



ARMA Update: 5 October 2021

(English Version)

Environmental Update: The Criteria and List of Businesses and Activities that are Mandatory to Have AMDAL, UKL-UPL, and SPPL

General Overview

The Government of Indonesia has issued the Governmental Regulation No. 22 of 2021 on the Organization of Environmental Protection and Management (“**GR 22/2021**”) as the implementing regulation of Law Number 11 of 2020 on Job Creation (“**Omnibus Law**”), in the environmental sector.

Accordingly, the Minister of Environment and Forestry (“**MOEF**”) issued a MOEF Regulation No. 4 of 2021 on The List of Business and/or Activities Required to Have Environmental Impact Analysis, Environmental Management Efforts, and Environmental Monitoring Effort or Statement of Environmental Management and Monitoring Ability dated 1 April 2021 (“**MOEF Reg 4/2021**”).

This ARMA Update will discuss regarding the update on environmental obligations under these regulations as well as the position of Environmental Impact Analysis (*Analisis Mengenai Dampak Lingkungan Hidup* or “**AMDAL**”), Environmental Management Efforts and Environmental Monitoring Effort (*Upaya Pengelolaan Lingkungan Hidup dan Upaya Pemantauan Lingkungan Hidup* or “**UKL-UPL**”), and Statement of Environmental Management and Monitoring Ability (*Surat Pernyataan Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup* or “**SPPL**”) in relation with Business Licensing as well as the criteria for businesses and activities that are mandatory to have AMDAL, UKL-UPL, and SPPL. Further, it will also discuss the list of business and activities that are mandatory to have AMDAL, UKL-UPL, as well as SPPL which are stipulated in the MOEF Reg 4/2021.

What Are the Criteria of Businesses and Activities Required to Have AMDAL, UKL-UPL, and SPPL?

❖ AMDAL

AMDAL is mandatory for every business plan and activity that has a significant impact on the environment.¹ Further, the GR 22/2021 also stipulates that the obligation to prepare AMDAL is also compulsory for all business or activities that (i) already listed as ‘mandatory AMDAL’ or ‘*wajib AMDAL*’ based on the prevailing regulations, or (ii) located within or directly adjacent to protected areas.²

Criteria of the businesses and activities that have a significant impact on the environment consist of the following activities:³

¹ Article 3 (1) of the MOEF Reg 4/2021 Jo Article 5 GR 22/2021

² Article 5 (2) of the GR 22/2021

³ Article 3 (2) of the MOEF Reg 4/2021 Jo Article 8 GR 22/2021



- a. the alteration of land and landscapes;
- b. the exploitation of natural resources, both renewable and non-renewable;
- c. processes and activities that could potentially cause pollution and/or environmental damage as well as waste and deterioration of the utilization of natural resources;
- d. the result of which processes and activities that may affect the natural environment, artificial environment, and socio-cultural environment;
- e. operations and activities that such outcome will affect the preservation of natural resources conservation areas and/or protection of cultural reserves;
- f. the introduction of plants, animals, and micro-organisms;
- g. the manufacture and the use of biological and non-biological materials;
- h. activities that have a high risk of affecting the country's defense; and/or
- i. the application of technology that is estimated to have a significant potential effect on the environment.

❖ UKL-UPL

Business and activities that do not have the abovementioned impacts are required to have UKL-UPL.⁴ This consist of:⁵

- a. type of business plans and activities that have no significant impacts;
- b. type of business plans and activities whose location is carried out outside and/or not directly in contact with protected areas;
- c. included as the types of business plans and activities that are excluded from mandatory AMDAL classification.

❖ SPPL

SPPL is required for businesses and activities that do not substantially impact the environment and do not fall into the category to have UKL-UPL.⁶ This consist of:⁷

- a. types of business and activities that have no significant impact and are not mandatory to have UKL-UPL;
- b. micro and small business activities that do not have a substantial effect on the environment; and/or
- c. included as types excluded from UKL-UPL obligations.

What is the Position of AMDAL and UKL-UPL in Business Licensing?

Previously AMDAL or UKL-UPL was a prerequisite to obtaining Environmental Permit (*Izin Lingkungan*). In the current licensing system based on the Omnibus Law and its implementing regulation, the term of Environmental Permit has been changed to 'Environmental Approval' or "*Persetujuan Lingkungan*".

⁴ Article 5 (1) of the MOEF Reg 4/2021 *Jo* Article 6 (1) of the GR 22/2021

⁵ Article 6 (2) of the GR 22/2021

⁶ Article 6 (1) of the MOEF Reg 4/2021 *Jo* Article 7 (1) of the GR 22/2021

⁷ Article 7 (2) of the GR 22/2021



Further, Environmental Approval is one of the prerequisites for the issuance of a Business License or Governmental Approval. Environmental approval is obtained through the preparation and feasibility test of the AMDAL or the preparation or examination of the UKL-UPL form.⁸

❖ Environmental Approval for AMDAL

AMDAL is the basis of the environmental feasibility test for business plans and activities. The result of the feasibility test will become the basis for the issuance of the Environmental Approval in the form of an Environmental Feasibility Decree (*Keputusan Kelayakan Lingkungan Hidup*) by the Central and Local Government. The Environmental Feasibility Decree is a prerequisite for issuing a Business License or approval of the Central of Local Government.⁹

❖ Environmental Approval for UKL-UPL

Businesses and activities that do not significantly impact the environment shall fulfil the UKL-UPL standards stated in the Environmental Approval in the form of Environmental Management Capability Statement Environmental Management Statement (*Pernyataan Kesanggupan Pengelolaan Lingkungan Hidup*). The fulfilment of such criteria would become the basis of issuing a Business License or approval by the Central and Local Government.¹⁰

❖ SPPL

Any activities that are obliged to prepare SPPL are no longer required to prepare or obtain other environmental documents/approval since the SPPL is integrated into Business Identification Number (“NIB”).¹¹

List of Businesses and Activities that are Mandatory to Have AMDAL, UKL-UPL, and SPPL

MOEF Reg 4/2021 describes a list of business activities and activities that are mandatory to have AMDAL, UKL-UPL, and SPPL. List of business and activities that are mandatory to have AMDAL, UKL-UPL, and SPPL applies to:¹²

- a. businesses and activities that require facilities and infrastructure; and
- b. services that require facilities and infrastructure.

Appendix I of the MOEF Reg 4/2021 contains a list of types of business plans and activities that are classified based on KBLI, where it is divided into 12 sectors, as follows:

⁸ Article 3 of the GR 22/2021

⁹ Article 22 (2) of the Omnibus Law that changes Article 24 of Law No. 32 of 2009 regarding Environmental Protection and Management (“**Law 32/2009**”)

¹⁰ Article 22 (12) of the Omnibus Law that changes Article 34 of Law 32/2009

¹¹ Article 22 (13) of the Omnibus Law that changes Article 35 of Law 32/2009

¹² Article 7 (1) of the MOEF Reg 4/2021



- a. Public Works and Housing Sector that consists of 31 types of businesses and activities;
- b. Transportation Sector that consists of 11 types of businesses and activities;
- c. Industrial Sector that consists of 528 types of businesses and activities;
- d. Tourism Sector that consists of 45 types of businesses and activities;
- e. Nuclear Energy Sector consists of 11 types of businesses and activities;
- f. Health Sector that consists of 25 types of businesses and activities;
- g. Agricultural Sector that consists of 196 types of businesses and activities;
- h. Fishery and Marine Sector that consists of 33 types of businesses and activities;
- i. Electricity Sector that consists of 41 types of businesses and activities;
- j. Environment and Forestry Sector that consists of 70 types of businesses and activities;
- k. Energy and Mineral Resources Sector that consists of 34 types of businesses and activities;
- l. Telecommunication sector that consists of 2 types of businesses and activities.

Sanction Against Environmental Approval Violations

The violation of environmental obligation may affect to the cancellation of Business License instead of Environmental Permit, such cancellation that can be done in the case of:¹³

- a. the requirements submitted in the application contain legal defects, errors, misuse, and false information and/or forgery of data, documents, and/or information;
- b. its issuance does not qualify the conditions as stated in the Environmental Feasibility Decree or the Environmental Management Capability Statement; or
- c. the obligations stipulated in AMDAL or UKL-UPL documents are not being implemented.

Administrative sanctions may be applied to the person in charge of a business and/or activity if a violation is found against the provision of Business Licensing or Governmental Approval relating to Environmental Approval and regulations regarding environment protection and management.¹⁴ These administrative sanctions may be in the form of:¹⁵

- a. written warning;
- b. government coercion;
- c. administrative fines;
- d. Business Licensing suspension; and/or
- e. revocation of Business License.

Further, any person who conducts business and/or activity without having an Environmental Feasibility Decree or Environmental Management Capability Statement which results in any casualties/damage to health, safety, and/or the environment will be penalized. The sanction is a prison sentence with a minimum of 1 (one) year up to a maximum of 3 (three) years and a minimum fine of Rp1.000.000.000 (one billion Rupiah) up to a maximum of Rp3.000.000.000 (three billion Rupiah).¹⁶

¹³ Article 22 (15) of the Omnibus Law that changes Article 37 of Law 32/2009

¹⁴ Article 505 (1) of the GR 22/2021 Jo Article 22 (28) of the Omnibus Law that changes Article 76 of Law 32/2009

¹⁵ Article 509 (1) of the GR 22/2021

¹⁶ Article 22 (36) of Omnibus Law that changes Article 109 of Law 32/2009



Please contact Rudi Bachtiar (rudi.bachtiar@arma-law.com) and Salsabila Hana Safira (salsabila.safira@arma-law.com) for further information.

Disclaimer:

This ARMA Update is the property of ARMA Law and is intended to provide general information and should not be treated as legal advice, nor shall it be relied upon by any party for any circumstance. ARMA Law have no intention to provide specific legal advice with regard to this ARMA Update.