

INDONESIA



Environmental Law update



By Dewi Savitri Reni

Over the last decade Indonesia has experienced significant economic growth. As much of this growth is the result of natural resource development, Indonesia has also become more aware and willing to tackle accompanying environmental problems, with mixed results.

Current issues: Two years ago, the Indonesian Parliament passed Law No. 32 of 2009 dated October 3, 2009 regarding Environmental Protection and Management (the Environmental Law). The Environmental Law raises a number of questions regarding its interpretation and implementation as none of the implementing regulations to the Law have been issued through to the end of 2011.

Overview of 2009 Environmental Law: Similar with the previous law, the Environmental Law requires companies to issue an Environmental Management Statement, an Environmental Management Efforts-Environmental Monitoring Efforts Report or an Environmental Impact Assessment (AMDAL) depending on their industry and exposure to the environment. In addition to this obligation, the Law provides a new requirement for companies to carry out an Environmental Risk Analysis or obtain an Environmental Permit.

According to the Law, the Environmental Permit is a precondition to obtain other business permits. There are questions as to whether all existing licenses shall be integrated and will be replaced by the Environmental Permit or whether the process or the procedures to obtain a license in Indonesia will, in effect, be annulled due to this additional requirement. A draft regulation suggests that the Permit will be issued automatically following AMDAL approval without any additional requirements. The draft also suggests that once the Environmental Permit is revoked, the business permit of the company shall automatically be revoked as well.

Reclamation: In conjunction with the above, the Law requires the owner of an Environmental Permit to provide a guarantee

fund that will be used to rehabilitate their work site in the event of environmental damage or restoration. However, clarification is required on the amount of funds to be earmarked, the security of the funds while placed under government management, and on whether the fund will be tax deductible. For the mining sector, it should also be clarified as to whether the fund overlaps with the provisions regarding the reclamation and post-mining guarantees under the mining laws. For the oil and gas sector, it should be clarified as well as to whether the fund overlaps with the platform decommissioning fund or the asset retirement obligation.

Environmental audits: The Law also requires companies to perform environmental audits. Under Article 121 paragraph 1 of the Environmental Law, existing companies with no AMDAL would have to complete environmental audits within two years of the enactment of the Law, i.e., by October 3, 2011.

Enforcement: The 2009 Environmental Law has stronger administrative and criminal penalties than previous legislation. It provides more rights to government institutions, local governments, and civil society and environmental non-government organisations concerning environmental pollution or damage. The law still imposes strict liability on companies which use dangerous and hazardous material (B3), result and/or manage B3 waste and/or cause serious threat to the environment. It also imposes penalties on government officials who grant Environmental Permits without following the proper procedures. However, implementation and enforcement of these measures continues to be a significant problem in the near future for Indonesian authorities.

Conclusion

Overall, the enactment of the Environmental Law is a step forward in providing better protection for the environment. Hopefully, future implementing regulations to the Environmental Law, which have not been issued, can provide clear clarification on how to efficiently implement the new requirements of the 2009 Law and strike a balance between environmental management and economic growth.

Soewito Suhardiman Eddymurthy Kardono (SSEK)

14th Floor Mayapada Tower , Jl. Jend. Sudirman Kav.28
Jakarta 12920, Indonesia

Tel: (62) 21 521 2038 / (62) 21 521 2130

Fax (62) 21 521 2039

Email: dewireni@ssek.com

www.ssek.com