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Guide to Impact on Indonesia's Energy, Resources and Infrastructure Sectors – Licensing, Environmental, Forestry and Construction Reforms

By Dhani Maulana M Pattinggi, Matthew Goerke, Renny Soependi, Paskalia Deviani Ekaputri and Akhmad Sigit Tri Handoyo

Indonesia's 2020 Job Creation Law (**Omnibus Law**) has been heralded for introducing significant reforms in a range of areas, including Indonesia's laws on investment, employment, immigration, environmental standards, business licensing and building permits. In this note we discuss the potential impact on investors in the energy, resources and infrastructure sectors as part of our continuing series of *Omnibus Law Insights*.

The first thing to note about the Omnibus Law is that it has not introduced any fundamental reforms to the energy, resources or infrastructure sectors. Accordingly, each of these sectors will continue to be separately regulated:

- for the mining sector, through IUP/IUPKs and existing contracts of work;
- for the upstream oil and gas sector, through production sharing contracts and co-operation contracts;
- for the power sector, through business licences and power purchase agreements;
- for the geothermal sector, through separate business licences for direct and indirect utilisation of geothermal resources and concession agreements; and
- for the infrastructure sector, through concession agreements and/or business licences issued by the relevant governmental authorities.

However, the Omnibus Law generally seeks to streamline and centralise the licensing processes applicable to each of these sectors.

Other than general labour reforms (further details available [here](#)), the most significant impact of the Omnibus Law on the energy, resources and infrastructure sectors is through the amendments and potential relaxation of the environmental, forestry and construction regulatory requirements.

Mining Sector

In addition to the incentives provided under the recent amendments to the 2009 Mining Law (further details available [here](#)), the Omnibus Law provides that mining companies carrying out coal added-value activities (in the form of coal coking, coal liquefaction, coal gasification, and/or coal slurry/coal water mixture) may be exempt from royalty payments. This new incentive is intended to encourage the development of Indonesia's onshore coal processing sector. Meanwhile, the Omnibus Law expressly states that coal sales are no longer exempt from VAT.

Oil and Gas Sector

Business Licensing¹

In an attempt to simplify licensing requirements in the sector, all upstream and downstream oil and gas companies are now required to obtain a business licence from the Central Government. This is a particularly welcome change for non-integrated downstream sector business players that were previously required to obtain a number of separate business licences for processing, transportation, storage and wholesale trading.

The Omnibus Law further provides that business licensing for the downstream oil and gas sector will be managed through an electronic integrated licensing system managed by the Central Government. The current licensing system is managed through the MEMR² online system and it remains to be seen whether this will now be integrated into the Central Government's online single submission (**OSS**) licensing system.

Unfortunately, the position in respect of the licensing of the upstream oil and gas sector is less clear. Currently, Indonesian upstream oil and gas businesses are implemented through cooperation contracts entered into by the relevant contractor(s) and SKK Migas³ (and this system has not been materially amended by the Omnibus Law). However, due to this contracting

system, limited additional business licences are currently required by upstream oil and gas contractors. As a result, we expect the implementing regulations of the Omnibus Law will need to make clear whether each contractor (or only the relevant operator) is required to obtain a business licence to implement upstream oil and gas sector activities in Indonesia.

Survival of SKK Migas

Some earlier drafts of the Omnibus Law contemplated that SKK Migas would be abolished and replaced with a new state-owned enterprise specifically engaged in the upstream oil and gas sector. While the final version of the Omnibus Law does not include this change, the Indonesian Parliament has since indicated that the abolishment of SKK Migas may be included in a revised Oil and Gas Law, discussions on which have been ongoing for several years. In the meantime, SKK Migas will continue in its existing role.

Power Sector

Business Licensing

Similar to the oil and gas sector, the Omnibus Law aims to simplify the business licensing requirements for the power sector. The Omnibus Law introduces a single business licence that will be issued by the Central Government for the activities of power supply for the public interest, power supply for own interest, and power supporting services (each of which previously required a separate licence).

Notably, the Omnibus Law seeks to limit the authority of the regional governments to issue business licences and approvals in relation to the electricity sector. However, regional governments will retain some licensing and approval authority in accordance with norms, standards, procedures and criteria stipulated by the Central Government. The exact scope of this regional authority is not yet clear (and the provisions of the Omnibus Law are somewhat contradictory on this point). However, we expect that the relevant implementing regulations will provide further clarity on the authority of the regional governments in relation to licensing for the Indonesian power sector.

National Electricity Plan

Under the Omnibus Law, the Central Government will no longer be required to consult with the Indonesian Parliament prior to stipulating the national electricity plan. The Omnibus Law also seeks to eliminate separate regional electricity plans. These reforms are expected to provide the Indonesian Government with greater flexibility to efficiently develop the national electricity plan (and remove any potential inconsistency with regional electricity plans) and should provide greater certainty to investors.

Renewable Energy Electricity Tariffs

The Omnibus Law does not seek to materially reform Indonesia's renewable energy sector and does not

provide any significant new incentives for investment in this sector. While the long-anticipated re-introduction of fixed feed-in tariffs for the Indonesian renewable energy sector has not yet materialised, it continues to be discussed and considered by the Indonesian Government. If fixed feed-in tariffs for the renewable energy sector are re-introduced, this will likely be done through a future government or ministerial regulation.

Geothermal Resources

The Omnibus Law removes the requirement for geothermal power companies to obtain a permit from MMAF⁴ for geothermal resources located within a water conservation area. However, geothermal power companies are still required to obtain a permit from MOEF⁵ for geothermal resources located within a forestry area.

The Omnibus Law also introduces several reforms for the direct utilisation of geothermal resources (ie, for non-electricity generating purposes), including removing the requirement to submit periodic reports and work plans and budgets, and removing all royalty obligations.

Infrastructure Sector

Business Licensing

The business licensing reforms contained throughout the Omnibus Law also apply to the infrastructure sector. In general, this has been achieved by replacing the requirement to obtain several specific licences with a single business licence issued by the Central Government. Under the Omnibus Law:

- for the railway sector, a single business license replaces the previous requirement to obtain separate railway business, railway construction and railway operation licences.
- for the aviation sector, a single business license replaces the previous requirement to obtain separate airport construction, airport operation and other specific airport-related licences.
- for the water sector, utilisation of water resources for business purposes will be subject to a single business licence, while utilisation of water resources for non-business activities (ie, for daily use and community farming) will require a different form of approval.

Notably, the Omnibus Law continues to allow business licences and approvals for the water sector and the railway sector to be issued by the Central Government as well as regional governments but only in accordance with the relevant regional government's authority based on the norms, standards, procedures and criteria determined by the Central Government. The exact scope of this regional authority is not yet clear; however, we expect that the relevant implementing regulations will provide further clarity on the licensing authority of regional governments.

Promotion and Development of Micro and Small-scale Enterprises

In an attempt to empower micro and small-scale enterprises as part of infrastructure projects, the Omnibus Law requires public infrastructure owners and operators to ensure that at least 30 percent of the total commercial and/or promotional area in all public infrastructure is allocated for the promotion and development of micro and small-scale enterprises. Previously, a 30 percent micro and small-scale enterprise prioritisation requirement only applied to toll roads in development (with a minimum of 20 percent applying to toll roads already in operation). This new 30 percent minimum allocation applies to public infrastructure within terminals, airports, ports, railway stations, toll road rest and service areas⁶ and other public infrastructure that may be determined by the Central Government or relevant regional government.

Domestic Maritime Transportation

As part of the general consolidation of authority within the Central Government, the Omnibus Law states that the fixed designated routes for domestic maritime transportation will now be determined solely by the Central Government (and will no longer require the involvement of regional governments or the association of national maritime transportation companies).

Potential Liberalisation of Airport Ownership

As discussed in our note on the impact of the Omnibus Law on foreign investment (available [here](#)), the Omnibus Law requires a new Presidential Regulation (to be known as the Investment Priority List) to be issued which sets out, among other things, the sectors that are open to investment, subject to certain conditions. Since it is not legally permissible for a Presidential Regulation to be inconsistent with a law passed by Indonesia's Parliament (such as the Omnibus Law), the Omnibus Law removes certain foreign ownership restrictions set out in laws previously passed by parliament, thus allowing business sectors to be regulated in the future by the Investment Priority List as a Presidential Regulation.

One example is the Aviation Law, which has been amended by the Omnibus Law to remove the requirement for majority local ownership of airport service businesses. This reform opens up the possibility for the Indonesian Government to increase the maximum foreign ownership of companies engaged in airport service businesses in Indonesia and potentially attract more foreign investors to Indonesian airport projects.

Environmental Reforms

Environmental Licensing

Under the previous regulatory regime, all Indonesian business entities were required to:

- obtain an environmental licence (*izin lingkungan*); and
- depending on the characteristics, capacity and environmental impact of the relevant business activity:
 - obtain an approved environmental impact analysis report (**AMDAL**);
 - obtain an approved environmental management/environmental monitoring report (**UKL-UPL**); or
 - issue an environmental management statement letter (**SPPL**).

Under the Omnibus Law, the requirement to obtain a separate environmental licence (*izin lingkungan*) has been removed, and a separate SPPL is no longer required (as this will be part of the company's business identity number).

Instead, an Indonesian business entity will only be required to:

- obtain an approved AMDAL, in circumstances where the proposed business and/or activities will have a significant impact on the environment⁷; or
- issue a statement of environmental management undertaking confirming the fulfilment of the UKL-UPL study requirements, which will need to be approved by the Central Government.

In addition, the Omnibus Law removes the ability for regional governments to issue various environment-related licences (including waste dumping and B3⁸ waste management approvals), which may now be issued by the Central Government on an integrated basis. Further, regional governments will no longer have the authority to determine the list of activities that are subject to a UKL-UPL, as that will be regulated solely by the Central Government.

These licensing reforms are intended to provide greater certainty to investors, reduce the time required to complete the environmental approval process, and ensure that comprehensive environmental approvals are only required where the proposed activities are likely to have a significant environmental impact.

Environment Guarantee Fund

The Omnibus Law continues to require business licence holders to deposit guarantee funds for the purposes of environmental restoration. However, now only the Central Government is authorised to appoint the government bank to receive the guarantee funds and to determine which third party can utilise those funds for environmental restoration. To date, this statutory environment guarantee fund requirement has not been implemented in practice due to a lack of implementing regulations. However, there is now some prospect that these obligations will finally be implemented and enforced by the Indonesian

Government through implementing regulations of the Omnibus Law.

Streamlined AMDAL Approvals

One of the more controversial reforms from the Omnibus Law is the removal of the right of environmental observers (such as environmental NGOs and environmental experts) and *indirectly* impacted members of the public to participate in the AMDAL preparation process. This reform significantly reduces the number of people that have the right to provide input or responses during the AMDAL preparation process, or to file objections to AMDAL documents and approvals. Now, only people that are *directly* affected by the proposed business and activities can participate in the AMDAL preparation process, and make objections.

Clearly, extensive public participation in the AMDAL process will continue to be important for all major energy, resources and infrastructure projects, and project developers should continue to ensure that all those directly affected are appropriately involved in this process. Investors should welcome these changes as limiting the scope for third parties to engage in frivolous or vexatious actions to interfere with or delay the AMDAL process.

Strict Liability

The Environmental Law adopted a strict liability principle whereby any party whose activities involve the use, production and/or management of B3 waste and/or pose a serious threat to the environment will be subject to strict liability for any occurrence of loss, *without any requirement to prove or substantiate fault*. As a result, fault did not need to be substantiated by a plaintiff when seeking compensation for (i) activities relating to the use, production and/or management of B3 waste and/or (ii) activities posing a serious threat to the environment.

The Omnibus Law removes the phrase “without any requirement to prove or substantiate fault” from the relevant strict liability clause and replaces it with “where loss arises from the relevant party’s business and/or activities”. It appears that the intent of the Omnibus Law is to remove the strict liability principle and instead require substantiation of the element of fault in any environmental lawsuit. However, it is worth noting that the Environmental Law (as amended by the Omnibus Law) retains the words “strict liability” in the relevant provisions. Notwithstanding the seemingly clear intention of the Omnibus Law, some ambiguity therefore remains.

Forestry Reforms

Business Licensing

To simplify the forestry licensing arrangements, anyone engaging in forestry-related business activities such as logging must now obtain a business licence from the Central Government. This single licence will

replace the various forestry business licences that currently exist. Forestry businesses will also no longer be required to maintain a forestry performance guarantee fund.

Borrow and Use Permits

Energy, resources and infrastructure companies seeking to carry out business activities within a protected or production forestry area previously had to obtain a borrow and use permit (*izin pinjam pakai*) from the relevant regulatory authority.

Under the Omnibus Law, borrow and use permits are replaced by borrow and use arrangements (*pinjam pakai*), to be entered into with the Central Government. The exact form of these arrangements is not yet clear. However, in the past, obtaining borrow and use permits from regional governments was a notoriously protracted and burdensome process. Transferring this authority to the Central Government (and potentially integrating it into the OSS system) is a significant reform that should be welcomed by Indonesian energy, resources and infrastructure players. Again, until further regulations are issued, it remains to be seen how the new borrow and use arrangements will be implemented in practice.

Central Government Authority

Under the Omnibus Law, the Central Government is now authorised to stipulate the forestry areas that must be protected and maintained (including in regions where national strategic projects are located), in accordance with the physical and geographic conditions of the relevant rivershed area and/or island. As a result, forest areas no longer have to constitute at least 30% of the rivershed area or island. Instead, this will now be assessed on a case-by-case basis.

In another change, the Central Government no longer has to obtain parliamentary approval to grant forestry borrow and use arrangements which have a significant impact, broad coverage and strategic value.

These reforms give the Central Government greater flexibility to manage and control forestry areas in Indonesia, including to accommodate energy, resources and infrastructure project developments.

Construction Industry Reforms

Construction Industry Licensing

Consistent with its overall objectives, the Omnibus Law also aims to simplify the business licensing requirements for the construction industry. All construction companies in Indonesia (whether established as Indonesian companies or representative offices) are now required to obtain a single business license from the Central Government that serves as a replacement for, among other things, the separate construction services business licence (IUJK) and construction representative office (CRO) licence. The Omnibus Law also removes the

requirement for construction companies to register their experience or obtain an experience registration certificate, although the Central Government could re-introduce these requirements in future implementing regulations.

Notably, the Omnibus Law shifts licensing authority from the MOPW⁹ directly to the Central Government itself. While the significance of this change is not yet clear, it is hoped that the implementing regulations will clarify that licensing for the construction industry will become integrated with the Central Government's OSS system.

Unfortunately, the rumoured significant reforms to simplify the requirements to obtain a Building Construction Permit (*Izin Mendirikan Bangunan* or IMB) have not made it into the final version of the Omnibus Law. We therefore expect that the IMB requirements for the energy, resources and infrastructure sectors will remain largely the same, noting that the IMB reforms which are included in the Omnibus Law are largely limited to apartment and housing construction.

Procurement of Construction Services

The Omnibus Law essentially revokes the procurement process (tender/selection/appointment) for appointing construction companies to handle projects financed with State funds. As a result, these procurement procedures will now only apply to the appointment of construction companies that are affiliates of the building owner for public services projects. This reform will provide greater flexibility in the appointment of construction companies for projects financed with State funds, and may well lead to more direct appointments of state-owned construction companies.

Notwithstanding these reforms, the Central Government continues to be responsible for the procurement system for Indonesian construction companies, meaning that more detailed procurement procedures could be set out in future implementing regulations.

Foreign Construction Workers

The Omnibus Law removes all the requirements (and corresponding sanctions) in relation to the use of foreign construction workers. As a result, the employment of foreign construction workers in Indonesia should no longer be subject to any additional restrictions or requirements, such that these workers can be employed in the same way as other foreign workers in Indonesia. However, new sanctions will apply to construction experts (local or foreign) that fail to comply with the specified performance standards.

Further details on the labour reforms under the Omnibus Law (including the employment of foreign workers) can be found [here](#).



Dhani Maulana M Pattinggi
Partner
Jakarta

dhani.maulana@hbtlaw.com



Matthew Goerke
Senior International Counsel
Jakarta

matthew.goerke@hbtlaw.com

¹ After the Omnibus Law was passed by Indonesia's parliament on 5 October 2020, several versions of the law circulated online and, at the time of publication, the final version had yet to be formally issued. One of these versions states that BPH Migas will now be required to obtain MEMR approval for the purpose of determining and stipulating the tariff for gas transportation through pipelines, which may cause further delays to the tariff determination process. However, media reports later suggested that this provision would not be included in the final version of the Omnibus Law.

² MEMR is the Indonesian Minister/Ministry of Energy and Mineral Resources.

³ SKK Migas is the Indonesian Upstream Oil and Gas Regulatory Special Task Force (*Satuan Kerja Khusus Pelaksana Kegiatan Usaha Hulu Minyak dan Gas Bumi*).

⁴ MMAF is the Indonesian Minister/Ministry of Maritime Affairs and Fisheries.

⁵ MOEF is the Indonesian Minister/Ministry of Environment and Forestry.

⁶ The prioritisation requirement for toll road rest and service areas applies to micro and small-scale enterprises as well as medium-scale enterprises and includes toll roads already in operation as well as those in development.

⁷ Where the AMDAL is issued by a regional government, it is not entirely clear whether the AMDAL would also need to be approved by the Central Government. We expect further clarity on this issue from the relevant implementing regulations.

⁸ B3 is the Indonesian abbreviation for hazardous and toxic materials (*bahan berbahaya dan beracun*).

⁹ MOPW is the Indonesian Minister/Ministry of Public Works and Housing.