survival of humans and other living things.² Based on evaluation activities carried out by the Travel and Tourism Competitiveness Index (TTCI) regarding the tourism

¹ Armida S. Alisyahbana, *Arah Kebijakan Pembangunan Nasional dalam Menunjang Pariwisata Daerah*. (Jakarta: Kementerian Perencanaan Pembangunan Nasional, 2011).

² Taslim Arifin, Dietrich G. Bengen, John I. Pariwono. "Evaluasi Kesesuaian Kawasan Pesisir Teluk Palu untuk Pengembangan Pariwisata Bahari", *Jurnal Pesisir dan Lautan* 4, no. 2 (2022): 25-35.

performance of countries in the world in considering environmental sustainability and natural resources, it states that Indonesia is in the 131st position out of 136 countries evaluated. This is because Indonesian tourism sites continue to engage in numerous excessive ecological exploitation activities.³

Since 1993, the PIL, SEL, and SEMDAL mechanisms in the EIA system that are required for the kinds of businesses and/or activities that are already taking place are no longer followed. As a document for environmental management in the regions, the SEL, SEMDAL was created. Following the issuance of PP 29/1986 regarding EIA, which was improved by PP 51/1993 and PP 27/1999 regarding EIA, and the issuance of PP 27/2012 regarding Environmental Permits in compliance with the 2009 PPLH Law as a replacement for the prior PP EIA. With the aforementioned developments, the notion of EIA is more crucial than ever as a legal tool in the licencing system for decision-makers, business owners, and the general public. The EIA process is very helpful in efforts to preserve environmental capabilities in sustainable development.⁴

EIA legal provisions must be followed and are subject to a very severe legal framework for law enforcement (command and control system). The government machinery involved in the licensing system, as part of the oversight mechanism (especially in compliance monitoring), and the assistance of specially qualified EIA experts for that are all largely dependent on human resources (well-trained staff).⁵ Experience has shown that the EIA process in the licensing process results from a lack of understanding in the process, coupled with a lack of supporting experts, and low awareness on the part of most entrepreneurs so the system does not work well and even creates opportunities for authority abuse.⁶ An environmental audit is a new method of "self-regulating" that the UUPPLH 1997 offers because this tends to raise production costs from an economic perspective. Although an environmental audit is optional, the Minister may order one to be conducted with a designated

³ P Burn, and A. Holder. *Tourism: A New Perspective* (London: Prentice Hall International Hampstead, 1997).

⁴ M. Daud Silalahi, and Kristianto Pustaka Halomoan. *Hukum Lingkungan dalam Perkembangannya di Indonesia*. (Jakarta: CV. KENI Media, 2015).

⁵ Ali Rahmat Kurniawan, Takehiko Murayama, and Shigeo Nishikizawa. "A qualitative content analysis of environmental impact assessment in Indonesia: A case study of nickel smelter processing." *Impact Assessment and Project Appraisal* 38, no. 3 (2020): 194-204.

⁶ Edy Lisdiyono, "Improving legal argument critically in the litigation mechanism in Indonesia (an empirical study of environmental verdicts)." *Sriwijaya Law Review* 1, no. 1 (2017): 080-092.

environmental auditor and the costs will be billed to the disobedient entrepreneur if the person in charge of a business or activity demonstrates a lack of compliance with environmental law provisions.

With the enactment of UUPPLH 2009 and PP 2012 Environmental Licensing, the concept of EIA as part of the licensing system has undergone a fundamental change. In this development, the EIA document is only the basis for granting environmental permits based on environmental feasibility studies in the form of EIA. The responsible authority can apply for a business license based on an environmental permit. What makes the legal duty to do this EIA research interesting is the potential that an area already has an RTRW in the category of Detailed Regional Spatial Plans. Spatial Planning (RTR) is defined as a type of index of the amount of information on designated areas for development projects and/or businesses, and the level of accuracy of geographic information systems (GIS) is provided in the form of an index through information maps, reflected by area maps (overlays) in the Detailed Spatial Planning category, particularly the Regional Rules RTRW on Regency/City.⁷

According to the General Explanation of the 2009 PPLH Law, pollution and environmental damage are controlled in Indonesia through efforts to prevent environmental damage in environmental management, specifically the preparation of an analysis of the impact of environmental damage as an effort to control impacts early.⁸ EIA is enhanced as part of the prevention aspect by improving accountability in the implementation of EIA preparation and implementing certification for EIA document drafters, as well as by clarifying legal punishments for EIA offenders.⁹

⁷ Irwansyah Irwansyah. "Based Environmental Law: The Debate Between Ecology Versus Development." *Sriwijaya Law Review* 1, no. 1 (2017): 44-66; Joshua Wijaya Proyogo, "Balancing Risk and Caution: The Precautionary Principle in Indonesian Environmental Law Context." *Indonesian Journal of Environmental Law and Sustainable Development* 3, no. 1 (2024): 1-30.

⁸ Andri G. Wibisana, "The Elements of Sustainable Development: Principles of Integration and Sustainable Utilization." *Mimbar Hukum* 26, no. 1 (2014): 102-116.

⁹ Andri G. Wibisana, and T. A. Dewaranu. "Environmental damage and liability in Indonesia: Fancy words under conventional wisdom." *Law and Justice in a Globalized World* (2018): 221-228; Harkristuti Harkrisnowo, Hikmahanto Juwana, and Yu Un Oppusunggu, eds. *Law and Justice in a Globalized World: Proceedings of the Asia-Pacific Research in Social Sciences and Humanities, Depok, Indonesia, November 7-9, 2016: Topics in Law and Justice*. (Florida USA: CRC Press, 2017); Francisca Rachel Alicia, "Implementation of Environmental Pollution and Damage Prevention Instruments in Indonesia: Issues and Challenges." *Indonesian Journal of Environmental Law and Sustainable Development* 3, no. 1 (2024): 125-156.

According to Sukanda Husein, there are five compliance approaches in Environmental Law: command and control (CAC), self-organization (ADS), economic approach, behavioral approach, and public pressure approach.¹⁰ In this context, the EIA falls within the category of the control and control approach (CAC approach), which focuses on measures to prevent pollution by charging connected to the procedure for issuing licenses through environmental requirements, followed by supervision/control. The EIA/environmental audit also refers to PermenLH 3/2013, in the form of a mandatory environmental audit, and a voluntary environmental audit.

Based on the provisions of Article 1 paragraph (11) of the PPLH Law as amended by Law 11 of 2020 concerning Job Creation,¹¹ EIA is one of the concrete tools for achieving and maintaining ecologically sound development.¹² The EIA is designed to keep environmental conditions at a certain level of quality to enable development continuity¹³.

Creative tourism is a travel experience that provides opportunities for tourists to develop their creative potential. Creative tourism has an EIA as one of the requirements in an environmental permit which is an activity study that is systematically and scientifically structured using an interdisciplinary and even multidisciplinary approach,¹⁴ so the study is coherently and comprehensively integrated.¹⁵

Enforcement of environmental law is the last link in the regulatory chain of environmental policy planning¹⁶, the sequence of which is as follows:

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- ¹⁰ Sukanda Husein, *Penegakan Hukum Lingkungan Indonesia*, (Sinar Grafika, Jakarta, 2009).
- ¹¹ Bagus Hermanto, and Nyoman Mas Aryani. "Omnibus legislation as a tool of legislative reform by developing countries: Indonesia, Turkey and Serbia practice." *The Theory and Practice of Legislation* 9, no. 3 (2021): 425-450.
- ¹² Andri Gunawan Wibisana, "Pengelolaan Lingkungan Melalui Izin Terintegrasi Dan Berantai: Sebuah Perbandingan Atas Perizinan Lingkungan Di Berbagai Negara." *Jurnal Hukum & Pembangunan* 48, no. 2 (2018): 222-255.
- ¹³ Hario Danang Pambudhi, and Ega Ramadayanti. "Menilai kembali politik hukum perlindungan lingkungan dalam uu cipta kerja untuk mendukung keberlanjutan ekologis." *Jurnal Hukum Lingkungan Indonesia* 7, no. 2 (2021): 297-322.
- ¹⁴ Toni Kumayza, "EIA in developing countries: How does environmental impact assessment (EIA)/(AMDAL) support neoliberal mining? (a case study in Indonesia)." *IOP Conference Series: Earth and Environmental Science*. Vol. 905. No. 1. IOP Publishing, 2021.
- ¹⁵ Adriaan Bedner, "Consequences of decentralization: Environmental Impact Assessment and water pollution control in Indonesia." *Law & Policy* 32, no. 1 (2010): 38-60.
- ¹⁶ Marmolejo Cervantes, Miguel Ángel, Volker Roeben, and Lisa Reilly Solís. "Global Climate Change Action as a Jus Cogens Norm: Some Legal Reflections on the Emerging Evidence." *Environmental Policy and Law* 52, no. 5-6 (2022): 359-373.

- 1) Legislation (*wet en regelgeving*).
- 2) Standard setting (*norm zetting*).
- 3) Licensing (*vergunning verlening*).
- 4) Implementation (*uitvoering*) and
- 5) Law enforcement (*rechtshandhaving*).¹⁷

The Indonesian nation's development process must be based on the principles of sustainable and environmentally sound development¹⁸ as mandated by Article 33 paragraph (4) of the 1945 Indonesia Constitution.¹⁹ Natural resource utilization is still the core capital of growth in Indonesia today and will be in the future.²⁰ The utilization of these natural resources must be done with caution²¹. As a result, the utilization of natural resources must be harmonic and balanced with environmental functions²². This research differs from prior studies in that it considers creative tourist development in the context of adopting EIA for sustainable environmental development. First, there is the research by Palguna et al., which only emphasizes quality improvement and realizing sustainable tourism through synergy and strengthening regional tourism development planning²³, but has not linked its correlation to forms of creative tourism, which are inextricably linked to empowering sustainable environmental development. Second, the research by Suartha et al. only focuses on empowering the participation of indigenous

¹⁷ Mirza Satria Buana, "Struggling with Development: How Decentralization Undermines Traditional Farmers' Cultural Rights in Barito Kuala, Indonesia." *Journal of Southeast Asian Human Rights* 6, no. 2 (2022): 226-249

¹⁸ Ni Luh Gede Astariyani, Ni Putu Wiwin Setyari, and Bagus Hermanto. "Regional Government Authority in Determining Policies on the Master: Plan of Tourism Development." *Jurnal Kertha Patrika* 42, no. 3 (2020): 210-219.

¹⁹ I. Gusti Ayu Putri Kartika, I. Ketut Rai Setiabudhi, and Sri Winarsi. "Foreigners and Narcotics Crimes: How Indonesian Laws Determine the Supervision Mechanism?." *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 8, no. 3 (2019): 290-301.

²⁰ Andri Gunawan Wibisana, "Keadilan dalam satu (Intra) generasi: Sebuah pengantar berdasarkan taksonomi keadilan lingkungan." *Mimbar Hukum* 29, no. 2 (2017): 292-307.

²¹ Samin Samin. *EIA Analisis Mengenai Dampak Lingkungan*. (Malang: UMM Press, 2006), p. 233.

²² I. Gede Yusa, and Bagus Hermanto. "Implementasi green constitution di Indonesia: Jaminan hak konstitusional pembangunan lingkungan hidup berkelanjutan." *Jurnal Konstitusi* 15, no. 2 (2018): 306-326.

²³ I Dewa Gede Palguna, Anak Agung Gede Duwira Hadi Santosa, Made Maharta Yasa, and I Gede Pasek Pramana. "Towards Quality and Sustainable Tourism in Bali: Should the Regional Master Plan be Adjusted?." *Udayana Journal of Law and Culture* 7, no.1 (2023): 43-58.

peoples in the context of realizing environmental protection and sustainable environmental development in various fields including tourism development.²⁴ However, there is no relevance to strengthening creative tourism in the current context. Third, the study conducted by Priyanta et al focuses on sustainable infrastructure development strategies and a national strategic project method for environmental development and tourism. It has not, however, been linked to the creative tourism side or creative economic activities involved in the tourism industry,²⁵ which are likewise interconnected in it as actors vulnerable to the implications of related policies.

Based on this prior research, this paper has a sense of urgency and will be centred on analysis and argumentation concerning the dynamics of sustainable tourism and its relationship with sustainable environmental development and creative tourism. This paper also aims to study and analyse the EIA's role and purpose in connection to the application of environmental law in creative tourism. Furthermore, this paper looked at, analyses, and identifies relevant legal issues of implementing environmental law based on EIA in the direction of creative tourism that supports Indonesia's future environmental sustainability.

This is based on legal research, which is a process of discovering regulations, principles, and doctrines to address issues.²⁶ In this context, the legal research used is the normative or doctrinal model, which portrays law as a prescriptive discipline.²⁷ It focuses on the law as norms, a system of norms, a hierarchy of legislation,²⁸ and other legal materials by examining primary and secondary legal sources²⁹. This legal research is based on a literature review conducted to obtain secondary data as well as to search for rules and norms through discovery methods to answer the questions. The results are presented

²⁴ I. Dewa Made Suartha, Hervina Puspitosari, and Bagus Hermanto. "Reconstruction communal rights registration in encouraging Indonesia environmental protection." *International Journal of Advanced Science and Technology* 29, no. 3 (2020): 1277-1293.

²⁵ Maret Priyanta, and Cut Sabina Anasya Zulkarnain. "Sustainable Infrastructure Legal Policy in Indonesia: A National Strategic Project Approach for National Development." *Sriwijaya Law Review* 7, no. 1 (2023): 1-18.

²⁶ Peter Mahmud Marzuki, *Penelitian Hukum*. (Jakarta: Kencana Prenada Group, 2016), p. 35.

²⁷ Nafay Choudhury, "Revisiting Critical Legal Pluralism: Normative Contestations in the Afghan Courtroom." *Asian Journal of Law and Society* 4, no. 1 (2017): 229-255.

²⁸ Karen Petroski, "Legal fictions and the limits of legal language." *International Journal of Law in Context* 9, no. 4 (2013): 485-505.

²⁹ Kadek Agus Sudiawan, Putu Edgar Tanaya, and Bagus Hermanto. "Discover the legal concept in the sociological study." *Substantive Justice International Journal of Law* 3, no. 1 (2020): 94-108.

in a descriptive-analytical report,³⁰ and the discussion of the main issues is based on legislation, case, and conceptual approaches. Furthermore, the legislation approach is used to examine the regulations closely related to the issues discussed. The conceptual approach is employed to understand the definitions and concepts embodied in legislation policy. Meanwhile, the case approach is used to analyze cases related. The technique used to collect legal materials for literature review is the documentation method, which involves collecting, studying, and analyzing³¹ various literature and documents related to the object through document study.

The analysis of legal materials is conducted by constructing descriptions of the issues, systematizing legal materials, followed by interpretation, evaluation of the results, and building legal arguments regarding the problems. During the analysis phase, the obtained data from the literature review is grouped. Secondary data from the literature review are also systematically selected and compiled to serve as a reference for ensuring the completeness, clarity, and consistency of the required data. Subsequently, the data are classified and organized systematically and consistently to facilitate writing and analyzing the existing data.³² After the collection process, data processing is performed. In this step, the data are grouped, selected, and analyzed using qualitative methods where the results serve as answers to the existing problems.

Creative Tourism Dynamics, Sustainable Environmental Development, and Sustainable Tourism

In the development era of the twenty-first century, discussions of environmental issues would be incomplete without bringing up the idea of sustainable development. The principles of environmental legislation that will support current global economic development have been established by a group of specialists in the UN Commission on Environment and Development. According to the UN Commission on Environment and Development, sustainable development "must make sure that it satisfies the demands of the present without jeopardizing the capacity of future generations to satiate their requirements. The concept of sustainable development does include constraints,

³⁰ Andri Gunawan Wibisana, "Menulis di Jurnal Hukum: Gagasan, Struktur, dan Gaya." *Jurnal Hukum & Pembangunan* 49, no. 2 (2019): 471-496.

³¹ Mathias M. Siems, "Legal originality." In *Legal Theory and the Legal Academy*. (London: Routledge, 2017), pp. 225-242.

³² Mathias M. Siems, and Daithí Mac Síthigh. "Mapping legal research." *The Cambridge Law Journal* 71, no. 3 (2012): 651-676.

albeit these limits are imposed by the environment and the biosphere's capacity to withstand the effects of human activity rather than by absolute restrictions. However, it is possible to better manage technology and social structure to pave the way for a new period of economic expansion.³³

The progress that has already taken place in many nations around the world has had both positive and negative effects that are significant. Progress in a variety of areas, including improvements in technology, production, management, and information, has a positive impact on society by raising the standard of living.³⁴ Negative impacts in the form of pollution and damage to the environment, both land, water, and air which cause various environmental disasters, for example through industrial activities that form waste, such as the chemical industry producing hazardous and toxic waste substances (B3); mining activities such as destroying installations, leaks, air pollution and damage to ex-mining land; transportation activities with puffs of smoke increasing air temperature in the city, noise/decibel levels from motorized vehicles, and fuel spills from tankers; and agricultural activities, due to residues from the use of chemical substances (herbicides, insecticides, pesticides, fungicides, inorganic fertilizers).³⁵ The environment is called "*harmonious*" as long as human interaction with the environment is within the limits of balance and can recover instantly in balance. Meanwhile, the environment is said to be "*disharmonious*" when there is a disturbance in the interaction between humans and their environment caused by the ability limits of one of the sub-systems being too unbalanced or unable to play its function, this is what is called "*environmental problems*". Thus, environmental problems are not only a national problem but also a regional (between countries) and global problem.³⁶

Regarding the advancement of the right to development, the 1993 Vienna Declaration reaffirmed in the Part II. Section C. Cooperation, development, and strengthening of human rights Verse (66)-(69) Vienna Declaration 1993, recommended priority national and international action in promoting

³³ Andri G. Wibisana, "The many faces of strict liability in Indonesia's wildfire litigation." *Review of European, Comparative & International Environmental Law* 28, no. 2 (2019): 185-196.

³⁴ I. Gusti Ayu Putri Kartika, "Pengaturan Hukum Dan Penegakan Hukum Terhadap Benda Cagar Budaya di Propinsi Bali". *Dissertation*. (Surabaya: Universitas Airlangga, 2003).

³⁵ Putu Tuni Cakabawa Landra, et.al. *Klinik Hukum Lingkungan*. (Denpasar: Udayana University Press, 2015), pp. 52-54.

³⁶ I. Dewa Made Suartha, and Bagus Hermanto. "Innovation Based on Balinese Local Genius Shifting Alternative Legal Concept: Towards Indonesia Development Acceleration." *Journal of Legal, Ethical and Regulatory Issues* 24, no. 7 (2021): 1-9.

democracy, development, and human rights through specific starting points or benchmarks that reinforce institutional foundations of human rights.³⁷ This priority is strengthened by the existence of a Center for Human Rights at the international level which was formed by the state to assist specific issues related to human rights which include preparing reports under the human rights treaties mechanism, implementing coherent and comprehensive action plans to promote and protect human rights, strengthening institutions human rights and democracy, legal protection for human rights, education and training of all elements of society, as well as the promotion of human rights information into all aspects of life that encourage assisted countries to realize the implementation of action plans for the promotion and protection of human rights humans, or based on Part II. Section C. Verse (71) of the 1993 Vienna Declaration encourages each country to fully commit to compiling a national action plan that identifies which and what steps are taken by the state to enhance the promotion and protection of human rights.³⁸ Thus, the foundation of the Vienna Declaration of 1993 is a reflection of the context of the right to development and its relevance to empowering sustainable development in various fields, including tourism. Furthermore, the 1993 Vienna Declaration as a basis for effective steps to break barriers and challenges for the fulfillment of human rights and prevent the continuation of violations of human rights (in this case including the rights to the environment and development), as well as Part I. Section 23 Verse (2) and Section 30 Vienna Declaration 1993 which emphasizes gross human rights violations as the dominant complex factor in the emergence of challenges to human rights.³⁹

Thus, the principle of sustainable development refers to development that includes good social, economic, and environmental development.⁴⁰ This results in the concept of sustainable growth, which incorporates tolerances for social and technological advancements. Hence, it is crucial to consider how well

³⁷ Peter Uvin, "From the right to development to the rights-based approach: how 'human rights' entered development." *Development in Practice* 17, no. 4-5 (2007): 597-606.

³⁸ Azadeh Chalabi, "National human rights action plans: a roadmap to development." *Development in Practice* 24, no. 8 (2014): 989-1002.

³⁹ Damiano De Felice, and Andreas Graf. "The potential of National Action Plans to implement human rights norms: An early assessment with respect to the UN Guiding Principles on Business and human rights." *Journal of Human Rights Practice* 7, no. 1 (2015): 40-71.

⁴⁰ Andri G. Wibisana, "Pembangunan Berkelanjutan: Status Hukum dan Pemaknaannya." *Jurnal Hukum & Pembangunan* 43, no. 1 (2017): 54-90. See also Abdul Kadir Jaelani, et al. "Green Tourism Regulation on Sustainable Development: Droning from Indonesia and China." *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 663-706.

technology fits into the environment and the institutions that support it.⁴¹ It presents institutional issues that must also be established to carry out sustainable development and natural systems (environmental components) that are interrelated in a development model that has fundamentally changed⁴². The institutional approach, which requires integration and careful analysis in every action, is what poses a problem. Complete technical support, training, and funding are all required for this development⁴³.

The concept of sustainable development stems from the necessity to preserve the function of natural resources to promote long-term development. Natural resources must be viewed within the context of the environmental or ecosystem order. The function of natural resources is preserved in this environmental context, which can sustainably support the growth process, necessitating the establishment of an environmentally sound development pattern.⁴⁴ It is interesting to pay attention to the contents of Law 10/2009 concerning Tourism, which is currently under discussion to be replaced with a new Tourism Law following the dynamics of legal requirements related to tourism issues. In these regulations, tourism is positioned as a variety of tourist activities supported by various facilities and services provided by the community, businessmen, government, and local government. Meanwhile, the government's ambitions for the expansion of national tourism are demonstrated by numerous tourism initiatives and encouragement to improve facilities at tourist destinations. This is entirely logical because tourism continues to play an important role in improving people's income, and foreign exchange, and stimulating national development projects in Indonesia.⁴⁵ The operations of the government, businessmen, and society, in general, should be one step ahead in

⁴¹ I. Gede Yusa, Bagus Hermanto, and Ni Ketut Ardani. "Law Reform as the Part of National Resilience: Discovering Hindu and Pancasila Values in Indonesia's Legal Development Plan." *International Conference for Democracy and National Resilience (ICDNR 2021)*. Atlantis Press, 2021.

⁴² Morten Broberg, and Hans-Otto Sano. "Strengths and weaknesses in a human rights-based approach to international development—an analysis of a rights-based approach to development assistance based on practical experiences." *The International Journal of Human Rights* 22, no. 5 (2018): 664-680.

⁴³ Andri G. Wibisana, Michael G. Faure, and Majory Raisya. "Error in Personam: Confusion in Indonesia's Environmental Corporate Criminal Liability." *Criminal Law Forum* 32, no. 2 (2021): 247-284.

⁴⁴ Anne Hardy, Robert JS Beeton, and Leonie Pearson. "Sustainable tourism: An overview of the concept and its position in relation to conceptualisations of tourism." *Journal of Sustainable Tourism* 10.6 (2002): 475-496.

⁴⁵ Dalia Streimikiene, et al. "Sustainable tourism development and competitiveness: The systematic literature review." *Sustainable Development* 29, no. 1 (2021): 259-271.

terms of regulating, managing, and servicing the needs of tourists through efforts to increase the quality of Indonesian tourism. Even more so in this day and age of technological advancement and the critical role of social media.⁴⁶

Important role and function of EIA and environmental law enforcement in supporting the creative tourism industry in Indonesia and Spain

The EIA was first born with the promulgation of an environmental law called the National Environmental Policy Act (NEPA) by the United States in 1969. NEPA entered into force on January 1, 1970. Article 102 paragraph (2) (C) in this law states that all proposed legislation and activities of the federal government that are expected to have a significant impact on the environment are required to be accompanied by an Environmental Impact Assessment report. In terms of NEPA, studies on attempts to safeguard the environment through EIA began in Indonesia in 1982 with the issue of Environmental Law No. 4 of 1982 concerning Basic Provisions for Environmental Management. It is vital to establish harmonious interactions between diverse activities and/or businesses to carry out sustainable development in the environmental tourism industry⁴⁷. EIA is a procedure that includes the sequential creation of terms of reference documents, environmental impact analyses, environmental management plans, and environmental monitoring plans as one of the environmental policy tools⁴⁸. The Environmental Permit will not be issued if there is no environmental feasibility decision from the EIA Assessment Commission which evaluates documents or studies regarding significant impacts submitted by the initiator.”

Factually, various environmental impact analyses have been carried out in Indonesia and other countries. Experience shows that EIA does not always produce the results we expect as a planning tool.⁴⁹ It is not uncommon for the EIA to be merely a formal document, serving only to fulfil legal requirements. The EIA report is archived and no longer used after it has been discussed and accepted. The report has no bearing on project planning or implementation.

⁴⁶ I Ketut Widia, *Hukum Kepariwisata*. (Malang: Setara Press, 2021).

⁴⁷ Boyle Alan, "Human rights and the environment: where next?." In *Challenges in International Human Rights Law*. (London: Routledge, 2017), pp. 765-794.

⁴⁸ Sakiko Fukuda-Parr, Alicia Ely Yamin, and Joshua Greenstein. "The power of numbers: a critical review of millennium development goal targets for human development and human rights." *Journal of Human Development and Capabilities* 15, no. 2-3 (2014): 105-117.

⁴⁹ Anne N. Glucker, et al. "Public participation in environmental impact assessment: why, who and how?." *Environmental Impact Assessment Review* 43 (2013): 104-111.

This also occurs in affluent countries, including the United States, which was a pioneer in EIA.⁵⁰ Presently, the EIA document is solely utilized by the activity's initiator as legitimacy or reasons for validation; in actuality, the activity will not create environmental pollution/damage because an environmental feasibility decision and licenses have already been issued.⁵¹

From the above descriptions, the role of EIA can be explained as follows: "EIA as an instrument for environmental protection in the context of carrying out sustainable development⁵², the environment needs to be maintained in harmony between various activities.⁵³ Changes in the environment induced by tourism development activities can be estimated before their implementation⁵⁴, allowing for the prediction of the repercussions or impacts that will occur. As a result, one of the tools utilized to safeguard the environment is EIA. This is established in Article 22 (1) of Law No. 32 of 2009 on Environmental Protection and Management. Article 22 point (1) states that any enterprise or activity that has a significant environmental impact must conduct an EIA. In this scenario, one of the EIA's major tasks and functions is to be able to support the creative tourism business, where tourism is defined as temporary travel from one location to another, carried out individually or in groups, to find balance and satisfaction with the environment in the social, cultural, natural, and scientific areas.⁵⁵

For developing countries with abundant natural resources, such as Indonesia, the tourism industry can be seen as a low-risk medium for economic

⁵⁰ Muhammad Syafiq, "Improving the effectiveness of environmental impact assessment in Indonesia regarding the protection of the marine environment from industrial pollution." *Journal of Environmental Assessment Policy and Management* 17, no. 3 (2015): 1550026.

⁵¹ Abdul Kadir Sabaruddin, "Amdal dan Kewenangan Bapedalda Dalam Menjaga Pelestarian Fungsi Lingkungan Hidup di Kota Balikpapan." *Risalah Hukum Fakultas Hukum Unmul* 3, no. 1 (2007): 13-20.

⁵² Sukadji Sarbi, "Strategi Pengembangan Kapasitas Pengelolaan Lingkungan Hidup di Era Otonomi Daerah Kabupaten Polmas Sulawesi Barat." *Jurnal Bumi Lestari* 6, no. 2 (2006): 100-105.

⁵³ Gede B. Suprayoga, Patrick Witte, and Tejo Spit. "Coping with strategic ambiguity in planning sustainable road development: balancing economic and environmental interests in two highway projects in Indonesia." *Impact Assessment and Project Appraisal* 38, no. 3 (2020): 233-244.

⁵⁴ Kadek Agus Sudiawan, et al. "Discourses on Citizen Lawsuit as Administrative Dispute Object: Government Administration Law vs. Administrative Court Law." *Journal of Indonesian Legal Studies* 7, no. 2 (2022): 449-486.

⁵⁵ Tom Gore, and Thomas B. Fischer. "Uncovering the factors that can support and impede post-disaster EIA practice in developing countries: The case of Aceh Province, Indonesia." *Environmental Impact Assessment Review* 44 (2014): 67-75.

development. Natural and cultural tourist attractions are one of the most important assets for tourism development, and they are already accessible in Indonesia. As a result, Indonesia has a significant opportunity to attract more tourists from the tourism market segment that often comes from high-income or developed countries.

Tourism can also be seen as a sociological phenomenon or symptom that affects people, society, groups, organizations, culture and so on. Tourism is broadly defined as the activities of government, business and society to control, manage and service the demands of tourists. This fact is supported by the results of a study conducted by the World & Tourism Council, which found that of the eight competitiveness indicators analyzed, only the price parameter helps Indonesia⁵⁶. This is truly unfortunate and serves as a model for the poor performance of national tourism. For someone to travel, there are always push and pull factors, where the push aspects are generally socio-psychological or individual motivation, and the pull factors are location-specific features.⁵⁷ According to UNWTO, the tourism industry is set to become one of the world's largest and fastest growing industries. Tourist arrivals are expected to exceed 1.8 billion by 2030, generating \$1.03 billion in foreign exchange.⁵⁸ The aim of the first step in planning a trip is to define the purpose of the first step in planning a trip so that when activities are carried out they are consistent with what is wanted.⁵⁹ When travelling / touring, whether far or near, one must have a desired goal, one of which is to get the best service and pleasant surroundings.⁶⁰ Therefore, environmental law regulates environmental patterns

⁵⁶ Inga T. Winkler, and Carmel Williams. "The Sustainable Development Goals and human rights: a critical early review." *The International Journal of Human Rights* 21, no. 8 (2017): 1023-1028.

⁵⁷ Sonya Graci, "Collaboration and partnership development for sustainable tourism." *Tourism and Sustainable Development Goals*. (London: Routledge, 2020), pp. 232-249.

⁵⁸ Ahmad Maryudi, et al. "'A level playing field'?—what an environmental justice lens can tell us about who gets leveled in the Forest law enforcement, governance and trade action plan." *Society & Natural Resources* 33, no. 7 (2020): 859-875.

⁵⁹ Carlo Aall, "Sustainable tourism in practice: Promoting or perverting the quest for a sustainable development?." *Sustainability* 6, no. 5 (2014): 2562-2583.

⁶⁰ Ralf Buckley, "Sustainable tourism: Research and reality." *Annals of Tourism Research* 39, no. 2 (2012): 528-546.

and all devices and conditions with humans who are in⁶¹ and affect that environment⁶².

In fact, the development of tourism in various regions of Indonesia, which has been quite good over the past decade⁶³, cannot be separated from its negative impacts. In addition to its ability to make a significant contribution from an economic point of view, tourism development that focuses only on economic aspects and ignores non-economic aspects in the form of the environment and community culture has caused a lot of damage, especially damage in the form of environmental pollution and also a change in community culture, evictions, rampant prostitution and the marginalization of communities around tourist attractions.

This is certainly contrary to the objective of promoting the development of tourism, as set out in Law No. 10 of 2009 on Tourism. Thus, one of the development planning programs that is of concern to the government and regional governments is the development of the tourism development sector, especially creative tourism, which is supported by an AMDAL as an environmental law enforcement in support of creative tourism.⁶⁴

Spanish environmental legislation and the implementation of Directives 85/337/EEC and 97/11/EC on Environmental Impact Assessment (EIA); an analysis of the main factors influencing the effectiveness of EIA in Spain⁶⁵, these factors being characterized as either internal (i.e. inherent in the legislation) or external, i.e. other factors, which can range from political to social issues. A

⁶¹ Surya Sofyan Hadi, et al. "Pertanggung Jawaban Korporasi terhadap Kebakaran Hutan dalam Kaitannya dengan Penerapan Hukum Lingkungan (Studi Kasus Putusan Pengadilan Negeri Pelalawan No. 228/pid. sus/2013/pn. plw)." *USU Law Journal* 4, no. 2: 56-69.

⁶² Ni Made Ernawati, Ross Dowling, and Dale Sanders. "Tourists' perceptions of community-based tourism products for sustainable tourism in Bali, Indonesia." In *The Practice of Sustainable Tourism*. (London: Routledge, 2015), pp. 95-112.

⁶³ Dwiesty Dyah Utami, Wawan Dhewanto, and Yuliani Dwi Lestari. "Rural tourism entrepreneurship success factors for sustainable tourism village: Evidence from Indonesia." *Cogent Business & Management* 10, no. 1 (2023): 2180845.

⁶⁴ Dian Yulie Reindrawati, Bhayu Rama, and Ulis Fajar Choirotun Hisan. "Threats to sustainable tourism in national parks: Case studies from Indonesia and South Africa." *Journal African Journal of Hospitality, Tourism and Leisure* 11, no. 3 (2022): 919-937.

⁶⁵ Rachel Dodds, "Sustainable tourism and policy implementation: Lessons from the case of Calviá, Spain." *Current Issues in Tourism* 10, no. 4 (2007): 296-322.

comparison between theory and practice; and an assessment of the likely effectiveness of the amended EIA Directive in Spain.⁶⁶

Environmental issues, which bring together the natural and social spheres, emphasizes the need to approach complex problems by combining new forms of non-specialist knowledge with combined epistemologies. However, the practical application of the transdisciplinary approach in everyday socio-environmental management is still almost non-existent⁶⁷. Spain's practice in integrating EIA with tourism is carried out at the level of each region with a speciality in the development of rural tourism⁶⁸, which is specifically based on the peculiarities or specificity of its attractions, and is realized by legislation at the regional/state level⁶⁹. The priority scale of things regulated in terms of Village Tourism in Spain is associated with five measurements in the form of the necessity of regulating supply, typology of establishments, rules and conditions governing establishments, other conditions, and supply and marketing trends aimed at ensuring EIA becomes a decisive instrument in maintaining environmental quality⁷⁰, which ultimately becomes a prerequisite for the development of tourist destinations in Spain⁷¹, especially in mobilizing the creative economy, in the development of rural tourism in various Spanish states.

Shortcomings in the text of the EIA Directive itself; although certain national legislative mechanisms in Spain have gone beyond the provisions of the Directive⁷², EIA in Spain is a politicized and arbitrary process and legislation is

⁶⁶ Guadalupe Ortiz, and Emilio Climent-Gil. "A transdisciplinary framework for environmental impact assessment: Opportunities and resistances among practitioners in Spain." *Environmental Impact Assessment Review* 81 (2020): 106339.

⁶⁷ Marcelo Canteiro, Fernando Córdova-Tapia, and Alejandro Brazeiro. "Tourism impact assessment: A tool to evaluate the environmental impacts of touristic activities in Natural Protected Areas." *Tourism Management Perspectives* 28 (2018): 220-227.

⁶⁸ Josep A. Ivars Baidal, "Regional tourism planning in Spain: Evolution and Perspectives." *Annals of tourism research* 31, no. 2 (2004): 313-333.

⁶⁹ Gerda K. Priestley, et al. "Legislative frameworks for rural tourism: Comparative studies from Spain." In *Aspect of Tourism: Rural Tourism and Sustainable Business* (Clarendon: Channel View Publications, 2005), pp. 63-86.

⁷⁰ Antonio Villanueva-Cuevas, "The Deficient Concept of the Tourist in Spanish Regional Legislation on Tourism Management." *The International Business & Economics Research Journal (Online)* 13, no. 7 (2014): 1605.

⁷¹ Gemma Cánoves, et al. "Rural tourism in Spain: an analysis of recent evolution." *Geoforum* 35, no. 6 (2004): 755-769.

⁷² Esther Garcia Rodriguez, "Environmental Impact Assessment in Spain: A Critical Review." *European Energy and Environmental Law Review* 8, no. 8-9 (1999).

usually not respected, leading to a high proportion of unsatisfactory EIAs and irregular implementation.

Because tourism is considered to have a very important role in Indonesia's and Spain development, especially as one of the regional and state income sectors as well as an engine of the economy,⁷³ tourism is considered to be able to reduce unemployment. In the national economy, it is a sector that is expected to be able to increase income through foreign exchange earnings. Therefore, the main law enforcers are government officials/agencies authorized to issue permits and prevent pollution.⁷⁴ Repressive law enforcement is carried out in relation to acts that violate the law and is aimed at directly stopping prohibited acts. Criminal prosecution usually follows a breach of the rules and usually cannot negate the consequences of that breach. To avoid repeated criminal prosecution, it is the perpetrator (polluter) who must put an end to the situation. With regard to government enforcement of civil environmental law, it should be distinguished from efforts to resolve environmental disputes (environmental dispute settlement) through environmental litigation to obtain compensation for victims of pollution resulting from acts that violate environmental law, because it is individual in nature. Civil litigation, as referred to in environmental law enforcement, is conducted by the authorities when the means of environmental law enforcement are inadequate.

Dealing with the description, it shows that EIA and environmental law enforcement are very useful in providing input for the preparation of detailed technical plans for business or activity plans. Furthermore, providing input for environmental management and monitoring plans from business plans or tourism development activities so that creative tourism is emerging tourism to minimise the negative impacts.⁷⁵

Conclusion

Regarding to the description above, it can be concluded that AMDAL and Environmental Law Enforcement in supporting sustainable tourism are very closely related to one another. AMDAL is one of the instruments for preventing

⁷³ Afrizal Firman, et al. "The impact of eco-innovation, ecotourism policy and social media on sustainable tourism development: evidence from the tourism sector of Indonesia." *Economic Research-Ekonomiska Istraživanja* 36, no. 2 (2023): 1-21.

⁷⁴ Aldi Lasso, and Heidi Dahles. "Are tourism livelihoods sustainable? Tourism development and economic transformation on Komodo Island, Indonesia." *Asia Pacific Journal of Tourism Research* 23, no. 5 (2018): 473-485.

⁷⁵ Nick Towner, and Mark Orams. "Perceptions of surfing tourism operators regarding sustainable tourism development in the Mentawai Islands, Indonesia." *Asia Pacific Journal of Tourism Research* 21, no. 11 (2016): 1258-1273.

environmental pollution and/or damage, while enforcing environmental law is closely related to the ability of apparatus and compliance of citizens with applicable regulations so that AMDAL and enforcing environmental law are processes of efforts to uphold or function legal norms in real terms as a guideline for behavior in traffic or legal relations in the life of society and the state. In the environmental law enforcement system in Indonesia, it is known through the three legal aspects described in the UUPPLH, namely aspects of administrative law, civil law, and criminal law. It contains sanctions for person who violates the provisions of the rules set out in supporting the realization of the role of creative tourism which has a major impact on the country's economy and society's welfare.

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Saving our planet, lifting people out of poverty, advancing economic growth... these are one and the same fight. We must connect the dots between climate change, water scarcity, energy shortages, global health, food security and women's empowerment. Solutions to one problem must be solutions for all.

Ban Ki-moon

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