

LEGAL CERTAINTY FOR INVESTORS ON INVESTMENT IN THE FIELD OF GEOTHERMAL ENERGY ONLINE BUSINESS

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ABSTRACT

This research discusses about how the role of the state to provide the legal certainty for investor in the field of geothermal energy. As one of the potential energy derived from the natural resources in Indonesia, geothermal should be developed for the welfare of the Indonesian people. In accordance with the mandate of the 1945 Constitution in its preamble stated that the purpose of the state is to improve the welfare of the community. Government guarantees for investors of practice in the field of geothermal energy. Legislation issued by the government to provide legal certainty for investors in capital plant in Indonesia such as: a. Law No. 23 of 2003 about Geothermal b. Law No. 25 of 2007 about Investment c. Law No. 30 of 2007 about Energy Indonesia has a wealth of energy resources. One of the energy resources owned by Indonesia is geothermal energy. However, in the development and utilization of geothermal energy, the implementations of energy sources are yet to be optimized to the maximum by the government. Keywords : legal certainty, investment, investor, geothermal energy.

Penelitian ini membahas tentang bagaimana peran negara untuk memberikan kepastian hukum bagi investor di bidang energi panas bumi. Sebagai salah satu energi potensial yang berasal dari sumber daya alam di Indonesia, panas bumi harus dikembangkan untuk kesejahteraan masyarakat Indonesia. Sesuai dengan amanat UUD 1945 dalam pembukaannya menyatakan bahwa tujuan negara adalah untuk meningkatkan kesejahteraan masyarakat. jaminan pemerintah bagi investor praktek di bidang energi panas bumi. Legislasinya yang dikeluarkan oleh pemerintah untuk memberikan kepastian hukum bagi investor di pabrik modal di Indonesia seperti: a. Undang-Undang Nomor 23 Tahun 2003 tentang Panas Bumi b. Undang-Undang Nomor 25 Tahun 2007 tentang Penanaman Modal c. Undang-Undang Nomor 30 Tahun 2007 tentang Energi Indonesia memiliki kekayaan sumber daya energi. Salah satu sumber energi yang dimiliki oleh Indonesia adalah energi panas bumi. Namun, dalam pengembangan dan pemanfaatan energi panas bumi, implementasi sumber energi yang belum dioptimalkan secara maksimal oleh pemerintah. Kata kunci: kepastian hukum, investasi, investor, energi panas bumi.

Key word: Geothermal Energy

1. Introduction.

Geothermal energy is one of the energy possessed by the Republic of Indonesia and is used to meet national energy needs, especially in the electricity sector. Currently, according to the World Bank, geothermal is the only technology that is capable to replace the coal for generating electricity. Geothermal energy has an advantage compared other energy that is not like oil, geothermal energy produced cannot be packaged and exported. Energy can only be used by the surrounding community. Therefore, geothermal energy development project is of interest to local governments considering the amount of benefits for the local area.

2. Legal Certainty For Investors On Investment In The Field Of Geothermal Energy

a. The Role of The State in Provide Legal Certainty for Investors in The Field of Geothermal Energy.

To advance the economy of the state, foreign investment arrangement must be set clearly by the government. Legal certainty provided to investors can increase the interest for entrepreneurs to invest in Indonesia. Investment in the energy sector, to achieve legal certainty for investor government issued Law and its implementing regulations in order to convince investors to invest in Indonesia. These regulations are:

- 1) Law No. 30 of 2007 about Energy

Article 20 paragraph 1 letter d declare that the supply and use of energy is done by means of diversification, conservation and intensification of energy sources and the energy.

Preparation of energy from new and renewable sources of energy is done by a regular order of business entities and individuals by the government or provided with appropriate incentives to its authority for a period of time to achieve its economic value.

- 2) Government Regulation No. 45 Year 2008 on Guidelines for Granting Incentives and Investment in Regional Ease

Article 3, paragraph 1 of Government Regulation No. 45 Year 2008 states that incentives can take the form:

- a. Reduction, relief or tax exemption area;
- b. Reduction, relief or release retributions;
- c. Stimulant funding and / or
- d. Capital assistance.

Article 3, paragraph 1 of Government Regulation No. 45 Year 2008 states that the provision of the facilities can take the form:

- 1) Provision of data and information investment opportunities;
- 2) Provision of facilities and infrastructure;
- 3) The provision of land or location;
- 4) Provision of technical assistance and / or
- 5) The acceleration grant of permissions.

Article 5 of Government Regulation no. 45 Year 2008 states that the grant of incentives and facilities provided to the investors that at least meet one of the following criteria:

- 1) Contribute to the increase in people's income;
- 2) Absorb a lot. local workforce;
- 3) Using mostly local resources;
- 4) Contribute to the improvement of public services;
- 5) Contribute to the increase in Gross Regional Domestic Product;
- 6) Visionary and sustainable environment;
- 7) Including high priority scale;
- 8) Including infrastructure development;

- 9) Perform technology transfer;
- 10) Do industry pioneer;
- 11) Located in a remote, underdeveloped regions, or border areas;
- 12) Carrying out a research, development and innovation;
- 13) Partnered with micro, small, medium, or cooperative; or
- 14) Industry uses of capital goods, machinery, or equipment produced in the country

b. Government Regulation no. 70 Year 2009 about Energy Conservation.

Article 17 of Government Regulation No. 70 of 2009 states that the government and / or local governments provide convenience to the users of energy and manufacturers of energy-saving equipment in the country to implement energy conservation to obtain:

- 1) Access to information about energy-saving technologies and specifications, and how to / step energy saving, and
- 2) Consultancy services on energy saving measures.

Article 18 of Government Regulation No. 70 of 2009 states that the government and / or local governments give incentives to:

- 1) Energy users are using more energy than or equal to 6,000 tons of oil equivalent per year as referred to in Article 12 paragraph (2), and
- 2) Manufacturers of energy-saving equipment in the country, which successfully implement energy conservation in a particulars period.

Article 20 paragraph 1 of Government Regulation No. 70 of 2009 states that the incentive for energy users as referred to in Article 18 letter a can be:

- 1) Tax facilities for energy-efficient appliances;

- 2) Giving reduction, relief, and local tax exemptions for energy-efficient appliances;
- 3) Import duty facility for energy-efficient appliances;
- 4) Low interest rates to fund energy conservation investments in accordance with the provisions of laws and regulations; and / or
- 5) Energy audits in partnership funded by the Government.

While Article 20 paragraph 2 explains that the incentive for manufacturers of energy-saving equipment as referred to in Article 18 letter b can be:

- 1) Tax facilities for components / parts and raw materials used to produce energy-efficient appliances;
- 2) Granting reductions, waivers, and local tax exemptions for components / parts and raw materials used to produce energy-efficient appliances;
- 3) Import duty facility for components / parts and raw materials that would be used to produce energy-saving equipment, and / or
- 4) Low interest rates to fund investments in order to produce energy-saving appliances in accordance with the provisions of the legislation.

c. Government Regulation No. 69 Year 2010 on Procedures for Granting and Utilization of Incentives Regional Tax Collection and Levies.

Based on Government Regulation No. 69 Year 2010, in accordance with Article 2 explains that the provision and utilization of the tax incentives and levies implemented based on merit, fairness, and rationality adjusted to the

responsibilities, needs, and characteristics and the objective conditions of the area.

Based on Government Regulation No. 69 Year 2010, the incentives given to the Implementing Agencies Withholding Tax and levies proportionately paid to:

- a. Officials and employees of the Implementing Agencies and Levies Withholding Tax in accordance with their respective responsibilities;
- b. The regional head and deputy head in charge of the financial management area;
- c. Secretary regional coordinator of the local financial management;
- d. Land and building tax collector at the village / sub-district and district, village chief / headman or other designation and district heads, and other personnel assigned by the Implementing Agency Tax Withholding,
- e. Other parties who assist Implementing Agency Tax collectors and Retribution.

Article 6 of Government Regulation Incentive amount is set at 3% to 5% for the provincial and district / city, of plan receipts taxes and levies in respect of the financial year for each kind of taxes and levies.

d. Factors Hindering for Investors in the Field of Geothermal Energy

Indonesia facing with the fact that the dependence on fossil fuels as a primary energy source will be unsustainable in the long term for the provision of national energy needs. With today's production rate and assumed there was no discovery of new oil fields, the oil reserves will be depleted within the next 12 years.¹

¹ <http://www.fkdpm.org/publikasi/kata-mereka/248-penataan-energi-migas-sekarang-atau-tidak-sama-sekali.html> accessed on February 2014

Alternative energy save the greatest potential for the survival of the national energy is geothermal energy. The potential of geothermal energy overall Indonesia was 29.038 MW which is 40% of the world's geothermal energy potential of making Indonesia as the country with the largest geothermal energy potential of the world.²

There are at least seven advantage that if geothermal energy is an option chosen to be developed to meet the needs of the national electrical energy forward.³

First, geothermal energy is a renewable energy contained in the Earth Indonesia itself, so it does not need to be purchased and not have to worry about the exhaustion of energy reserves. Second, the impact of carbon emissions on the environment caused minimal given the level of carbon emission is very low. Third, PLTP does not require fossil fuels to generate electricity, so no need to buy the fluctuating price of fossil energy. Fourth, the utilization of geothermal energy can take place on an ongoing basis and in a very long period of hundreds of years.

Fifth, the scale geothermal power plants are very flexible, ranging from small scale to large scale until the village consisting of 15 plants in the region that can supply up to 725 MW of electrical energy. Sixth, PLTP requires initial capital and land are smaller than wind power and solar, although greater than fossil fuel power plants and hydro power. Seventh, compared to nuclear power plants, the risk is low because of the geothermal power plants do not cause harmful effects in case of radiation leak.

When viewed from the total potential is there, the utilization of geothermal energy in Indonesia is still low at around 3%. Utilization is also still limited to Geothermal Power Plant (PLTP) to generate 807 MWe of electrical

energy which is still largely concentrated in Java 97%.⁴

The factors hindering geothermal investments in Indonesia so far as follows

1) Overlapping Invitation

Some types of regulations on geothermal investments in Indonesia tend to intersect between one and the other. Regulations on investment set by the Law No.25 of 2007 on Investment, but in practice the law only regulates in general and Business Sectors to invest in particular, the Government issued a regulation in accordance with the business areas and there are also regulations issued contrary to other business sectors.

Geothermal Investment in Indonesia is constrained by Act No. 41 of 1999 on forestry, in Article 38 in the Law states that mining business should not be done in the area of Forest Preserve. Here there is a difference of perception in the sense of "mining". In Law No. 27 of 2003 on Geothermal, Renewable energy development include into the category of mining activities.

2) Lack of Incentives for Investment in Investor In Geothermal Field

Investing is one way to lift the country's economy due to the influx of foreign capital, the domestic capital can be used for other public purposes. Therefore, the government should be serious in promoting the economic potential that Indonesia so as to attract investors to invest in Indonesia. One of Indonesia's economic potential is energy resources including geothermal.

As alternative energy, the value of the investment required for the development of geothermal energy is very large. The investment value for the geothermal field up to a trillion dollars for a geothermal power plant projects. In the construction of a geothermal power plant, investors not only spend capital for exploration, but also construction. In geothermal development, capital is the most important

²<http://www.thejakartapost.com/news/2011/01/26/geothermal-a-green-solution.html> accessed on February 2014

³ Setiawan, Sigit, "ENERGI PANAS BUMI DALAM KERANGKA MP3EI :Analisis terhadap Prospek, Kendala, dan Dukungan Kebijakan", 2012, page. 10

⁴ Wahyuningsih, Rina, "*Potensi dan Wilayah Kerja Pertambangan Panas Bumi di Indonesia*", 2005, page. 3

aspect. These costs are allocated in the process of surveying the exploration, drilling wells, land acquisition, production to maintenance facilities.

To that end, the government should provide incentives to investors so that the geothermal financial burden borne becomes lighter. One of the things that become obstacles for investors in the geothermal field is the Minister of Finance Regulation No. 77/PMK01/2011 the underwriting guidelines for the implementation feasibility Electricity Company. In this rule guarantees that the investment by the government in effect since resistant construction, whereas the investor wants guarantee is valid from the exploration phase.

e. The Lack of Certainty about Internal Rate of Return / IRR.

Current conditions are PT. State Electricity Company is the sole purchaser of geothermal power, and this is because the government has not determined the Internal Rate of Return on which the market price of geothermal power.

By the determines of IRR, the investors will be more confident to invest in geothermal field due to the presence of IRR, geothermal power will be able to compete with electricity from other energy sources such as coal.

f. Geothermal Energy Resources in Region of Conservation Forests

Most of the geothermal area is in protected forests and conservation areas that are under the authority of the Ministry of Forestry, not under the Ministry of Energy and Mineral Resources, causing dualism licensing. The condition licensing procedures overlaps between the two ministries is to make developers are faced with the uncertainty of.

3. CONCLUSION

Government guarantees for investors of practice in the field of geothermal energy. Legislation issued by the government to provide legal certainty for investors in capital plant in Indonesia such as: a. Law No. 23 of 2003 about Geothermal; b. Law No. 30 of 2007 about Energy; c. Law No. 25 of 2007 about Investment; d. Law No. 41 about 1999 about Forestry; e. Government

Regulation No. 45 Year 2008 on Guidelines for Granting Incentives and Investment in Regional Ease; f. Government Regulation no. 70 Year 2009 about Energy Conservation; g. Government Regulation No. 69 Year 2010 on Procedures for Granting and Utilization of Incentives Regional Tax Collection and Levies. Indonesia has a wealth of energy resources. One of the energy resources owned by Indonesia is geothermal energy. However, in the development and utilization of geothermal energy, the implementations of energy sources are yet to be optimized to the maximum by the government. Factors that inhibit the development of geothermal energy are:

1. Laws Overlapping Invitation
2. Lack of Incentives for Investment in Investor In Geothermal Field
3. The Lack of Certainty about Internal Rate of Return / IRR
4. Geothermal Energy Resources in Region of Conservation Forests

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