

Omnibus Law

Legal Insight

Job Creation Act: Coal Mine Downstream Businesses are Officially Royalty-Free

The government has enacted Government Regulation No. 25 of 2021 concerning Implementation in the Energy and Mineral Resources Sector (“**GR 25/2021**”), which serves as an implementing regulation to Law No. 11 of 2020 concerning Job Creation (“**Job Creation Act**”). GR 25/2021 includes the provision of tax related benefits to allow mining companies with certain criteria to obtain royalty-free benefits. This provision serves as a facility for the coal mining sector’s businesses engaged in downstream coal activities. It is believed that since downstream coal products require a large investment, the government is now willing to provide a facility to attract businesses to engage more actively in downstream coal activities.

What’s New?

Article 3 of GR 25/2021 stipulates that the holder of a production operation mining business license (*Izin Usaha Pertambangan Operasi Produksi* or “**IUP-OP**”), production operation special mining business license (*Izin Usaha Pertambangan Khusus Operasi Produksi* or “**IUPK-OP**”) or an IUPK as a continuation of operations contract/agreement (“**IUPK Operasi**”) for coal that provides Coal Added Value (*Peningkatan Nilai Tambah Batubara*) within Indonesia can be given certain treatment in the form of a royalty of 0% (zero percent).

It is to be noted, however, the royalty-free benefit will be granted with consideration of energy independence and fulfillment of industry’s need for raw materials. The article further emphasizes that the 0% royalty will only be applicable to the volume of coal used for Coal Added Value activities.

The term Coal Added Value was previously used in Article 102 of Law No. 3 of 2020 concerning Amendment of Law No. 4 of 2009 concerning Mineral and Coal Mining (“**Law 3/2020**”) and its elucidation but was not clearly defined as to whether it includes coal development and coal utilization or only activities included in the coal “development” category.

GR 25/2021 further defines Coal Added Value as coal development and/or utilization activities to improve coal quality with or without changing the physical or chemical properties of the original coal. Now that the definition has been clarified, it can be concluded that the 0% royalty will be granted for coal development activities and also applies to utilization activities (i.e. Coal Fired Steam Power Plant or “**PLTU**”).

In light of the above, we can see that although previously, Law 3/2020 provided that the 0% royalty was granted only for the utilization of Mine Mouth PLTU (*PLTU Mulut Tambang*), now following the enactment of GR 25/2021, the 0% royalty can be granted for PLTU in general.

As enactment of any other regulation, we would see that more detailed implementing regulations are necessary to further stipulate how the above tax related benefit will be implemented. This would include the technical requirements and procedures for obtaining approval from the minister in charge of government affairs in the field of state finance, as also mentioned in the provision.

What does it mean for Businesses?

Under Article 102 and its Elucidation of Law 3/2020, holders of IUP or IUPK on the operation production stages can carry out the development and/or utilization of coal, among others as follows:

Coal Development

- a. coal upgrading;
- b. coal briquetting;
- c. coking;
- d. coal liquefaction;
- e. coal gasification;
- f. coal slurry/coal water mixture;

Coal Utilization

- g. building a private PLTU.

Mining companies are thus being encouraged to conduct domestic development and/or utilization of coal to increase coal commodity value.

It is also important to note that the Job Creation Act has amended several provisions of Law No. 8 of 1983 concerning Value Added Tax on Goods and Services and Sales Tax on Luxury Goods as lastly amended by the Job Creation Act, imposing value added-tax (*Pajak Pertambahan Nilai* or “PPN”) on coal. This amendment includes a provision that coal is now subject to PPN. From a commercial point of view, this imposition of PPN will affect ongoing contracts or agreements between businesses, for example coal fired electricity generation agreements. Businesses may need to revisit their cooperations and arrangements to resolve this additional financial provision.

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