



**POLICY BRIEF (JULY, 2020)**

**THE REQUIREMENT OF ENVIRONMENTAL IMPACT ANALYSIS IN INDONESIA**

**1. Background**

Establishing a business entity in Indonesia is not all smooth sailing. There are various regulations to comply with and documents to be fulfilled. Here in Indonesia, one can establish a business entity when they have obtained their Business Permit. In this matter, for certain businesses, an Environmental Permit or *Izin Lingkungan* is required for a Business Permit to be issued. Besides being required for a Business Permit, an Environmental Permit is also required to obtain an Activity Permit. The process of obtaining the Environmental Permit itself is also not easy. Environmental Permit was introduced on Law No. 32 of 2009 concerning on Protection and Management of The Environment. Article 1 number 35 Law No. 32 of 2009 stated that,

*“Environmental Permit is a permit granted to every person conducting business and/or activity that required Amdal or UKL-UPL in the framework of environmental protection and management as a prerequisite for obtaining a business and/or activity permit”.*

**2. Instruments under the Environmental Permit**

Based on the definition of Environmental Permit, we can see that any businesses and activities that require Amdal or UKL-UPL need to obtain Environmental Permit in order to get their Business and Activity Permit. In the definition, we can also see that Amdal and UKL-UPL are mentioned. But what is exactly Amdal and UKL-UPL? According to Article 1 number 11 Law No. 32 of 2009, Amdal, which stands for *analisis mengenai dampak lingkungan* or Environmental Impact Analysis (“EIA”), is a study of the significant impacts of planned business and/or activity on the environment needed for the decision making process regarding the conduct of a business and/or activity. Whereas according to Article 1 number 12 Law No. 32 of 2009, UKL-UPL, which stands for *upaya pengelolaan lingkungan hidup dan upaya pemantauan lingkungan hidup* (environmental management efforts and environmental monitoring efforts), are the management and monitoring of businesses and/or activities that do not have an important impact on the environment required for the decision making process regarding the conduct of businesses and/or activities.

Both EIA and UKL-UPL are considered as one of the instruments for preventing pollution and/or environmental damage.<sup>1</sup> However, this essay will only explain EIA.

EIA is an important instrument in environmental law in Indonesia, in which it is the basis for determining environmental feasibility decisions.<sup>2</sup> It is a document that aims as a tool to plan preventive actions against environmental damage that may arise from development activity, as first stated in the National Environmental Policy Act (NEPA) 1969.<sup>3</sup> Article 22 subsection (1) Law No. 32 of 2009 stated that, “*Every business and/or activity that has an important impact on the environment must have an EIA*”. It can be seen that EIA is only required for those business and activity that has an important impact. Furthermore, Article 22 subsection (2) Law No. 32 of 2009 states that, “*Important impacts are determined based on criteria: the large number of people that will be affected by the planned business and/or activity; the extent of the area affected; the intensity and duration of the impact; the number of other environmental components that will be affected impact; the cumulative nature of the impact; reversal or irreversibility of the impact; and/or other criteria in accordance with the development of science and technology*”.

Aside from criteria for important impacts, Article 23 subsection (1) Law No. 32 of 2009 also set the criteria for businesses and/or activities that have an important impact and are required to have EIA, which are:

- a. changing landforms and landscapes;*
- b. exploitation of natural resources, both renewable and non-renewable;*
- c. processes and activities that can potentially give rise pollution and/or damage to the environment and waste and degradation of natural resources in their utilization;*
- d. processes and activities whose results can affect the natural environment, the artificial environment, and the social and cultural environment;*
- e. processes and activities whose results will affect the preservation of natural resource conservation areas and/or protection of cultural reserves;*
- f. introduction of species of plants, animals, and microorganisms;*
- g. manufacture and use of biological and non-biological materials;*
- h. activities that have a high risk and/or influence National Defense; and/or*
- i. the application of technology which is estimated to have great potential to affect the environment”.*

The preparation of EIA itself is carried out by the proponent by involving the affected community, environmental observer, and/or people who are affected by all forms of decisions in the EIA process where they can submit objections to the documents.<sup>4</sup> In compiling the documents, the initiator may request assistance from other parties who have the EIA drafting competency certificate.<sup>5</sup> The documents will be assessed by the EIA Commission formed by the Minister, governor, or regent/mayor who already has a license.<sup>6</sup> According to Article 30 subsection (1) Law

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<sup>1</sup> Indonesia, *Law of Protection and Management of The Environment*, Law No. 32 of 2009, Article 14.

<sup>2</sup> *Ibid.*, Article 24

<sup>3</sup> Otto Soemarwoto, *Analisis Dampak Lingkungan* (Yogyakarta: Gadjah Mada University Press, 1994), page 43.

<sup>4</sup> Indonesia, *Law of Protection and Management of The Environment*, Article 26.

<sup>5</sup> *Ibid.*, Article 27 jo Article 28.

<sup>6</sup> *Ibid.*, Article 29.

No. 32 of 2009, EIA Commission consists of environmental agencies; related technical agencies; experts in the field of knowledge related to the type of business and/or the activity being studied; experts in the field of knowledge related to the impact of which arise from a business and/or activity that is being reviewed; representatives of potentially affected communities; and environmental organization. After the EIA Commission evaluates the documents, the Minister, governor, or regent/mayor will make a decision on environmental feasibility or infeasibility based on the results.<sup>7</sup>

### **3. The Status of EIA under the Cipta Kerja Bill**

However, Indonesia is in the midst of drafting Cipta Kerja Bill, which also re-regulates Environmental Permit. Licensing bureaucracy which sometimes seems long and convoluted is considered to hamper investment, so the government plans to simplify the bureaucracy. In the Cipta Kerja Bill, the term Environmental Permit was erased and a new term called environmental approval was introduced.<sup>8</sup> At first glance, this regulation is just the same as Law No. 32 of 2009. However, environmental approval in the Cipta Karya Bill basically raises problems. One of the problems related to EIA is Article 22 and Article 23 Law No. 32 of 2009 are replaced by Article 23 number 3 Cipta Karya Bill, in which the parameters of the "important impact" and criteria for businesses and activities that require EIA are eliminated. Article 23 number 3 Cipta Karya Bill also only uses the conjunction "and" so that it gives rise to the potential to further reduce the activities required by the Environmental Impact Assessment without considering environmental aspects. Besides, the addition of the phrase "environmental, social, economic, and cultural" can have implications for the decline in environmental interests because they have to compromise with other aspects: economic, social, and cultural.<sup>9</sup>

### **4. Conclusion**

Environmental Permits are necessary for businesses to establish itself, where assessments must be conducted to review the impacts in business activities. The Environmental Law has played a valuable role in enforcing these procedures to prevent more environmental damage. However, the stability and role of the Environmental Permit are currently at stake since the Cipta Kerja Bill is drafted. Therefore, it is important that the Cipta Kerja Bill must uphold the values and significance of the EIA in order to achieve a sustainable environment in the business sector.

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<sup>7</sup> *Ibid.*, Article 31.

<sup>8</sup> Indonesia, *Cipta Kerja Bill*, Article 23.

<sup>9</sup> Indonesian Center for Environmental Law, "Catatan Atas RUU Cipta Kerja", <https://icel.or.id/wp-content/uploads/CATATAN-ATAS-RUU-CIPTA-KERJA-ICEL-13.02.20.pdf>, accessed on July 5, 2020.

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### **Books**

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### **Laws and Regulations**

Law No. 32 Year 2009 Regarding the Protection and Management of the Environment