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Licensing Requirements under the Omnibus Law in the Building Sector and Government Regulation No. 16 of 2021 on The Implementing Regulation of Law No. 28 of 2002 on Buildings

Following the enactment of Law No. 11 of 2020 on Job Creation (the “**Omnibus Law**”) on 2 November 2020 which amends Law No. 28 of 2002 on Buildings (“**Building Law**”), the Government issued some of the implementing regulations, including Government Regulation No. 16 of 2021 on the Implementing Regulation of Law No. 28 of 2002 on Buildings (“**Regulation 16/2021**”).

Regulation 16/2021 has replaced the previous implementing regulation of the Building Law, Government Regulation No. 36 of 2005. Regulation 16/2021 contains 349 Articles and 8 chapters covering various topics, including, among others, the function and classification of

buildings, the technical standards that apply to buildings, and the process of building establishment (including construction, utilization, maintenance and demolition). Given the broad scope of Regulation 16/2021, this advisory only focuses on the main licensing requirements that apply to buildings under Regulation 16/2021.

1. Building Approval

The Omnibus Law replaces a Building Permit (*Izin Mendirikan Bangunan* or IMB) with a Building Approval (*Persetujuan Bangunan Gedung* or “**PBG**”). A PBG is a ‘new’ requirement which the owner of the building must obtain before the construction or alteration of a building begins. However, under Regulation 16/2021, Building Permits (which include existing IMBs) issued before Regulation 16/2021 came into effect remain valid until they expire.

According to Article 261 of Regulation 16/2021, the PBG will be issued by the Investment and One-Stop Integrated Service Office (*Dinas Penanaman Modal dan Pelayanan Terpadu Satu Pintu* – “**DPMPTSP**”) in the region where the building is located after the applicant pays the mandatory fee. The procedure for the issuance of a PBG includes consultation on the construction plan before the issuance of the PBG. The registration for the consultation and application for a PBG is submitted through the Building Management Information System (*Sistem Informasi Manajemen Bangunan Gedung* or “**SIMBG**”).

Under the Omnibus Law, a PBG can only be issued if the building technical standards determined by the Central Government or the relevant regional government are met. For this purpose, Regulation 16/2021 provides a detailed list of the technical requirements which must be satisfied which includes those that apply to the following:

- a) the planning and design of buildings;
- b) the construction and supervision of buildings;
- c) the utilization of buildings;
- d) the demolition of buildings;
- e) the requirements apply to cultural heritage buildings (*Bangunan Gedung Cagar Budaya* or BGCB);
- f) the requirements apply to buildings for special functions (*Bangunan Gedung Fungsi Khusus* or BGFK);
- g) the requirements apply to green buildings (*Bangunan Gedung Hijau* or BGH);
- h) the requirements apply to state buildings (*Bangunan Gedung Negara* or BGN);
- i) the documentary requirements; and
- j) the requirements apply to parties involved in the construction of a building.

For the construction of a building, the building owners must engage a group of building service providers, including a construction planning services provider (*penyedia jasa perencana konstruksi*), a construction services provider (*penyedia jasa pelaksana konstruksi*), and a supervision services provider (*penyedia jasa pengawasan*) or construction management services provider before commencing construction. The construction planner services provider must prepare a technical plan to be submitted to the authorities through the SIMBG for the application for a PBG. Upon receipt of the application, the authorities will assess the architectural plan documents as well as the structural, mechanical, electrical and plumbing plan documents. If all the technical documents satisfy the technical requirements, a recommendation for the issuance of a written statement of compliance with the technical requirements will be issued by the relevant

technical agency in charge of building affairs in the area (“**Technical Agency**”). Based on that recommendation, a written statement of compliance with the technical requirements will be issued in which it will also determine the mandatory fee that the applicant must pay and will be the basis on which the PBG is issued. A PBG consists of (i) the PBG document and (ii) attachments to the PBG document.

Construction can commence upon the PBG being issued and after the applicant for a PBG provides the construction commencement date to the Technical Agency through the SIMBG. If the applicant does not provide the date, the Technical Agency will ask for clarification of the construction commencement date. If the applicant still does not provide the date, the PBG will be revoked and declared invalid. Then, during the building’s construction, through its appointed overseer (*penilik*), the Technical Agency will supervise the construction to make sure that it is in line with the PBG.

Specifically for the construction of several buildings within one area under the same technical plan, Regulation 16/2021 requires one service provider to construct them and the buildings must be owned by one person/legal entity when the application for a PBG is submitted and a collective PBG will be issued.

The PBG will have to be amended if changes are made to the following:

- a) the function of the building;
- b) the number of floors of the building;
- c) the area of the building;
- d) the appearance of the building;
- e) the specifications and dimensions of the building’s components which affect the safety or health aspects of the building;
- f) the retrofitting of a building against moderate or heavy damage levels;
- g) the protection or development of a cultural heritage building; or
- h) the repair of a building located in a cultural heritage area with minor, moderate or severe damage.

However, a PBG does not need to be amended for the maintenance or treatment of the building.

2. Certificate of Worthiness

Like in the Building Law, the Omnibus Law emphasizes that a building can only be utilized after the issuance of a Certificate of Worthiness (*Sertifikat Laik Fungsi* or “**SLF**”) by the Technical Agency.

The SLF will be issued through the SIMBG after the Technical Agency receives a written statement of worthiness (*surat pernyataan kelaikan fungsi*) from the supervisory services provider/construction management services provider/overseer (*penilik*) upon completion of the

final inspection and commissioning test of the building. An SLF consists of the (i) SLF documents, (ii) attachments to the SLF documents, and (iii) the SLF label. SLFs are issued free of charge.

Under Regulation 16/2021, if several buildings are constructed in one area under the same technical plan, an SLF will be issued for each of the buildings.

The term of an SLF is the following and is extendible:

- i. 20 years for single and row residential houses;
- ii. 5 years for other kinds of buildings.

3. Building Ownership Certificate

The Omnibus Law and Regulation 16/2021 have introduced the building ownerships certificate. A building ownership certificate will be issued to the building's owner at the same time as the SLF through the SIMBG.

A building ownership certificate can be one of the following documents:

- i. a Building Ownership Evidence Certificate (*Surat Bukti Kepemilikan Bangunan Gedung* or "**SBKBG**");
- ii. an ownership certificate for a flat/apartment building (*sertifikat kepemilikan Bangunan Gedung satuan rumah susun*); or
- iii. a flat/apartment ownership certificate (*sertifikat hak milik satuan rumah susun*).

An SBKBG consists of (i) the SBKBG document and (ii) attachments to the SBKBG document. The SBKGB document provides the following information:

- who owns the building or part of the building;
- the address of the building;
- the land title status;
- the PBG number; and
- the SLF or SLF extension number.

Meanwhile the attachments to the SBKBG document are the following information:

- the land utilization agreement;
- the deed of separation (*akta pemisahan*);
- a situation image; and
- the deed of the fiduciary security if the building is encumbered.

Like SLFs, if several buildings are constructed in one area under the same technical plan, an SBKBG will be issued for each of the buildings. Meanwhile, the ownership certificate for a flat/apartment building (*sertifikat kepemilikan Bangunan Gedung satuan rumah susun*) or flat/apartment ownership certificate (*sertifikat hak milik satuan rumah susun*) will be issued according to the relevant laws.

4. Approval for the Demolition of a Building

Under Regulation 16/2021, a building may be demolished under a demolition order from the Technical Agency or on the owner's own initiative. If a building owner wants to demolish a building, it must obtain approval for its demolition from the Technical Agency through the SIMBG before commencing the demolition.

For this purpose, the building owner must submit a Building Demolition Technical Plan (*Rencana Teknis Pembongkaran Bangunan Gedung* or "RTB"). Before the approval for a building's demolition is issued, the applicant must have a demolition consultation with the Technical Agency to discuss the suitability of the demolition method given the condition of the building and the surrounding environment, and to make sure that the RTB satisfies the demolition technical requirements. If following the consultation, the Technical Agency finds that the demolition will not endanger the surrounding community, the approval for the building's demolition will be issued through the SIMBG.

The approval for the building's demolition will be declared invalid if:

- i. the building owner does not demolish the building within 6 months of the issuance of the approval for the building's demolition;
- ii. the building owner does not demolish the building according to the approved RTB; or
- iii. the building owner does not comply with the safety and health requirements when demolishing the building.

5. Sanctions

Before it was amended, the Building Law only imposed administrative sanctions on building owners and users. However, under the Omnibus Law and Regulation 16/2021, the administrative sanctions can now be imposed on the building's owner, the building's management, the building's users, the construction services provider, the experts or the technical reviewer appointed by the building owner/user, overseer (*penilik*), Professional Experts Team (*Tim Profesi Ahli*) and Technical Assessment Team (*Tim Penilai Teknis*) formed by the regional government.

Under Regulation 16/2021, the administrative sanctions which can be imposed include among others, the following:

- i. written warnings;
- ii. a limitation on the construction, utilization or demolition activities;
- iii. a temporary or permanent suspension of the construction, utilization or demolition activities;
- iv. the freezing or revocation of the PBG, SLF or demolition approval;
- v. a suspension of the assignment of duties to the experts team for 3 months;
- vi. removal from the list of experts teams;
- vii. a suggestion for a sanction to the relevant professional association;
- viii. a temporary suspension or the termination of duties as an overseer (*penilik*).



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