

Omnibus Law

Legal Insight

Government's Further Action after Job Creation Act: GR 25/2021, which Impacts Electricity Business

As an implementation of Article 185 of Law No. 11 of 2020 concerning Job Creation (“**Job Creation Act**”) requiring the promulgation of implementing regulations of the Job Creation Act, the Government of Indonesia enacted Government Regulation (“**GR**”) No. 25 of 2021 concerning Implementation in the Energy and Mineral Resources Sector (“**GR 25/2021**”) on 2 February 2021, which also has provisions related to the electricity sector as a further implementation of Law No. 30 of 2009 concerning Electricity, which has been amended by Article 42 of the Job Creation Act (“**Electricity Act**”).

We highlight the major points of GR 25/2021 which may impact current business practice and which existing investors and potential investor need to know.

A. Funds Supporting the Development of Electricity Supply

Article 22 of GR 25/2021 regulates how the Minister of Energy and Mineral Resources (“**MEMR**”) and governors will, to support the development of the electricity supply, provide funds for indigent community groups, the construction of power supply facilities in less-developed regions, the construction of power in remote and contiguous areas, and the construction of rural electricity, and, according to certain considerations, for groups that drive the economy or society, and the development of electricity based on certain considerations.

The funds can be given through the community, consumers, and/or electricity business entities, and sourced from the state budget, regional revenue and expenditure budgets, and/or electricity business entities’ grants, according to the prevailing laws and regulations. We believe that this new requirement will raise questions among the investors and electricity business entities on how the government will approach electricity business entities to provide such funds and whether or not they will be subject to any mandatory obligations relating to such funds.

B. Electricity Supply Business (*Usaha Penyediaan Tenaga Listrik* or “**UPTL**”) for Public Interest

1. Electricity Supply Business Plan (*Rencana Umum Penyediaan Tenaga Listrik* or “**RUPTL**”)

GR 25/2021 substantially changes some requirements relating to RUPTL under MEMR Regulation No. 10 of 2019 concerning Guidelines for Compilation of RUPTL, by providing that:

- a. RUPTL will only be prepared according to National Electricity General Plan (*Rencana Umum Ketenagalistrikan Nasional*/RUKN). This provision leaves a question on the purpose of preparation and the determination of Regional Electricity General Plans (*Rencana Umum Ketenagalistrikan Daerah*/RUKD). Further, RUKN and RUKD will be annually evaluated and updated every 5 years;
- b. the first ratification of a RUPTL must be performed no later simultaneously with the grant of Business Licensing for UPTL for public interest, which means this mechanism currently applies to all kinds of UPTL for public interest. Furthermore, it does not specify the authority that can perform the ratification, but it provides that any change to the RUPTL will be subject to ratification by the MEMR or governor according to their respective competencies; and

- c. the MEMR or governor (according to their respective competencies) may include electricity supply related policies of the Central Government or Regional Government in the RUPTL.

2. Business Area Requirements

GR 25/2021 substantially changes the requirements relating to Business Area under MEMR Regulation No. 28 of 2012 concerning Procedures for Applications for Business Areas for Electricity Supply for Public Interest (as amended by MEMR Regulation No. 07 of 2016). The changes include (a) expanding the criteria that must be considered in determining Business Areas and (b) circumstances that may change the coverage of the Business Area. These changes give wider opportunities for businesses to obtain a business area and give more clarity and transparency on requirements that the businesses need to fulfill in applying for a change of their business area coverage, which will surely give them more certainty.

3. Consumer's Responsibilities

GR 25/2021 sets further types of consumer's responsibilities for losses suffered by holders of Business Licensing for UPTL for public interest and allows the consumer to object to such responsibilities. In case of any objection by the consumer, an electricity investigation will be held in accordance with terms and conditions that will be further regulated by an MEMR regulation.

4. Rights of Holders of Business Licensing for UPTL for Public Interest

In an effort to overcome issues due to overlapping infrastructures, GR 25/2021 provides an additional right for a holder of Business Licensing for UPTL for public interest to cross gas pipes and its infrastructure and forests to maintain the reliability of the electricity supply. In addition, a holder of Business Licensing for UPTL for public interest also needs to pay attention to provisions of GR No. 23 of 2021 concerning Implementation of Forestry that provides requirements relating to installations of electricity generation, electricity transmission, and electricity distribution that involve the use of forest areas.

5. Compensation

GR 25/2021 provides broader requirements for compensation that must be given by a holder of Business Licensing for UPTL for public interest to a holder of rights over land, building, and plants for indirect use of land, building, and plants that results in reduction of economic value of the land, buildings, and plants crossed by the electricity transmission network. GR 25/2021 does not specify whether the electricity transmission network refers only to high-voltage and extra high-voltage power lines as was previously the case in GR No. 14 of 2012 concerning Electricity Supply Business Activities (as amended by GR No. 23 of 2014).

GR 25/2021 provides that the calculation of compensation will be performed by an independent appraiser agency appointed solely by the MEMR and the MEMR will then determine the compensation amount as per the independent appraiser agency's recommendation.

As in MEMR Regulation No. 27 of 2018 concerning Compensation for Land, Buildings, and/or Plants in the Empty Spaces of the Electricity Transmission Network, the compensation must be given to the holder of rights over land, building, and plants in the empty spaces of the electricity transmission network is just once only. It also adds to the Business Licensing holder's obligations in that it must, upon the grant of compensation, perform maintenance of plants in the empty space of the electricity transmission network for compliance with electricity safety.

Requirements relating to (i) guidelines for calculation, (ii) criteria, and (iii) payment of compensation will be further regulated by MEMR regulation. In addition, Article 57 of GR 25/2021 also provides administrative sanctions to be imposed in relation to the buildings and/or plants.

C. UPTL for Personal Interest (Captive Power)

GR 25/2021 provide changes to requirements relating to capacity of electricity generation for UPTL for Personal Interest which were previously set out in MEMR Regulation No. 12 of 2019 concerning Capacity of Electricity Generation for Personal Interest Implemented under Operating Licenses. The changes include, as follows:

- a. Business Licensing;
- b. Fitness for Operation Certificate (*Sertifikat Laik Operasi* or “**SLO**”) requirements; and
- c. sanctions for non-compliance with Business Licensing requirements,

respectively for (i) UPTL for Personal Interest with a total capacity of electricity generation >500kW connected to 1 electrical installation system and (ii) UPTL for Personal Interest with a total capacity of electricity generation ≤500kW connected to 1 electrical installation system. GR 25/2021 provides more detailed SLO requirements (including technical requirements) for UPTL for Personal Interest with a total capacity of electricity generation ≤500kW connected to 1 electrical installation system.

D. Electricity Supporting Service Business (*Usaha Jasa Penunjang Tenaga Listrik* or “UJPTL”)

In addition to various of types of UJPTL under the Electricity Law and MEMR Regulation No. 38 of 2018 concerning Procedures for Accreditation and Certification of Electricity (“**MEMR Reg 38/2018**”), GR 25/2021 provides detailed requirements relating to UJPTL that change the UJPTL related requirements previously set out in GR No. 62 of 2012 concerning UJTPL (“**GR 62/2012**”) and relevant MEMR regulations, with the following substantial changes:

- a. changing the types of UJPTL (including by providing samples of ‘other service businesses that are directly related to electricity supply’ under Art. 16(1).l of Electricity Law);
- b. detailing types of entities categorized as ‘private business entities’ under Art. 16(2) of Electricity Law, that will also include foreign representative offices. GR 25/2021 also adds requirements applicable to foreign representative offices;

- c. expanding the classification of UJPTL by adding new classifications for (i) Consultancy in Electricity Installations, (ii) Construction & Installation of Electricity Installations, (iii) Inspection & Testing of Electricity Installations, (iv) Operation of Electricity Installations, (v) Maintenance of Electricity Installations, (vi) Education & Training, and (vii) Certification of Competence of Electricity Technicians (with sub-classification for new classification of ‘sale of electricity’);
- d. expanding the sub-classifications by:
 - i. adding sub-classifications for classifications of electricity generation and electricity transmission for (a) Consultancy in Electricity Installations, (b) Construction & Installation of Electricity Installations, (c) Inspection & Testing of Electricity Installations, (d) Operation of Electricity Installations, (e) Maintenance of Electricity Installations, and (f) Education & Training; and
 - ii. adding sub-classifications for classification of electricity utilization installations for Certification of Competence of Electricity Technicians;
- e. providing business qualifications depending on the business ability level, and competency of the technicians, which are applicable for (i) Consultancy in Electricity Installations, (ii) Construction & Installation of Electricity Installations, (iii) Inspection & Testing of Electricity Installations, (iv) Operation of Electricity Installations, (v) Maintenance of Electricity Installations, (vi) Education & Training, (vii) Certification of Competence of Electricity Technicians, and (viii) Certification of UJPTL Business Entities. The MEMR has actually regulated qualifications for UJPTL in MEMR Reg 38/2018; and
- f. Certificate of Business Entity (*Sertifikat Badan Usaha* or “**SBU**”) requirements; and
- g. mandatory accreditation requirements after 3 years of operation that are applicable, in particular, to (i) Inspection & Testing of Electricity Installations, (ii) Education & Training, and (iii) Certification of UJPTL Business Entities.

Pursuant to the above, the additional classifications and sub-classifications provide more opportunities for UJPTL business entities.

E. Other Electricity Related Requirements

1. Other Electricity Requirements under GR 25/2021

As the implementation of the provisions of Articles 45(4), Article 44, and Article 49 of the Electricity Act, GR 25/2021 provides more detailed requirements relating to (a) utilization of electricity networks for the purposes of telecommunications, multimedia, and/or informatics, (b) electricity safety and electricity installations (i.e. SLO requirements, Indonesian National Standards (*Standar Nasional Indonesia* (“SNI”)) and safety marks), and (c) Certificates of Competency for Technicians.

GR 25/2021 also provides actions prioritizing domestic products and potential.

2. Sanctions

In addition to sanctions provided in the Electricity Act, GR 25/2021 provides (a) stages in the imposition of each of the administrative sanctions (i.e. written warning, suspension of activity, penalty and/or revocation of the relevant business licensing) (“**Administrative Sanctions**”) and amounts of penalties and maximum penalties applicable for non-compliance with business licensing obligations and requirements under GR 25/2021 (including in relation to UPTL for public interest, UPTL for personal interest, UJPTL, SBU requirements, and SNI).

GR 25/2021 also provides that in the performance of supervision, the MEMR or Governor (according to their respective competencies) may impose administrative sanctions for violation of requirements of the Business Licensing, and if the violation results in casualties/losses to (a) safety, (b) health, (c) the environment, and (d) utilization of resources, the MEMR or governor (according to their respective competencies) may impose administrative sanctions in the forms of temporary suspension or revocation of the Business Licensing without eliminating the need for the offender’s obligations to be fulfilled.

3. Further Implementing Regulations

GR 25/2021, in general, provides that the implementation of electricity related requirements provided in GR 25/2021 will be further regulated by relevant MEMR regulations.

4. Other requirements

In addition to GR 25/2021, investors also need to take a look at:

i. Indonesian Statistics Board (*Badan Pusat Statistik* (“BPS”)) Regulation No. 2 of 2020 concerning Indonesian Business Field Standard Classifications (“KBLI”), which provides changes to KBLI numbers applicable to UPTL for public interest and changes and additions to KBLI numbers applicable to UJPTL, as previously provided in 2017 KBLI¹ ;

ii. Presidential Regulation 10 of 2021 concerning Investment Business Sectors (“PR 10/2021”) that revokes the 2016 Indonesian Investment Negative List² and provides:

a) UPTL for public interest are 100% open for foreign and domestic investment, except for UPTL for <1MW electricity generation that is allocated for cooperatives and micro small, and medium businesses (*usaha mikro, kecil, dan menengah*);

b) UPTL for public interest that can be categorized as ‘Priority Business Fields’ that can be granted fiscal incentives and/or non-fiscal incentives; and

c) limitations applicable to several types of UJPTL.

Please also note that PR 10/2021 also provides limitations for any existing business entity that wishes to make changes to foreign participation under PR 10/2021.

iii. GR 5 of 2021 concerning Implementation of Risk-Based Business Licensing (“GR 5/2021”) that was enacted on 2 February 2021. GR 5/2021 provides:

a) business licensing requirements for UPTL for public interest and UJPTL, which licensing will be granted be based on risk analyses. It is advisable for businesses to also take a look into the risk parameters, risk level, and business licensing requirements for their lines of business under GR 5/2021.

[1] Head of BPS Regulation No. 95 of 2015 concerning KBLI (as amended by Head of BPS Regulation No. 19 of 2017).

[2] Presidential Regulation No. 44 of 2016 concerning of List of Business Fields That Are Closed to Investment and Business Fields That are Conditionally Open for Investment.

- b) similar Administrative Sanctions (including the limitation on penalties) that can be imposed by the MEMR or governor (depending on their respective competencies) on businesses which violate requirements regarding obligations, requirements, and/or standards applicable in electricity sector, and types of actions that are considered to constitute a representative office's non-compliance with the applicable obligations and/or standards, and the amount of penalties that will be imposed for such non-compliance;
- c) the implementing regulations of GR 5/2021 must be enacted within 2 months after the enactment date of GR 5/2021; and
- d) the implementation of risk-based business licensing through the Online Single Submission (OSS) system will commence within 4 months after the enactment date of GR 5/2021.

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