



New Regulation on The Types of Planned Businesses and/or Activities which Require an Environmental Impact Assessment (*Analisis Mengenai Dampak Lingkungan - "AMDAL"*)

The Minister of the Environment and Forestry ("MOEF") has issued Regulation No. P.38/MENLHK/SETJEN/KUM.1/7/2019 on The Types of Planned Businesses and/or Activities Plans which Require an Environmental Impact Analysis ("Reg 38/2019"), which came into effect on 5 September 2019. Reg 38/2019 replaces Regulation No. 05 of 2012 on the same matter.

In general, provisions under Reg 38/2019 covers (i) the types of businesses and/or activities which require an AMDAL and which are exempted from the requirement; (ii) the screening process; and (iii) additions to and reductions from the types of business/activity plans which require an AMDAL. Reg 38/2019 further provides more specific details than the previous regulation, increases the threshold for some activities or business and introduces the AMDAL categories which will affect the timing for preparing the AMDAL document.

A. The types of business and activities which require an AMDAL and Exemptions

Reg 38/2019 provides a specific list of businesses and activities which require an AMDAL ("List of Activities" – Attachment I to Reg 38/2019) in several sectors such as in construction, water utilization, reclamation, activities dealing with Hazardous and Toxic Waste (B3), electric power, new and renewable energy, ports and mining sectors. The same as the previous regulation, However, some of those businesses or activities have their scale/magnitude threshold increased.

In addition to the List of Activities, any businesses and activities engaged in within or directly adjacent to protected areas (*kawasan lindung*) also require an AMDAL – only if it is allowed under the laws and regulations. Currently, there are 23 types of protected areas listed in Attachment II to Reg 38/2019, with 3 of them are new.

Other than the above, it will be subject to a ruling issued by the MOEF after undergoing an assessment or evaluation whether an AMDAL is required. The same is also applied for any new activities that have not yet been identified.

In addition, Reg 38/2019 also provides further details on certain criteria for businesses and activities which may be exempted to have an AMDAL. However, they will still require an Environmental Management Efforts (*Upaya Pengelolaan Lingkungan Hidup - "UKL"*), Statement of Environmental Management and Monitoring Undertaking (*Surat Pernyataan Kesanggupan Pengelolaan dan Pemantauan Lingkungan Hidup - "SPPL"*) or any other requirement under the prevailing laws. Specifically, for those located within an Industrial Area, Special Economic Zone, Port or Free Trade Zone, a detailed Environmental Management

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Plan and Environmental Monitoring Plan (*Rencana Pengelolaan Lingkungan Hidup and Rencana Pemantauan Lingkungan Hidup* – “RKL-RPL”) is required instead of AMDAL.

B. AMDAL Categories

AMDALs are divided into 3 (three) categories: A, B and C, according to their complexity, impact on the environment, location sensitivity and environmental capacity.

Category	Characteristics	AMDAL Preparation Time
A	The planned business or activity is very complex; and the location is very sensitive.	180 days
B	The planned business or activity is quite complex; and the location is quite sensitive.	120 days
C	the planned business or activity is not complex; and the location is less sensitive.	60 days

The List of Activities also includes the AMDAL category for each business or activity which will be used as the initial guideline for the technical team of the AMDAL assessment commission to determine the AMDAL category. The AMDAL assessment commission will re-evaluate the list using the accumulated values or tiered question method.

A planned business or activity is automatically determined to be AMDAL Category A if the location is within or directly adjacent to a protected area or is very specific and complex and requires high technology (eg a Nuclear Power Plant).

As the AMDAL Category is still new, how the provision will be applied remains unclear. In addition, Reg 38/2019 does not include any provisions for the extension of the deadline or any further explanation of the consequences if the deadline for preparing the AMDAL has expired.

C. Additions to and reductions from the types of businesses/activities which require an AMDAL.

A planned business or activity which (i) has a scale/magnitude lower than that set out under the list as mentioned in A above, or (ii) is not on the list, but will have a significant impact on the environment, may be stipulated as a business or activity which does require an AMDAL. Likewise, a planned business or activity with a significant impact on the environment may be declared a business or activity for which does not require an AMDAL.

The ministers or head of a non-ministry government agency, governor, mayor/regent or the public may submit a written proposal for the addition and reductions to the MOEF to be evaluated by the Director General. The MOEF will issue the decision within 30 (thirty) business days of the application being deemed complete.

If a business or activity is included in the List of Activities, it may only have an exemption under a determination from the MOEF obtained through the reduction mechanism.

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