



POLICY BRIEF (JULY, 2020)

THE INTEGRATION OF ENVIRONMENT IMPACT ASSESSMENT TO THE OSS

1. Background

As industrialization has evolved rapidly in Indonesia, the government has been looking for ways to ease the process for permits, especially for businesses. One of the government's efforts to achieve the goal is by issuing the Online Single Service, or OSS, which is a new integrated electronic feature that was introduced under Government Regulation No. 24 Year 2018 Regarding Online Single Submission (GR OSS). The OSS provides a service where business owners are able to register and integrate their business and commercial permits electronically. This includes the obligatory permits, such as Environmental Impact Assessment, to be processed through the OSS.¹

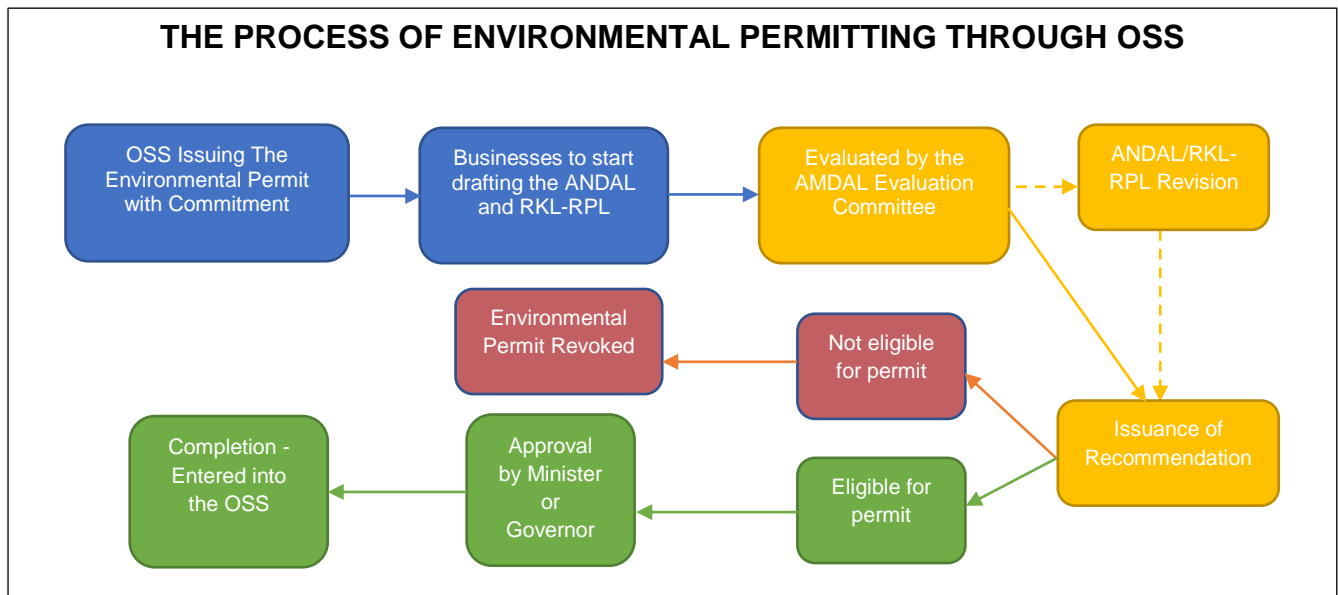
The Environment Impact Assessment or AMDAL is the environmental prerequisite that is required under Law No. 32 of 2009 (Environment Law) for commencing a project that may have potential significant environmental impacts. The Indonesian Government imposes thresholds that trigger the need for an activity to engage in an AMDAL process based on the type, scale and location of the proposed activity. According to Ministerial Decree of MoEF no. 38 Year 2019, the types of business plans or activities which require the environmental impact analysis includes the plans that : modifies the natural landscape; exploits the natural resources; damages the conditions of the environment; affects the natural and artificial environment, including conservations and sanctuaries; involves technological operation which is predicted to be affecting the environment.²

¹ Article 85 of Government Regulation No. 24 Year 2018

² Article 2 of Ministerial Decree of MoEF no. 38 Year 2019

2. The Integration of AMDAL to the OSS

Through the recent Ministerial Decree of MoEF No. 26 Year 2018, the documentation for the AMDAL is available through OSS integration. The process of obtaining environment permit through OSS has a difference in which the permit begins with an Environmental Commitment Permit. A Commitment Permit conditions the



commitment to complete the documents for AMDAL or UKL-UPL in order to obtain the recommendation.

The steps begin with the determination of categories for the businesses, whether or not the business plan falls under AMDAL or UKL-UPL, since each permit has different scopes. The OSS will then issue the Environmental Commitment Permit,³ where businesses must then complete the drafting for the documents of AMDAL, which consist of KA-AMDAL, AMDAL, and RKL RPL. The drafting period must be completed within 30 days after the issuance of the commitment permit, otherwise the permit will not be approved and will be revoked.⁴ Once completed, the documents will be examined by the AMDAL Evaluation Committee, and must be approved by the Minister, Governor, or Mayor. The approval of the recommendation of AMDAL means that the commitment is fulfilled. The OSS will then update the status of environmental permit where the commitment has been completed.

3. Policy Aspects

3.1. The Differences of AMDAL Application through OSS and Non-OSS

³ Article 6 of Ministerial Decree of MoEF no. 26 Year 2018

⁴ Article 7(3) of Ministerial Decree of MoEF no. 26 Year 2018

There are differences which signifies the application of environmental permits through OSS and Non-OSS. Firstly, in its process, the issuance of the Environmental Commitment Permit by the OSS will be obtained before having AMDAL or UKL-UPL. Under the Environment Law, it is stated that Environmental Permit cannot be obtained before businesses receive the recommendations for AMDAL which states their environmental eligibility. However, this concept was modified in the GR OSS with they use of Environmental Commitment Permit for those who are still in the process of drafting their AMDAL. Secondly, the time period to complete the ANDAL or RKL-RPL is much shorter than the Non-OSS process. According to Government Regulation No. 27 Year 2012, the drafting of KA-ANDAL is not given a time period, though it is pointed that the KA-ANDAL will be nullified if the ANDAL and RKL-RPL is not completed 3 years after its approval. Meanwhile, the time period is strictly regulated in the GR OSS, which must be completed 30 days after the commitment permit is issued.⁵

Other than the process, the substance for the ANDAL and RKL-RPL are also different. In the process of Non-OSS, the ANDAL and RKL-RPL are arranged based on the KA-ANDAL approved by the AMDAL Evaluating Committee, while in the OSS, the KA-ANDAL form was already approved by the technical team. Originally, KA-ANDAL must include a narration which explains the foreword, scope, study method, and concluded with a table summary.⁶ Meanwhile, under the GR OSS, the KA-ANDAL form only requires the table summary of the scoping and study methods without any narration.

3.2. The GR OSS to undermine the important role of AMDAL

Unfortunately, these adjustments for the OSS have undermined the mandatory role of AMDAL for businesses. The system that is adopted by the OSS is the opposite from the original permitting process. Previously business permits can only be obtained after a set of permits including AMDAL are complete. In contrast, the OSS uses a system where the process of AMDAL will commence only after the Business Identification Number (NIB) is issued. In this case, businesses are already permitted to conduct their business activities whilst the process of AMDAL is still occurring. According to an expert on environment and forestry, Hariadi Kartodiharjo, this effort has weakened the position of AMDAL which supposed to function as a decision maker. He added that environmental consideration should not be used as means to only sustain a project where its environmental impacts will be handled. Instead, its role should be as a factor of why a certain project cannot be executed.⁷

Furthermore, the attempt to simplify and summarize the substance of KA-ANDAL has left some important aspects out of the information. Firstly, the KA-ANDAL form left out the description of the original state of the environment. Generally, the description would (1) depict the general components of the impacted environment, and (2) the

⁵ Article 54 (2), Government Regulation No. 24 Year 2018

⁶ Annex I of Ministerial Decree of MoEF No. 16 Year 2012

⁷ Hukumonline, "PP OSS Dinilai Lemahkan Posisi Wajib AMDAL". *Hukumonline.Com*, 2019

businesses and activities surrounding the location of the business plan and its environmental impacts. This description is important to identify the potential impacts under the KA-AMDAL, which will sort out the significant impacts that require monitoring.

Secondly, the GR OSS also has narrowed down the subjects needed in the public involvement for the documentation of AMDAL. Under the Environment Law, community engagement is mandatory in the drafting of AMDAL,⁸ of which includes (1) impacted communities, (2) environment observers, and (3) those influenced by the decision and the process of AMDAL.⁹ However, the GR OSS has limited the conditions and only the impacted communities are mandatory to be involved in the AMDAL process, whereas the involvement of environmental observers are only optional.¹⁰ Leaving out the aforementioned aspects of the AMDAL documentation may provide loopholes for businesses, where they could leave out important details in their submission. Given the crucial roles of environmental observers and the detailed description of the state of the environment, this could result in the occurrence of unpredicted environmental impacts.

4. Recommendation

The Environmental Impact Assessment or AMDAL is an important tool that is used as a condition for an environmentally sustainable economic development in Indonesia. In the recent issuance of the GR OSS, the documentation of AMDAL must also be integrated electronically through the OSS. However, in its process, the GR OSS has weakened the role of AMDAL which was supposed to be a decisive factor on whether or not a business plan or activity should be approved. Therefore, there needs to be an amendment in the integration process where the business permit can only be given after all of the documentations for AMDAL are completed and approved. Furthermore, the substance of the KA-AMDAL should not be constricted just to ease the permitting process. The existence of the GR OSS may be beneficial to fasten the process to obtain business permits and provide certainty. However, it is also important to remember that a comprehensive and thorough documentation for AMDAL will contribute greatly to a sustainable economic environment in Indonesia.

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⁸ Article 26 (1) Law No. 32 Year 2009

⁹ Article 26 (3) Law No. 32 Year 2009

¹⁰ Article 55 (2) Government Regulation No. 24 Year 2018.

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Laws and Regulation

Law No. 32 Year 2009

Government Regulation No. 24 Year 2018

Ministry of Environment and Forestry Decree No. 16 Year 2012