



# Granting Government Guarantees to Accelerate National Strategic Projects

by Pratiwi Widyastuti



To improve people's welfare, the government is investing in National Strategic Projects ("NSP"). They are project(s) conducted by Government, Local Government, and/or legal entities which aim to improve development in order to raise public welfare. There are many NSP that have already been running, such as the power plant project in Batang, the airport revitalization project in Bengkulu, the smelter construction project in Ketapang, and many more. The enforcement of NSP itself is ruled by Presidential Decree Number 3 of 2016 ("PP No.3/2016"). Article 25 of PP No.3/2016 states that the government may grant guarantees concerning political risk affecting implementation and finance. This scheme of the NSP structure can be conducted by Central Government, Local Government, State-Owned Enterprises (SOEs/BUMN), and Regional-Owned Enterprises (ROEs/BUMD), private legal entities in the form of limited liability companies, and through cooperation.

In implementing such provisions, the government issued Minister of Finance Regulation ("PMK") Number 60/PMK.08/2017 on 9<sup>th</sup> May 2017. This legislation consists of some regulatory issues, such as the aim and principle of the government guarantee, the scope and general requirements of NSP, the form and the validity period of NSP, budget allocation in the State Budget (APBN), claims

for guarantee, mechanisms of repayment to government, and controlling and reporting.

This regulation mentions some types of guarantee, for example: the government guarantee for government cooperation projects with legal entities, direct loans from an International Financial Institution for infrastructure projects, the government and obligation guarantee for the acceleration of highway construction projects, and loan guarantee and feasibility for power plant projects.

In obtaining these kinds of guarantee, firstly, the Project needs to be listed in the Attachment of Presidential Regulation Number 3 of 2016 additional to the NSP. Then, the person in charge of NSP must not have a government guarantee or not applied for it. Next, it is not in order for the implementation of government assignment for which it has not got a government guarantee. Finally, there is a Cooperation Agreement which contains the following: the kind of political risk which can hamper the NSP, the financial obligation of PIC of NSP, a sufficient period of time to carry out the financial obligation, and a provision for any dispute arising from this contract or relating this contract to be settled by arbitration.



*Eid Mubarak*

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# The New Regulation on Mineral and Coal Mining Licenses

by Jessica Tjendana

For the 2<sup>nd</sup> time this year the Ministry of Energy and Mineral Resources has introduced a new regulation with the aim of simplifying the licensing process. In line with President Jokowi's idea of efficiency and to encourage further investment in the mining industry, on 9<sup>th</sup> May 2017 the Ministry of Energy and Mineral Resources introduced Ministry Regulation No. 34 regarding Mineral and Coal Mining Licenses ("MEMR No. 34/2017").

Here are some of licensing simplification measures mentioned in MEMR No. 34/2017:

- A special Mining Operation License for Sales and Transportation is no longer required. Previously, a mining company with a Mining Production License who wished to carry out transportation and sales activities would need to apply for a special License for Sales and Transportation. This License is no longer applicable and an IUP OP holder who wishes to engage in such activities will only need to apply for a Registration Certificate. Such a certificate is to be completed in 8 working days and it will be published in the MEMR website.
  - The application for a Mining Operation Production for Processing and Refining license will no longer require a Principle License (Izin Prinsip). Previously, the regulation stipulated that a Principle License is required prior to the issuance of an Operation Special Mining Permit for Processing and Refining.
  - A Registered Certificate (SKT) is no longer required for a non-core mining service company. Such a certificate is replaced with a Registration Certificate. The processing time of such licenses has been reduced to just 8 working days.
  - The integration of 7 licenses and recommendation in the Work Plan and Budget Agreement (RKAB) acts as a recommendation for license applications in other government departments. The seven (7) licenses and recommendation that are integrated are: (1) Recommendation regarding the usage of foreign workers; (2) License approval for changing of investment and sources of financing including changes in paid up and issued capital; (3) Permission of approval for construction of transport, storage or stockpiling facilities, and the purchase or use of explosives; (4) Permission of approval to propose a plan for the construction of a liquid fuel storage site; (5) Permission of approval to carry out sleep blasting; (6) Permit of approval of feasibility certificate of use of equipment and / or certificate of installation feasibility of the Head of Mining Inspector; And (7) Permission approval of dredger/ suction operation.
  - Simplification of activity stages of the KK (Contract of Work) and PKP2B (Coal Mining Concession Work Agreement) to just 2 stages (exploration and production operation) which will be implemented within 6 months following the introduction of the MEMR No. 34/2017. The integration of the IUP license will also apply to the Kontrak Karya (Contract of Work) and Perjanjian Karya Pengusahaan Pertambangan Batubara (Coal Mining Concession Work Agreement).
- With this further simplification in the mining licensing process, it is hoped that more foreign and local investors will start to invest in the mining industry.



# Working Areas for Indirect Utilization of Geothermal Energy

by Eduardy Armandana Eddin



On 18 May 2017, the Minister of Energy and Mineral Resources (“MEMR”) enacted the Ministerial Regulation No. 37 of 2017 regarding Geothermal Working Areas for Indirect Utilization (“Permen ESDM No. 37/2017”). The enactment was deemed necessary to complement the implementation of Article 10, 31, 32 (3), and 85 of Government Regulation No. 7 of 2017 regarding Indirect Utilization of Geothermal Energy (“PP No.7/2017”) and makes further provisions regarding Geothermal Working Areas for Indirect Utilization.

Permen ESDM No. 37/2017 regulates the guidelines for Geothermal Working Areas (“WKP”) for Indirect Utilization. The harnessing of Geothermal energy for Indirect Utilization in the entire territory of Indonesia is achieved with the authority of the Central Government, implemented and coordinated by the MEMR. In the framework of the determination Survey Implementation, the MEMR may conduct a Preliminary Survey or Preliminary Survey and Exploration to estimate the location and presence or absence of geothermal resources. According to Article 6 (1) Permen ESDM No. 37.2017, the Ministry can assign this task to business entities, university or research institutes that have the expertise and ability to conduct a Preliminary Survey or Preliminary Survey and Exploration. Geothermal exploitation activities for Indirect Utilization shall be implemented in a Working Area.

In the case of the determination of Working Area, there is a Work Area Preparation Team undertaking an assessment

and evaluation of geothermal data and information as a basis for assessing the feasibility of the Working Area. Based on the results of the assessment and evaluation produced by the Preparatory Work Area Team or Assignment of Preliminary Surveys and Exploration (“PSPE”), the determination of the Work Area is proposed by the Director General to the Minister. According to Article 12 Permen ESDM No.37/2017 the Work Area is determined by observing the Geothermal system in an area of not more than 200.000 (two hundred thousand) hectares.

The MEMR will determine Geothermal Work Areas, which may be on state land, areas under land right titles, customary communities, territorial waters or forest areas. The MEMR will auction these work areas to businesses and issue a Geothermal License (“IPB”) to the auction winner.

The Geothermal License (IPB) is a license to conduct geothermal exploitation for Indirect Use in a particular Working Area. The MEMR is responsible for regulating and licensing all indirect utilization. In the event that the auction winner wants to return of the Working Area, the application for the return of the entire Work Area must be submitted, enclosing the administrative requirements and technical documents based on article 25 (4) of ESDM Regulation 37/2017, as follows:

- a. Geothermal License (IPB)
- b. Deed of Incorporation of the Business Entity and / or the latest Amendment of Business Entity; and
- c. Taxpayer Identification Number (NPWP)

Furthermore, with the enactment of this Permen ESDM No. 37/2017, the Permen ESDM No. 8/2008 regarding Procedures for the Determination of Mining Geothermal Working Areas is revoked and no longer valid.

# Amendment to Minister of Energy and Mineral Resources Regulation on Recommendation Issuance Procedures for Refined Mineral Export Sales

by Vincent Yap



On 15 May 2017, the Minister of Energy and Mineral Resources (“MEMR”) issued and promulgated MEMR Regulation No. 35 of 2017 on the Amendment to MEMR Regulation No. 6 of 2017 regarding Procedures and Requirements for Recommendation Issuance Procedures for Refined Mineral Export Sales (“MEMR Regulation No. 35/2017”). The amendment aims to perfect the previous regulation.

The MEMR No. 35/2017 amendment deals mainly with the role of the Independent Verifier (“IV”) in the previous regulation.

Pursuant to Article 1 point (17) of MEMR Regulation No. 35/2017, the IV is a state-owned company (locally known as *Badan Usaha Milik Negara* or “BUMN”), including its subsidiaries, which possess ability in project management consulting services and/or industrial engineering for the plan verification as well as physical development of the processing and/or refinery facilities. The IV serves as one of the determining institutions in regard to the issuance of export permits.

The IV will issue the verification results which is one of the determining aspects as to whether the export license owned by a mining company will be extended or not. Such verification is on the infrastructure development of the smelter. In the event that the infrastructure development of the smelter for mineral refinement is below the expected target, that is, 90% per 6 (six) months, it may lead to the revocation of the export permit recommendation.

Moreover, the role of the IV is to supervise and verify which mining companies possessed the export permit before the enactment of MEMR Regulation No. 35/2017. MEMR Regulation No. 35/2017 stipulates a 3 (three) months grace period to comply and adjust with the new procedures and requirements.