



New Guidelines and Procedures for Capital Investment Principle Licenses

by Athalia Devina



The Head of the Indonesian Capital Investment Coordinating Board (“BKPM”) enacted Head of BKPM Regulation Number 14 Year 2015, entitled Guidelines and Procedures for Capital Investment Principle Licenses (“BKPM Regulation No. 14/2015”) on 8 October 2015. BKPM Regulation No. 14/2015 supersedes Head of BKPM Regulation Number 5 Year 2013 entitled Guidelines and Procedures for Licensing and Nonlicensing in relation to Capital Investment, as amended by Head of BKPM Regulation Number 12 Year 2013.

There are 3 important points regarding BKPM Regulation No. 14/2015 compared to the previous regulation:

1. As stipulated in Article 13, a foreign company must implement the provisions and requirements of the investment value and capital in order to acquire a principle license. The provisions and requirements, unless otherwise stipulated by legislation, must meet

the following conditions: (i) the total investment value is greater than Rp.10.000.000.000,- (ten billion Rupiah), excluding land and buildings for every subgroup of the same business in one project site in one District/Regency/City in the Industrial sector, or for every subgroup of the same business within one District/Regency/City, outside the industrial sector; (ii) for the expansion project for one line of business within one business group at the same location, when the value of investment allowed is less than Rp.10.000.000.000,- (ten billion Rupiah), provided that the accumulated investment value of the entire project at the site has reached more than Rp.10.000.000.000,- (ten billion Rupiah) excluding land and buildings; (iii) for the expansion of one or more lines of business within one sub class of business, which does not get the facilities or receiving facilities outside the industrial sector, at one location within one district/regency/city where the investment value is allowed less than Rp.10.000.000.000,- (ten billion Rupiah), provided that the accumulated value of investment for all business sectors is greater than Rp.10.000.000.000,-

(ten billion Rupiah) excluding land and buildings; (iv) the value of issued capital equals the paid-up capital in the sum of at least Rp. 2.500.000.000,- (two billion five hundred million Rupiah); (v) participation in the capital of the company of each shareholder to the value of at least Rp.10.000.000,- (ten million Rupiah) and percentage of ownership to be calculated based on the nominal value of the shares.

2. Article 30 makes stipulations concerning the investment license. For the purpose of accelerating the realization of specific investment projects, there must be: (i) a minimum investment value of Rp.100.000.000.000,- (one hundred billion Rupiah); and/or (ii) minimum Indonesian manpower of 1.000 persons given the acceleration of the issuance of the principle license called the investment license. The investment license will be issued within 3 hours after a complete and correct application is submitted directly by all prospective shareholders to the central PTSP at BKPM. In the event that a prospective shareholder cannot attend, he may be represented by proxy by a prospective shareholder, by the attachment of the original power of attorney.
3. Article 16 makes provisions concerning divestment. Where the divestment obligation of a foreign company has been determined in an approval letter and/or business license before the enforcement of BKPM Regulation No. 14/2015, its divestment obligations remain binding and must be implemented within a predetermined period of time. Article 16 stipulates that the minimum nominal value of share ownership in respect of the fulfillment of the divestment obligation is Rp.10.000.000,- (ten million Rupiah). After obtaining the approval of the Ministry of Law and Human Rights, share ownership of Indonesian participants as a result of divestment can be transferred to Indonesian citizens/foreign citizens/Indonesian entities/foreign entities in accordance with the prevailing regulations.

Article 62 of BKPM Regulation No. 14/2015 stipulates the following transitional provisions:

1. Principle licenses that were issued before BKPM Regulation No. 14/2015 came into force remain valid until the expiry of principle licenses for the Project Completion Period;

2. Principle licenses for companies located in specific industrial areas that were issued before BKPM Regulation No. 14/2015 came into force can act as investment licenses by applying first to the central PTSP at BKPM;
3. Application for principle licenses that were accepted and declared complete and correct before the enactment of BKPM Regulation No. 14/2015 and are still in the stage of completion, will be processed in accordance with the provisions of BKPM Regulation No. 14/2015;
4. Companies that already obtained registration approval before the enactment of BKPM Regulation No. 14/2015, and which need fiscal and non-fiscal facilities, must apply for principle licenses in accordance with the provisions of BKPM Regulation No. 14/2015;
5. In the case of companies which have not obtained registration approval and do not have Company Deeds that have been authorized by the Ministry of Law and Human Rights, if the companies still be interested in continuing their business activities, they are required to submit new principle licenses, in accordance with prevailing legislation;
6. Companies that have already obtained principle licenses before the enactment of BKPM Regulation No. 14/2015 and where the time period of the projects has ended can apply for a change, an extension of time period, or a business license, no later than 1 year from the enactment of BKPM Regulation No. 14/2015;

BKPM Regulation No. 14/2015 came into force for central PTSP at BKPM on 26 October 2015 and for BPMPTSP Province, BPMPTSP Regency/City, PTSP KPBPB, and PTSP KEK no later than 90 days from the enactment date.

The BKPM Chairman Regulation on the Application Procedures for Investment Licenses and Non-Licenses

by Vinton Rasil Taris

In order to simplify the investment licenses and non-licenses application process, the Chairman of the Indonesian Investment Coordination Board (*Badan Koordinasi Penanaman Modal* or “**BKPM**”) has issued Regulation No. 15 of 2015 on the Guidelines and Procedures for Investment Licenses and Non-Licenses (“**Perka BKPM No. 15/2015**”). Perka BKPM No. 15/2015 has been issued as a consequence of the government’s strategy in accelerating macroeconomic development, protecting the small business industry and stimulating the rural economy.

Before the issuance of Perka BKPM No. 15/2015, the application procedures for investment licenses and non-licenses were governed by BKPM Chairman Regulation No. 5 of 2013 as amended by BKPM Chairman Regulation No. 12 of 2013, which has been superseded by the enactment of Perka BKPM No. 15/2015. There are several significant differences between the old and new regulation.

Firstly, stipulations concerning the Investment Principle License are no longer governed by the application guidelines and procedures for investment licenses and non-licenses regulation, hence Perka BKPM No. 15/2015 only makes stipulations concerning Investment Business Licenses, Representative Office Permits, Business Operating Licenses, and regarding non-licensing : (i) the utilization of foreign workers; (ii) importer identification numbers; and (iii) technical recommendations for various business sectors. However, the investment Principle License is regulated by the BKPM Chairman Regulation No. 14 of 2015 on the Guidelines and Procedures for Investment Principal Licenses.

Pursuant to Article 13 Paragraph 6 of Perka BKPM No. 15/2015, a Foreign Investment Company may apply for a Business License when the realization of its total value of investment is more than ten billion Rupiah, excluding the value of investment in land and buildings. Article 13 Paragraph 6 of Perka BKPM No. 15/2015 makes an exception for Foreign Investment Companies which have



obtained an Investment Principle License with an investment value in the amount of ten billion Rupiah or less, on condition that the time period for project completion is still valid.

Secondly, Perka BKPM No. 15/2015 also specifies the types, guidelines and procedures for sectoral business licenses that can be applied for at BKPM. The details are stipulated under Chapter V of Perka BKPM No. 5/2015, which consists of 14 (fourteen) business sectors. In regard to sectoral business licenses, BKPM has the authority to issue these licenses by the delegation of authority from the relevant ministers / governor / major.

Thirdly, the investment license and non-license application must be submitted to the BKPM Integrated One Stop Service through the Electronic Information Service and Investment License System (*Sistem Pelayanan Informasi dan Perizinan Investasi Secara Elektronik* or SPIPISE). This is required pursuant to Article 76 of Perka BKPM No. 15/2015.

Perka BKPM No. 15/2015 became effective on 26th October 2015 for the central BKPM Integrated One Stop Service, and within 90 days after the enactment of the regulation, for the Board of Investment and Integrated One Stop Services (*Badan Penanaman Modal dan Pelayanan Terpadu Satu Pintu* or “**BPMPTSP**”) Province, BPMPTSP Regent/City, Free Trade Zone and Free Port Integrated One Stop Services, Special Economic Zone Integrated One Stop Services.

Non-Tax State Revenue from Geothermal Activities

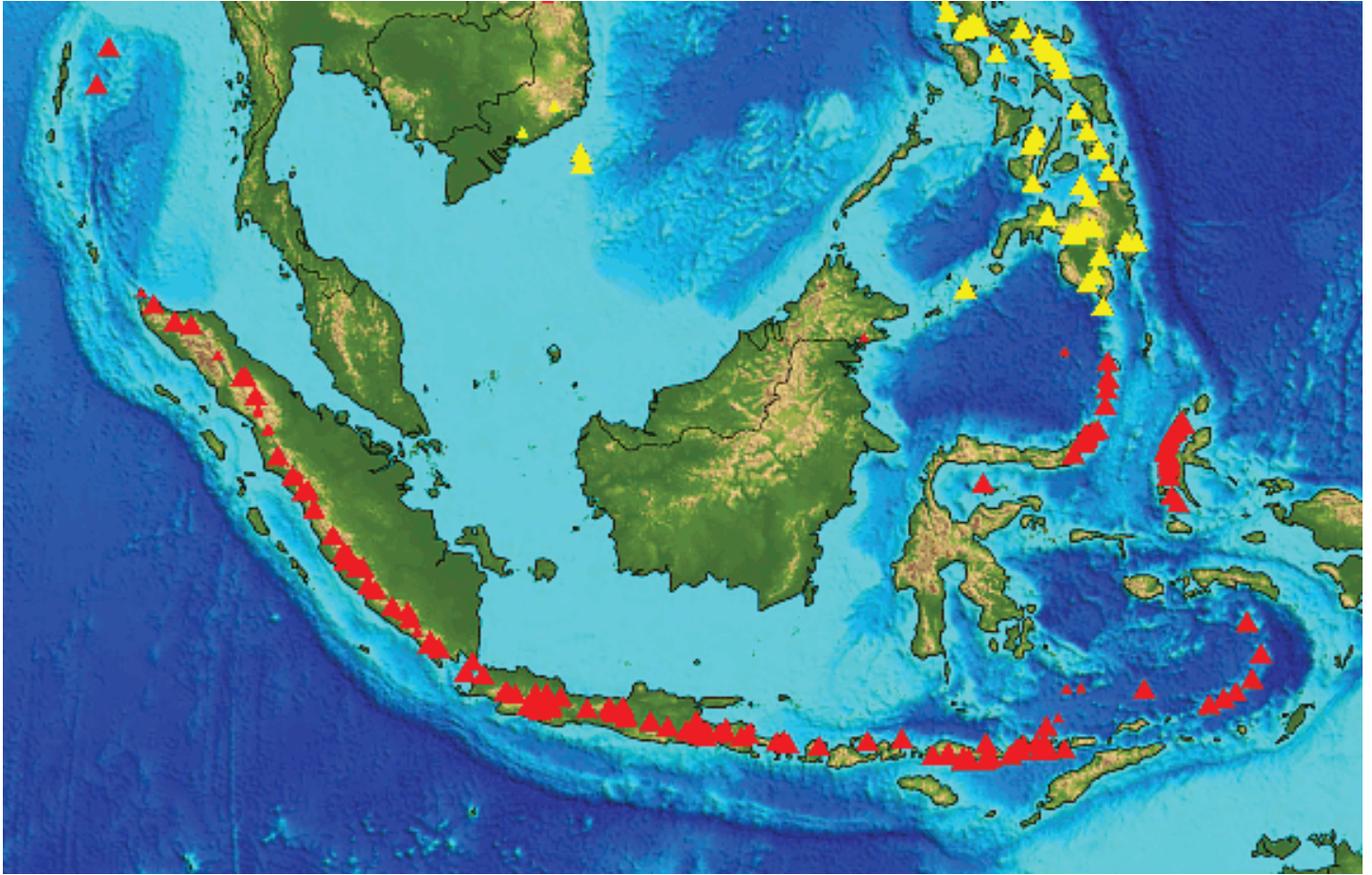
by Nirmala Adisti Karunia



On 16 April 2015, the Minister of Energy and Mineral Resources issued Regulation No. 14 year 2015 entitled the Procedure for Imposition, Collection and Payment of Non-Tax State Revenue from Geothermal Activities by the Directorate General of New and Renewable Energy and Energy Conservation ("**Regulation No. 14/2015**"). Regulation No. 14/2015 was issued as a further implementation of Government Regulation No. 9 year 2012, regarding the Classification and Tariffs upon Non-Tax Revenue that is Applicable in the Ministry of Energy and Mineral Resources ("**PP No. 9/2012**"). It aims to regulate non-tax revenue from the geothermal sector that is currently expanding in Indonesia.

According to Regulation No. 14/2015, non-tax revenue derived from geothermal activities consists of 4 types. There is a fixed levy (consists of fixed levy from geothermal exploration activities and production operation activities), a production levy, the service of geothermal map printing and data prices of geothermal working areas. Each type of levy has its own calculation, subject matter, time period and penalty for those who violate the regulation, summarized as follows:

Type of Levy	Fixed levy	Production levy	Service of geothermal map printing	Data prices of geothermal working areas
Subject Matter	Holder of geothermal license	Holder of electricity supply business license	Business entities or individuals that use geothermal map printing service	Business entities that win the auction for geothermal working areas to obtain the geothermal license
Calculation of Tariff	Geothermal working area (ha) x tariff	The amount of electricity power sold x tariff x selling price of electricity power	The price of service will be determined by non-tax revenue authorities	If the price exceeds Rp0,00 ,the auction winner should pay the determined price
Time period	The license holder must pay the first year levy calculated from the date when the geothermal license is issued by the Minister to 31 December of the current year, no later than 1 month after the issuance of geothermal license, and the next annual payment is calculated from 1 January until 31 December and to be paid no later than 15 January in the current year.	The license holder must pay the production levy from the commercial operation date every month no later than the 15 th of the following month for the previous month supply of electricity	The user must pay the printing service to the non-tax revenue authorities (per request basis	The levy must be paid no later than 30 days from the announcement of the auction winner



The license holders and/or the user of geothermal map data services should take note of the due date of payment because if the license holder exceeds the due date for payment of the levy, it will be fined at a rate of 2% of the amount of indebted levy per month. After paying the levy directly to the state treasury, they are obliged to submit the payment receipt to the Directorate General and a copy of such receipt to the Governor and Regent/Mayor no later than 5 business days thereafter.

An additional requirement for the holder of electrical supply business license is to submit a report of electricity power production in the current month, sales invoice of electricity from the electricity supply license holder that also has a geothermal business license, payment receipt of the electricity power bill and verification report of the electricity power sale derived from geothermal activities.

The license holder should be aware that if a particular license has expired or been revoked, such expiration or revocation would not waive the holder's obligation to pay the indebted non-tax state revenue relating to geothermal activities. Furthermore, in the case that the geothermal license is issued before PP No. 9/2012, the holder of the license should pay the fixed levy calculated from the enactment of PP No. 9/2012 to include a month after the Regulation No. 14/2015 enactment date. After that, calculations in accordance with Regulation No. 14/2015 will apply.

Guidelines on the Utilization of Foreign Workers

by Rio Rahmat Hidayat



On 29 June 2015, the government of the Republic of Indonesia enacted the Minister of Manpower Regulation No. 16 Year 2015 (the “**Manpower Regulation No. 16**”) entitled Guidelines on the Utilization of Foreign Workers, which revokes the Minister of Manpower Regulation No. 12 Year 2013. Pursuant to Article 4 paragraph (2) of Manpower Regulation No. 16, the employer of a foreign worker must be a legal entity in the form of a limited liability company or a foundation. Aside from this such business entities in the form of a civil association (*persekutuan perdata*), firm (*firma*), limited partnership (*persekutuan komanditer/CV*), associates (*usaha bersama*) or cooperative/co-op (*koperasi*) are not prohibited from employing foreign workers, otherwise specifically regulated by law.

Procedurally, there are steps that should be taken according to Manpower Regulation No. 16 by the employer before recruiting a foreign worker. At the outset, the employer should have a Foreign Manpower Utilization Plan (“**RPTKA**”) that is ratified by the Director General or Director of Foreign Manpower Utilization Control (the “**Director**”) which is valid for a maximum period of 5 (five) years (depending

on the type of RPTKA that is requested by the employer). On that basis, the employer will then apply for and shall obtain an expatriate work permit (“**IMTA**”), published by the Director upon paying the Expatriate Utilization Compensation Fund (“**DKP-TKA**”) in the amount of USD 100 as one of the conditions, among others, stipulated in this regulation in order to obtain an IMTA. The issuance of the IMTA will be the basis for several application purposes such as (i) visa application; (ii) approval and renewal of a limited residence permit (“**ITAS**”); (iii) residential status upgrade to ITAS; (iv) ITAS application to a permanent residence permit (“**ITAP**”); and (v) ITAP renewal. The aforementioned RPTKA and IMTA must be submitted online by the employer to the Director by attaching the required documents as stipulated in this regulation..

Recently, the government amended the Manpower Regulation No.16, supplementing it with the Minister of Manpower Regulation No. 35 Year 2015 (the “**Manpower Regulation No. 35**”). Manpower Regulation No. 35 entered into force on 23 October 2015. The following are the comparisons between Manpower Regulation No. 16 and Manpower Regulation No. 35:

No.	Subject	Manpower Regulation 16	Manpower Regulation 35
1.	The removal of a comparative ratio on the utilization of foreign manpower	1:10	No longer valid (removed)
2.	Restriction of foreign manpower utilization	(does not exist)	Expatriate workers are prohibited from occupying a "commissioner position" in any Domestic Capital Investment Company (PMDN)
3.	Provision change to the obligation of non-resident BoD and BoC in Indonesia regarding the IMTA.	It is mandatory for non-resident expatriate BoD and BoC to have an IMTA	No longer required
4.	Provision change to the obligation to exchange currencies for DKP-TKA payment purposes	DKP-TKA payment of USD 100 per position/month must be exchanged into Rupiah	DKP-TKA payment is allowed by USD.
5.	Annulment of several occupation types in which a temporary IMTA is not required	Occupations types which no longer require a temporary IMTA (annulled): <ul style="list-style-type: none"> - provision of guidance, counseling as well as international cooperation in technology & industry innovations. - Lecturing; - attending a meeting held by the principal or representative office in Indonesia; - the probation of an expatriate worker's ability to work; 	Occupation types which require temporary IMTA: <ul style="list-style-type: none"> - taking part in commercial film production; - occupations involving auditing, production quality control, or inspection of branch offices for more than 1 (one) month; and - occupations related to machine installation, electrical, after sales service of products during the early business phase.

Aside from the abovementioned, the transitional provisions of Manpower Regulation No. 35 stipulate that the employer has made DKP-TKA payment of (i) the non-resident BoD and BoC; and (ii) the occupations that require temporary IMTA prior to the issuance of Manpower Regulation No. 35, payment is not refundable/irrecoverable.