Indonesia

EIA profile

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Contact & history

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History of ESIA

EIA was officially introduced under the Basic Environmental Law No. 4 of 1982. Government Regulations No. 29 (1986) provided the implementing regulation, and established the EIA system in Indonesia. Since then, the EIA regulation has been regularly revised to reflect institutional changes, and increased understanding of EIA. In the nineties, reforms of the regulation shifted responsibilities for EIA review, and provided more inclusive provisions for public involvement. After adoption of regional autonomy laws, the Ministry for Environment (now the Ministry of Environment and Forestry) issued decrees to clarify regional mandates for EIA. In 2006 the Ministry of Environment issues two decrees (No. 8 and No 11) to further detail EIA procedures and revise the list of projects subject to EIA. In 2009, the Environmental Protection and Management Law (Article 22) replaced the original framework law for EIA. In 2012, Environmental Permit regulations were issued under the Environmental Protection and Management Law, which now contain the procedural requirements for EIA.

Legal framework

Framework/Enabling law

The Basic Environmental Law No. 4 of 1982 introduced EIA into the legal system.

National detailed regulation for ESIA

The Government Regulations No. 29 (1986) established the EIA system.

Guidelines

- Some of the decrees that have been issued are also called guidelines.
- In addition, the Ministry for Environment and Forestry provides guidance on EIA on its website, including examples of EIAs. (to be checked).

Scope of ESIA application

There was previously a distinction between EIA requirements for private and public projects, but that was removed in 1999, and EIA applies equally to both.

Exemptions from ESIA application

An activity can be exempted from the obligation to conduct an EIA if:

- the location of the activity is within an area that has had an EIA already
- the location of the activity is within a district/city that has already a detailed spatial plan and/or a district/city strategic area spatial plan
- the activity is conducted within the framework of a disaster emergency response

For activities which are exempted from EIA, an EMaE-EMoE (environmental monitoring and management study) shall be prepared.

Institutional setting

Central ESIA authority

The Ministry for Environment and Forestry is responsible for overseeing the EIA system. It issues the overriding EIA regulation. At the provincial and district level, more stringent EIA regulation can be developed to complement the national rules.

Other key (governmental) parties involved in ESIA, and their roles

At each level of EIA implementation , an EIA Appraisal Committee is set up to advice on the EIAs. This Committee approves the Terms of Reference for the EIA, reviews the EIA, once it is completed, and undertakes stakeholder consultation.

At the central level, the Minister of Environment and Forestry sets up a Central EIA Appraisal Committee. Similarly, at the regional level these tasks are fulfilled by a Provincial EIA Appraisal Commission and a Provincial Technical Team. District/city EIA Appraisal Commissions can also be established at the district level. Each EIA Appraisal Committe has a secretariat and Technical Teams of independent experts that assists the Committe with the reviewing process. Generally, an EIA Appraisal Committee consist of representatives from the following institutions:

- environmental agencies
- related technical agencies
- scientific experts of the field of the studied activity
- representatives from affected communities

- environmental organizations

Chapter V of the Environmental Permit Regulations gives more detailed provisions regarding the EIA Appraisal Committees, including which types of EIAs are to be reviewed by which commission. For example, the central EIA Committee reviews EIAs for activities located in more than one province.

(De)centralisation of ESIA mandates

Decision-making on individual EIAs takes place at different levels. Districts are responsible for EIAs within their administrative boundaries. The Mayor or the Chief of the District then takes consent decisions. Provinces are responsible for EIAs for activities covering more than one district. The governor approves the EIA in this case. The Ministry for Environment and Forestry makes decisions on EIA for activities that cover more than one province and for activities that have broad social impacts or security implications.

ESIA procedure

Overview ESIA procedure

The mandatory screening process determines if an EIA has to be conducted for an activity. It is then decided if a full EIA is required for obtaining an environmental permit, if a Environmental Management/Monitoring Effects (EMaE-EMoE) have to be made or if the activity does not require an environmental permit. For acitivities that require a full EIA, a scoping process which includes the formulation of the Terms of Reference follows. Thereafter, an Environmental Impact Analysis is carried out. Then, an EIA appraisal (review of the EIA documents) is conducted. The EIA appraisal process is an integral part of the Environmental permit application and issuance process. It results in a decision on the environmental feasibility of the project, which leads to the decision on the issuance of the environmental permit. Finally, compliance monitoring is conducted.

Important documents of the EIA process in Indonesia are: Terms of Reference (scoping), EIA report, Decision on Environmental Feasibility, Environmental Permit and monitoring reports.

For activities that require an EMaE-EMoE, an EMaE-EMoE form has to be submitted to the respective authority. The EMaE-EMoE examination follows which results in an recommendation on refusal or approval of the EMaE-EMoE. Finally, the decision on the issuance of the environmental permit is taken and a follow-up on the permit takes place.

Screening

Screening process

There is a screening requirement. At central level the Minister of Environment and Forestry is responsible for the screening decision, at regional level this is the Governor, and at district level the Mayor. The Environmental Protection and Management Law of 2009 determines that activities with significant impacts require an EIA. In its Sections 22 and 23 criteria are given for determining impacts that are significant and for identifying which activities thus require an EIA. For projects which do not have significant impacts, an Environmental Management Effort and Environmental Monitoring Effort (EMaE-EMoE) should be prepared.

Timeline Screening

To be checked

Scoping

Scoping process

Scoping is a required step of the EIA process. A distinct review process of the Terms of Reference (ToR) is defined in the Environmental Permit Regulations (2012). The proponent firstly prepares the ToR and submits them to the appropriate license authority. The authority then forwards it to the relevant EIA Appraisal Commission, who reviews the ToR with assistance from the Technical Team. At first, the Commission provides a written statement regarding the administrative completeness of the ToR. Once the ToR are declared to be complete, the Technical Team reviews the ToR. It may require a revision of the ToR. Once the appraisal of the Technical Team reveals that the ToR are acceptable, the EIA Appraisal Committee will issue an approval of the ToR.

Contents of the scoping document

The Terms of Reference has to address:

- scope of the study;
- type of activities of the project that may cause impact to environment;
- environmental parameters likely to be affected by the project;
- method of data collection and analysis;
- potential and important impact identification; and
- methods of impact prediction and evaluation.

Timeline scoping

The Environmental Permit Regulation (2012) requires that after the ToR have been submitted and declared to be complete, the appraisal period of the ToR shall not exceed 30 working days.

Assessment

Assessment process

For the preparation of EIA documents, three different types of study approaches are distinguished: a single study, an integrated study, a study based on the area. The initiator can prepare the EIA itself or with the help of EIA consultants.

The regulation does require the assessment to be comprehensive, taking into account biological, geo-physical/chemical, socio-economic, cultural, and public health aspects.

source

The AMDAL Process and the Equator Principles, Common themes and apparent differences, by Dr. Karlheinz Spitz and Dr. Yahya Husin, 2009.

Environmental Permit Regulation 2012

Contents of the EIA report

According to Section 25 of the Environmental Protection and Management Law (2009), the EIA report shall contain:

- study on the impact of the planned undertaking and / or activity
- an evaluation of the activities and or around the location of the planned activity
- Suggestions and inputs of the affected communities
- the estimated amount and significance of the impact that may occur if the planned activity is carried out
- a holistic evaluation of the impacts to determine the if the activity is environmentally feasible
- an EMP and a monitoring plan

If an EMaE-EMoE is prepared, a form with the following information is required:

- identity of the initiator
- Business and/or activity plans
- environmental impacts that would occur
- environmental management and montoring plan

Accreditation of consultants

The Environmental Permit Regulations (2012) determine that a person drafting an EIA is required to have an EIA drafter certificate, which is obtained through a competency test.

Review

Review process

The EIA documents/EMaP-EMoP are reviewed by the respective EIA Appraisal Commission. Firstly the Committee checks the documents for administrative completeness. Then a technical team is commissioned to appraise the documents and presents its results to the EIA Appraisal Commission. Thereafter, an EIA Appraisal Committee meeting is held and a recommendation regarding the EIA and EMaP-EMoP appraisal results is formulated. This may be a recommendation of environmental feasibility or environmental unfeasibility. The recommendation is then sent to the respective authority (the Minister, Governor or Mayor), which takes the final decision regarding the environmental feasibility of the activity.

source

Environmental Permit Regulations 2012

Review expertise

The mechanism of the EIA appraisal Commission, and its technical advisory commission, allows the involvement of various (independent) experts in review. The regulations do not require that the advice of the EIA Appraisal Commission is followed by the Competent Authority.

Timeline Review

Review of the EIA report can take a maximum of 75 working days.

Decision making

Integration of ESIA into decision-making

After the EIA appraisal process has been finalized, the competent authority determines on the basis of recommendations by the EIA Appraisal Commission if the activity is environmentally feasible or not. Simultaneously, the initiator submits an application for an environmental permit to the authority. The EIA documents have to be added to this application. The competent authority then issues the environmental permit in conjunction with the environmental feasibility decision. An environmental permit is a prerequisite for obtaining a business or activity license.

Depending on the project, the competent authority for the decision on the environmental acceptability is the Minister (central level), the Governor (regional level) or the Mayor or Chief of the District (district level). The competent authority takes the environmental feasibility decision as well as the decision on the issuance of the environmental permit.

According to Section 32 if the Environmental Permit Regulations (2012) decision on the environmental feasibility of an activity contains the following elements:

basic consideration of the issuance of the decision

statement of environmental feasibility

requirements and obligations of the initiator

obligations that stakeholders shall perform

An environmental permit contains the requirements and obligations specified in the environmental feasibility decision, requirements set by the Minister, Governor or Mayor, and an expiration date of the environmental permit (Section 48).

source

Environmental Permit Regulation 2012

Decision justification

It is not clear if the environmental permit decision must be justified with reference to EIA information. The competent authority is advised to take into account the recommendations of the EIA appraisal commission when taking the decision on the environmental feasibility of the activity though. This decision has to be justified by the authority.

Section 39 of the Environmental Protection and Management Law (2009) determines that the decision on an environmental licence has to be announced.

Timeline decision-making

Review of the EIA report and the decision on the environmental acceptability can take a maximum of 75 working days.

Follow up

Compliance monitoring

The Environmental Protection and Management Law (2009) requires the competent authorities to conduct compliance monitoring. Hence, the Minister (central level), Governor (regional level) or the Mayor or district chief (district level) supervise the compliance of the proponent with the enviornmental permit conditions. According to the Environmental Permit Regulations (2012), the must submit a report on the implementation of the environmental permit requirements every 6 months (Section 53). The monitoring reports are submitted to the respective authority. Furthermore, the proponent has to submit a monitoring plan as part of the EIA report.

Non-compliance penalties

With adoption of the new Environmental Protection and Management Law in 2009, the penalties associated with infringement of the EIA regulation have increased. Transgressors can be fined, but also risk jail sentences. For example, an individual preparing EIA document without the required certification can serve a jail sentence of 1 to 3 years and can be fined between 1 to 3 billions IDR. Similar jail terms can be given to an individual carrying out a project without the required environmental acceptability approval. (To be checked)

If a violation of the environmental permit takes place, administrative sanctions are taken by the Minister, Governor, or Mayor. These sanctions comprise of written warnings, force by the government, the freezing of the environmental permit and the revocation of the environmental permit. An environmental permit may be cancelled if:

- the required documents submitted in the application for the permit contain legal flaws, errors, misuse and untruthfulness and/or falsification of data, documents and information
- if requirements as determined through the decision on the environmental feasibility or the recommendation on the Environmental Management/Monitoring Efforts are not met
- if obligations set out in the EIA or Environmental Management/Monitoring Efforts documents are not fulfilled

Section 40 of the Law further determines that in case the environmental licence is revoked, the licence for the undertaking shall be cancelled.

source

Environmental Protection and Management Law 2009

Stakeholder engagement

Public participation requirements for ESIA process stages

At the start of the EIA process, the competent authority is required to inform the public about their business and/or activity plans, so that the public can provide comments on them. Public consultation is thus required already prior to the preparation of the Terms of Reference. Also, the public should be involved while the EIA document is prepared. Moreoever, representatives of affected communities are members of the EIA Appraisal Commissions. They are thus involved in the review process of the ToR and the EIA report. Finally, the public can also get involved in the decision-making process as the competent firstly announces the environmental permit application of the initiator. The public has then the opportunity to provide their opinion to the competent authority. Finally, the

environmental permit decision is also announced to the public.

Public comments have to be submitted in writing to the Competent Authority, or can be presented to the EIA Appraisal Commission verbally.

In the justification for the decision on environmental acceptability, the Competent Authority has to explain how the results of consultation were taken into account.

Guidelines for public announcement and public involvement in EIA have been issued in 2000 by the central Environment Agency Bapedal (No. KepDal 08/2000).

source

Environmental Permit Regulations (2012)

Timeline for public comments

Before the preparation of the Terms of Reference, the public has 10 working days after the public announcement of the planned activity to provide comments and their opinion. After the announcement of an environmental permit application, the public has also 10 working days to provide advice and opinions to the respective authority.

Access to information

The application for an environmental licence and a decision on the enviornmental licence is announced.

The Environmental Permit regulations (2012) stipulate that the environmental permit applications shall be announced through multi media and/or a bulletin board at the activity site. Furthermore, the environmental permit decision shall be announced through mass media or multimedia.

Appeal

Possibilities for appeal

The legal recourse options have expanded with the adoption of the Environmental Protection and Management Law. (To be further added to)

ESIA practice

Annual no. of ESIAs

To be checked.

Professional bodies

- Asian Environmental Compliance and Enforcement Network (AECEN)

Relevant links

- Asia Pacific Centre for Environmental Law