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The Energy and Mineral Resources Sector - the Implementing Regulation of the Job Creation Law under the Government Regulation No. 25 of 2021

On 2 February 2021, the Government of Indonesia has finally issued an implementing regulation of Law No. 11 of 2020 on Job Creation (“**Job Creation Law**”) which covers the energy and mineral resources sector under Government Regulation No. 25 of 2021 on The Implementation of the Energy and Mineral Resources Sector (“**GR 25/2021**”). GR 25/2021 covers the following sectors: (i) mineral and coal; (ii) Geothermal; and (iii) electric power.

GR 25/2021 amends:

- (i) Government Regulation Number 14 of 2012 on Electric Power Supply Activities;
- (ii) Government Regulation Number 62 of 2012 on Electric Power Support Services Businesses;
- (iii) Government Regulation Number 28 of 2016 on The Amounts and Procedures for the Granting of Geothermal Production Bonuses; and
- (iv) Government Regulation Number 7 of 2017 on The Indirect Utilization of Geothermal Energy.

We set out below the salient points of GR25/2021 in the mining, geothermal and electric power sectors.

In the Mining Sector

Under the Job Creation Law and GR 25/2021, mining companies which hold a mining business license for production operations (“**IUP-OP**”) or a special mining business license for production operations (“**IUPK-OP**”) engaged in coal added-value activities (“**Coal Value Added Activities**”) may be exempt from royalty payments, considering the following:

- 1) energy independence and meeting the need for industrial raw materials; and
- 2) the amount of coal used in the Coal Value Added Activities.

An exemption from royalty payments requires prior approval from the Minister of Finance. Further provisions on the activities, amounts, requirements and procedures for an exemption from royalty payments will be issued in a Ministerial Regulation by the Minister of Energy and Mineral Resources (“**MEMR**”).

In the Geothermal Sector

- a) Commencement of activities. Geothermal License (*Izin Panas Bumi* – “**IPB**”) holders must commence the activities submitted during procurement within 1 (one) year of the issuance of their IPB. Otherwise, they will be served a written warning from the MEMR.
- b) Exploration and exploitation. If it has not yet explored its working area, the IPB holder must commence its exploration within a certain time limit, during which it must conduct a Feasibility Study. However, if an IPB holder has explored its working area, it can: (i) directly conduct a Feasibility Study; or (ii) conduct additional Exploration within a certain time limit.

Otherwise, the following progressive administration sanctions will be imposed on the IPB holder: (i) 3 (three) successive written warnings from the MEMR each one valid for 1 (one) month ; followed by (ii) a temporary suspension of some or all of its activities; and finally, (iii) the revocation of its IPB.

The result of the Feasibility Study must be submitted to the MEMR for approval. If the Feasibility Study is approved by the MEMR, the IPB holders can commence exploitation based on the approved Feasibility Study.

- c) Reclamation and preservation. Upon the expiry of its IPB, an IPB holder must, among other things, return the relevant working area. Before the IPB holder returns its working area, it must complete reclamation and preservation work and obtain approval for it from the MEMR. Otherwise, the IPB holder will be fined IDR50,000,000,000 for each gas well in the working area.

- d) The Indirect utilization of geothermal energy. Indirect Utilization means the activity of exploiting geothermal energy through a conversion process from heat and/or fluid energy to electric power. Any business entity that engages in the indirect utilization of geothermal energy without an IPB will have some or all of its activities suspended and be fined IDR10,000,000,000.

Further, any IPB holder engaged in the indirect utilization of geothermal energy that does not comply with utilization requirements under its IPB will have some or all of its activities suspended temporarily and be fined IDR50,000,000,000.

- e) The Utilization of Electric Power Generated from a Working Area. The holder of an IPB may utilize electric power generated from its working area upon obtaining an electric power business license in the following ways:
- a. in cooperation with another integrated Electric Power Supply business license holder;
 - b. selling the generated electric power to other business entities or the public; or
 - c. utilizing the electric power for its own use and selling any excess electric power.
- f) Data and information. All deliveries, submissions and transfers of Data and Information regarding geothermal energy obtained from the Preliminary Survey, Exploration, and Exploitation requires prior approval from the MEMR. Otherwise, the guilty party will be served 3 written warnings each valid for 1 (one) month.

Upon expiry of its IPB, an IPB holder must, among other things, return all the data and information obtained during its Exploration and Exploitation activities to the MEMR. Otherwise, the IPB holder will be fined IDR7,000,000,000.

- g) Transferring an IPB. IPB holders are prohibited from transferring their IPB to another business entity, and the sanction for doing so is a fine of IDR100,000,000,000.

Further, if an IPB holder transfers its shares on the Indonesian Stock Exchange before commencing its exploration activities and without obtaining prior approval from the MEMR, it will be fined IDR100,000,000,000.

- h) The obligations of holders of an IPB when it expires. When its IPB expires, the holder of an IPB must:
- a. pay off and settle all its financial obligations in accordance with the prevailing regulations;
 - b. return the entire working area and comply with all the regulations on returning working areas;
 - c. submit all the Geothermal Data and Information about the working area, both in analog and digital form related to Geothermal exploitation to the MEMR;
 - d. Safeguard objects and buildings and the condition of the land around them which may threaten public safety;
 - e. Within 6 months after the expiration of the IPB, (i) remove objects, buildings and equipment in the former working area, except for buildings that can be used for public

purposes; and (ii) hand over the assets resulting from the Geothermal exploitation to the MEMR.

In the Electric Power Sector

In the electric power sector, GR 25/2021 covers, among other things, (i) the provision of electric power for the public interest; (ii) the provision of electric power for the party's own use; and (iii) the electric power support services business, as explained briefly below.

(i) the provision of electric power for the public interest.

The activities of Electric Power Supply Businesses for the public interest include the following:

- a) generating electric power;
- b) transmitting electric power;
- c) distributing electric power; and
- d) selling electric power.

The above can be integrated as the activities of 1 (one) business entity in 1 (one) Working Area. The provision of electric power for the public interest must conform to the National Electric Power General Plan issued under a Decree of the MEMR.

According to the Job Creation Law, by state-owned enterprises, region-owned enterprises, private enterprises, cooperatives, and non-governmental organizations engaged in the supply of electric power can provide electric power for the public interest upon obtaining an Electric Power Supply for the Public Interest business license.

If the generation, transmission, distribution and sales business is integrated, the generation and / or transmission business can be engaged in **outside** the Business Area.

(ii) The Determination of a Business Area.

A Business Area can be determined if the following requirements are satisfied:

- a. the existing Business Area holders are unable to provide electric power;
- b. the existing Business Area holders are unable to meet the required quality and reliability standards;
- c. the existing Business Area holder has returned part or all of its Business Area to the MEMR;
- d. the Business Area proposed by a business actor has not been reached by any existing Business Area holder; or
- e. the Business Area proposed by a business actor is integrated in an area in which energy resources are managed in an integrated manner according to the pattern of need for electric power of the business.

(iii) Right of Way for an Electric Power Transmission Network (Grid).

The holder of an Electric Power Supply business license must provide compensation for the indirect use of land which reduces the economic value of the land, buildings and plants crossed over by its Electric Power Transmission network (grid). The compensation for this purpose only needs to be paid once.

The amount of the compensation must be calculated by an independent evaluator appointed by the MEMR to be provided in a Ministerial Regulation. The independent evaluator will then submit a recommendation regarding the amount of compensation to be determined by the MEMR.

(iv) the provision of electric power for the party's own use.

An electric power supply business for the businesses' own use with a total power generation capacity of more than 500 kW (five hundred kilowatts) connected in 1 (one) Electric Power Installation system requires an Electric Power Supply for its Own Use business license.

If the electric power supply for its own use business generates a total power capacity of up to 500 kW (five hundred kilowatts) connected in 1 (one) Electric Power Installation system with certain technical specifications under GR 25/2021, it must submit a report to the MEMR or the Governor before engaging in the electric power supply for its own use business.

(v) The electric power support services business

Under the Job Creation Law and GR 25/2021, state-owned enterprises, regional-owned enterprises, private enterprises, public service agencies, and cooperatives may engage in the electric power support services business upon obtaining :

- (i) an Electric Power Support Service business license; and
- (ii) a Business Entity Certificate for the electric power support services business.

Private enterprises that provide electric power support services business can be in the form of:

- a. a legal entity established under the prevailing laws;
- b. a non-legal entity that has been registered with the MOLHR; or
- c. a foreign representative office established by a foreign entity or foreign individual that provides electric power support services.

The electric power support services business consists of:

- 1) consultancy in the field of electric power installation;
- 2) construction and installation work for an electric power installation;

- 3) inspection and testing of electric power installation;
- 4) operation of the electric power installation;
- 5) maintenance of electric power installation;
- 6) research and development;
- 7) education and training;
- 8) electric power utility and equipment testing laboratories;
- 9) electric power user and equipment certification;
- 10) electric power engineering personnel competency certification;
- 11) electric power support service business entity certification; and
- 12) other service businesses that are directly related to the provision of electric power.

GR 25/2021 sets out the classifications for each of the electric power support services business activities above.

General requirements that apply to Foreign Representative Offices for electric power support services business

A foreign representative office can only obtain a business license for an electric power support services business in the following areas:

- a. consultancy in the field of Electric Power Installations;
- b. the construction and installation of Electric Power Installations; and
- c. the maintenance of Electric Power Installations,

GR 25/2021 restricts foreign representative offices to working on high-cost electric power support services which satisfy the following requirements:

- a) the construction and installation work for an electric power installation must have a value of at least IDR 100,000,000,000.00; and
- b) any consultancy work in the field of electric power installation or the maintenance of electric power installation must have a value of at least IDR 10,000,000,000.00.

To do so a foreign representative office must, among other things, establish a joint operation with a domestic electric power support services business entity which satisfies the following requirements:

- a) it is a limited liability company;
- b) 100% (one hundred percent) of its shares are held by individual Indonesian citizens, the Republic of Indonesia, regional governments, private companies, state-owned companies, region-owned companies or cooperatives;
- c) it must have a business entity certificate with large-scale business qualifications; and
- d) it must have a license to provide electric power support services.

Discretion

GR 25/2021 allows the MEMR (within its authority) to exercise discretion to overcome concrete problems if GR 25/2021 does not regulate, is incomplete or unclear, or in the event of government stagnation.

Transitional Provisions

The provisions on business licenses of GR 25/2021 do not apply to business actors that already held a business license before GR 25/2021 came into force.

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