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The Evaluation Procedure on the Issuance of Mineral and Coal Mining Business Licenses

by Vinton Rasil Taris

On 30 December 2015, the Minister of Energy and Mineral Resources enacted Regulation No. 43 of 2015 regarding the Procedure of Evaluation on the Issuance of Mineral and Coal Mining Business Licenses ("**Regulation No. 43/2015**").

This new regulation is issued in connection with Law No. 23 of 2014 on Regional Government ("**Law No. 23/2014**"), especially the provision of the distribution of government affairs in mineral and coal mining. According to Law No. 23/2014, the central government and provincial government shall undertake mineral and coal mining matters, therefore Regulation No. 43/2015 governs the handover of license documents from the district / city government to the central government and provincial government, and also the phase of mining licenses evaluation subsequent to the document handover. Pursuant to Article 4,Regulation No. 43/2015 of the Ministry of Energy and Mineral Resources, the Director General and the relevant Governor are authorized to assess and evaluate the issuance of mining business licenses.

In line with the Article 5 paragraph 1 of Regulation No. 43/2015, the issuance of mining licenses which are subject to evaluation shall be categorized into two types: (i) a mining business license that has been adjusted from mining authorization; (ii) mining authorization that has not yet expired and also has yet to be adjusted to a mining business license. The mining licenses will be evaluated through five aspects: administrative, territorial, technical, environmental, and financial.

Firstly, the administrative aspect, which covers evaluation and involves filing for an extension of the mining business license, up to the end of its validity period. Secondly, the territorial aspect, which covers clearance of the land title which is used for mining, to the extent of the coordinates of its mining territorial area. Third, the technical aspect, which covers the license holder's compliance in reporting its exploration and feasibility studies. Fourth, the environmental aspect, where the inspector will evaluate the environmental documents which have been verified by the relevant authority. Fifth, the financial aspect, which covers evidence of payment of royalties.

A non-compliance with the mining regulations may lead to the imposition of sanctions or other settlement. Several actions may be taken by the Director General or the Relevant Governor as a consequences of the evaluation, for example, in the case where the assessor finds that there is more than one mining business license held by a business entity, the assessor may incorporate the mining territory that is authorized (if it is close to the other site) and issue a new mining business license which incorporates the sites, or instruct the license holder to assign to another corporation as long as the license holder holds 51% of the shares in the successor business entity. Regulation No. 43/2015 also stipulates that non-compliance with the technical, environmental, and financial aspects may lead to administrative sanctions, as stipulated by the Article 17 paragraph 3 of Regulation No. 43/2015, which consists of a written warning, temporary suspension of business operations, or revocation of the license.

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Longer Term for Foreign Property Ownership

by Arien

Property law in Indonesia is implementing friendlier rules for foreign buyers with the issuance of Government Regulation No. 103 of 2015 regarding Ownership of Residential Houses or Property by Foreigners Domiciled in Indonesia ("**GR 103/2015**"). The new regulation allows foreigners to own detached houses and the surrounding land (referred to hereafter as "homes") or strata title apartments (hereafter referred to as "apartments") for up to 80 years. GR 103/2015 revokes Government Regulation No. 41 of 1996 ("**GR 41/1996**") and came into effect on 28 December 2015.

GR 103/2015 extends Article 42 of Law No. 5,1960 on the Basic Agrarian Principle that foreigners domiciled in Indonesia may own properties, either homes or apartments that are built on land with *Hak Pakai* ("**Right to Use**") title. The homes may also be built with a Right to Use title over a Right to Own, based on an agreement between the foreigner and the original holder of the land title ("**Agreement**").

The most notable provision under GR 103/2015 is that the Right to Use for foreign ownership, which is 30 years, may be extended for 20 years, and is renewable for another 30 years. This time period is much longer than previously stipulated in GR 41/1996, where foreigners could only hold ownership of a property for a maximum period of 50 years. The extension and renewal of the property titles must be done while the foreign owner still resides in Indonesia.

The regulation requires that the foreigner who wishes to purchase a property has a valid permit to live in Indonesia, which can either be a Diplomatic Stay Permit, Official Stay Permit, Residence Permit, Visit Stay Permit, Limited Stay Permit, or a Permanent Stay Permit. In the event that the foreign owner of such property passes away, it may be inherited by their heir. However, if the heir is a non-Indonesian person, he or she must also have a valid permit to live in Indonesia.

GR 103/2015 further stipulates that if the foreign owner or their foreign heir no longer resides in Indonesia, they are obliged to release their right to the home within 1 year to another party who is eligible to hold the right. If the right in question is not released or transferred to an eligible party within this period of time, the following shall apply:

(a) Either, it will be auctioned off by the state, in the case where the house was built on a Right to Use over state land. Proceeds from the auction will accrue to the owner – net of auction fee, materials or other expenses, or;

(b) It will automatically revert to the owner of the relevant land, in accordance with the Agreement on which the house was built.

Pursuant to Article 3 of GR 103/2015, Indonesian citizens who are married to foreigners also have the same rights to own a property as other Indonesians, on condition they have a prenuptial agreement and such property is not part of the joint assets of the pair.

It is important to note that according to Article 5 of GR 103/2015, the Right to Use for foreign buyers applies to the purchase of new homes or apartments. There is no provision in respect of the purchase of second-hand properties by foreign buyers.

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New Regulation Regarding Location Permits

by Delvi

On 28 April 2015, the Minister of Agrarian and Spatial Affairs / Head of the National Land Agency issued Regulation Number 5 of 2015 on Location Permits ("Regulation No. 5/2015"). This Regulation revokes Minister of Agrarian and Spatial Affairs / Head of the National Land Agency Regulation No. 2 of 1999 ("**Regulation No. 2/1999**") concerning Location Permits.

The purpose of this Regulation is to improve the existing regulatory framework on location permits as it is no longer suited to current society and its thriving development, and given the need now to establish new guidance absent from previous regulation. The Location Permit allows a company to acquire the land needed for its operation, and also serves as license for the transfer of rights and the utilization of the land for investment. A Location Permit applicant is prohibited from acquiring land before a Location Permit is issued.

Under e Regulation No. 5/2015, the term of the Location Permit must be issued for a term of 3 (three) years. There is no classification based on the land area. If land acquisition is not fully completed within the term provided in the Location Permit, it can be extended for a period of 1 (one) year as long as the acquisition process pertaining to the land area as specified in the Location Permit is already 50% (fifty percent) or more complete. If the land acquisition fails to complete within the term of Location Permit as referred to above, the acquired land shall be used in the proposed investment by having the development land area adjusted to make an integral parcel of land. Otherwise,the Location Permit holder may resume acquiring land located between the acquired land to make an integral parcel of land. If the land acquired is less than 50% (fifty percent) of the land area specified in the Location Permit, the acquired land must be released to the qualified company or other parties.

Regulation No. 5/2015 also adds a new provision to the objects of Location Permits. For efficiency and effectiveness, industrial estate business is allowed to have land extending to an area of more than that provided by the Head of the Land Office and the Head of the Regional Land Office of the National Land Agency of the local province. Before they allowed company to extend the area, they have to obtain approval from the Minister of Agrarian and Spatial Affairs / Head of the National Land Agency.

Regulation No. 5/2015 also states that the issuance of a Location Permit for the cross-districts/cities land in 1 (one) province will be signed by the Governor, and for the cross-provinces land the Location Permit will be signed by the Minister of Agrarian and Spatial Affairs / Head of the National Land Agency. The Regulation is thereby given a much clearer structure.

Furthermore, Article 14 of the Regulation No. 5/2015 stipulates that there is a monitoring and evaluation which shall be conducted by:

(a) for the national level, the Minister of Agrarian and Spatial Affairs / Head of the National Land Agency;
(b) for the provincial level, the Head of the Regional Office of the National Land Agency of the province;
(c) for the district/city level, the Head of the District Land Office.

The results of monitoring and evaluation shall be taken into consideration in the revocation of the Location Permits by the Minister of Agrarian and Spatial Affairs/Head of the National Land Agency upon the recommendation of The Head of the Regional Office of the National Land Agency and The Head of The District Land Office.

By comparison, the differences between Regulation No. 2/1999 and Regulation No. 5/2015 are as follow:

	Regulation No. 2/1999	Regulation No. 5/2015
Term of Location Permits	**Area of land** / **Time period** Up to 25 Ha / 1 (one) year More than 25 Ha 50 Ha / 2 (two) years More than 50 Ha / 3 (three) years	3 (three) years.
Failed Completion (acquisition of land)	If land acquisition of at least 50% cannot be completed within the specified time, the land can be released to another company; or reduced and the remainder made available to other companies.	Land already acquired shall be used to make the proposed investment by having the development land area adjusted, to make an integral parcel of land; or the Location Permit holder may resume acquiring land located between the acquired land, to make an integral parcel of land. If less than 50% (fifty percent), the acquired land shall be released to the qualified company or other parties
The Land Tenure of the company (and other companies of the same group) for industrial estate areas	1 province : 400 Ha Through out Indonesia : 4.000 Ha	1 province : 400 Ha Through out Indonesia : 4.000 Ha The company allowed to have land with an area of more than provided.
Procedures for Issuance of Location Permits (overlapping the provinces)	Not regulated	A decision signed by the Minister of Agrarian and Spatial Affairs / Head of the National Land Agency.
Prohibit (acquiring land)	Not regulated	A Location Permit applicant is prohibited from acquiring land before a Location Permit is issued.
Extended Location Permit	Not regulated	May be extended for a term of 1 (one) year as long as the acquisition is already 50% (fifty percent) or more of land area as specified in the Location Permit to complete.
Monitoring and evaluation	Not regulated	Monitoring and evaluation of Location Permits shall include: - monitoring of land acquisition activities; - monitoring and evaluation of land and space utilization - security of the land the entity has acquired; and - supervision and control over the boundaries of the land acquired.
Cancelling Location Permits	Not regulated	Location Permits shall be cancelled by the results of monitoring and evaluation

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Government Regulation on Remuneration

by Febi Jaya Conggih

Unsurprisingly, employers and employees have never been on the same side in Indonesia on the issue of salaries. Employers usually complain that workers' demands are unrealistic, while the employees complain that salaries are often barely enough to meet their daily needs. By looking at these opposed points of view, an understanding of the remuneration system and its regulation are indispensable to obtain a degree of interpretative consensus, especially between the employers and employees, to avoid disagreements and business disruptions in the form of protests and strikes.

In line with this problem, the government has issued Government Regulation Number 78 Year 2015 entitled Remuneration ("**GR No. 78/2015**") as a solution to the continual standoff. GR No. 78 is an implementation of Article 97 Law Number 13 Year 2013 concerning Man-power which obliges the government to regulate remuneration.

According to GR No. 78/2015, salaries for employees/ workers are comprised of:

a. salary without allowance;

b. basic salary and fixed allowance; or

c. basic salary, fixed allowance, and non-fixed allowance.

In terms of the salary component consisting of the basic salary and fixed allowance and non-fixed allowance, the amount of the basic salary is at least 75% (seventy-five percent) of the total basic salary and fixed allowance.

GR No. 78/2015 also introduces a fixed formula to determine annual labour wage increases, which was previously dealt with by a tripartite meeting between local government, business associations and labour unions. The regulation stipulates a measured annual wage increase that takes into account the current fiscal year's inflation and gross domestic product (GDP) growth rates. The formula to determine annual minimum wage increase is as follows: Previous minimum wage + previous minimum wage x (%annual inflation rate + %GDP annual increase). This formula is expected to eliminate the negotiation process for determining UMP and thus create a more predictable and realistic standard for wage increases.

Besides that, there will also be adjustments every five years in the index for minimum decent living costs (KHL), which is determined by the regional wage council, made up of representatives from regional administrations, business associations and labour unions. Regions that set their minimum wage level below minimum living costs will have to adjust within four years after the regulation has taken effect.

Employers or employees who violate the provisions of the Employment Agreement, Company Regulation, or the Collective Labour Agreement due to deliberate action or negligence can only be fined if this is set down firmly in the Employment Agreement, Company Regulation, or the Collective Labour Agreement.

To ensure the implementation of the provisions in GR No. 78/2015, the government has established administrative sanctions against employers that do not adhere to these regulations. The administrative sanctions are imposed on employers who:

a) do not pay religious holiday allowance to employees;
b) not allot money for certain business services to employees;
c) do not arrange the structure and scale of wages and do not give notice to all employees;
d) do not pay wages until in accordance with the employment agreement and Collective Labour Agreement;
e) does not fulfill its obligation to pay fines;
f) cut the salaries of employees by more than 50% (fifty percent) of each salary payment received by employees.

At the time GR No. 78/2015 comes into force, all the implementing regulations of Law No. 13 Year 2003 on Manpower governing remuneration and Government Regulation No. 8 of 1981 on the Protection of Wages remain valid as long as not contrary to and/or have not been replaced by this regulation.

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