New Water Regulations in Indonesia
Our Firm
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Bahar & Partners was founded in October 1992 and since its establishment, has been focused on providing legal services in corporate law in Indonesia. Currently, we provide legal services in the fields of investment and natural resources, infrastructure, securities, banking and finance, governance, business competitions and commercial disputes, information and communication technologies (ICT), and aviation & maritime.

Our philosophy “Pursuit of Excellence” drives us to give excellent service to all of our valuable clients. It’s manifested in the excellence of our people recruited from the best graduates with continuous training and improvement. The excellence of our people and resources will bring out the excellence of our work products and services, which embraces the giving of excellent solutions in the excellence of timing and quality. Currently we have 25 lawyers all qualified practicing in Indonesian laws.
Chambers Asia Pacific – 2015 Edition – Wahyuni Bahar is mentioned as an experienced and seasoned capital markets lawyer, respected by his peers. He is a multi-specialist, and in addition to securities transactions also handles M&A and banking and finance deals.

IFLR 1000 – 2013 Edition – Wahyuni Bahar is mentioned as the Leading Lawyer and Mutiara Rengganis is mentioned as the Rising Star.

The Asian Law Profiles – 2013 Edition - Mutiara Rengganis is mentioned as one of the most highly acclaimed legal experts in the Asia-Pacific region.

Background

Law No. 7/2004 on Water Resources

- GR No. 42/2008 on Water Resources Utilization ("GR 42/2008");
- Governmental Regulation ("GR") No. 16/2005 on the Drinking Water Supply System ("GR 16/2005");
- GR No. 20/2005 on Irrigation;
- GR No. 43/2008 on Ground Water;
- GR No. 37/2010 on Dam;
- GR No. 38/2010 on River;
- GR No. 73/2013 on Swamp;
- GR No. 69/2014 on the Right of Water Utilization

Law No. 11/1974 on Water

- GR No. 121/2015 on Water Resources Utilization ("PP SDA");
- GR No. 122/2015 on the Drinking Water Supply System ("PP SPAM")

MK Decision 85/2013

New Law on Water?
New Regulations on Water Sector

GR No. 121/2015 on Water Resources Utilization (“PP SDA”)

Regulates on:
source and water potential on earth, both above and below soil surface, which can be used for (a) raw material in producing drinking water and (b) supporting material in the production of non-drinking water products

GR No. 122/2015 on the Drinking Water Supply System (“PP SPAM”)

Regulates on:
Utilization of water resources for drinking water purposes delivered to customers through PIPELINE SYSTEM to fulfill daily basic needs of the people.

UPSTREAM

DOWNSTREAM
## PP SDA – (1) Framework

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### 6 Basic Principles of Water Resources Utilization

- a. Shall not disturb, set aside, and abolish the people’s right over water;
- b. State’s protection of the people’s right over water;
- c. Preservation of environment as one of the human rights;
- d. Monitoring and control by the State over water are absolute;
- e. **Priority of water utilization shall be given to state-owned enterprises (BUMN) or regional-owned enterprises (BUMD);**
- f. Water utilization license or groundwater utilization license can be granted to private party with strict requirements and tight control, and subject to the fulfillment of the above principles and relevant water availability.
PP SDA – (2) Licensing

**Who can utilize water resources?**
- State Owned Enterprise/"BUMN";
- Regional Owned Enterprise/ "BUMD";
- Village Owned Enterprise;
- Private sector;
- Cooperatives;
- Individual person; or
- Cooperation between legal entity

**How a party can utilize water resources?**

By obtaining license as follows:
- Water Resources Utilization Permit,
- Ground Water Utilization Permit

**Who is the authorized party to issue related permit?**

Central or local government in accordance with its authority

**How the permit can be obtained?**

In accordance with the order of priority as described below and as long as there is any water available (water allocation)

**ORDER OF PRIORITY IN THE ISSUANCE OF PERMIT**
(BASED ON WATER UTILIZATION ACTIVITIES)

a. Fulfillment of daily basic needs for local community that requires large amounts of water
b. Fulfillment of daily basic needs which alters natural condition of water resources
c. Small agriculture outside the existing irrigation system
d. Fulfillment of daily basic needs through drinking water supply system (SPAM)
e. Non business activity for public purposes
f. Water resources utilization by BUMN/BUMD
g. Water resources utilization by private entity
Any existing water utilization permit, both Water Resources Utilization Permit and Ground Water Utilization Permit, shall remain valid until the expiration of such license.
PP SPAM
PP SPAM – (1) Framework

FRAMEWORK

Chapter 1: General provisions
Chapter 2: Types of Drinking Water Supply System (SPAM)
Chapter 3: SPAM provisions
Chapter 4: Prevention of water pollution
Chapter 5: Authority and responsibility
Chapter 6: The implementation of SPAM
Chapter 7: Rights & obligations of customers
Chapter 8: Tariff, retribution and fee
Chapter 9: Development & monitoring
Chapter 10: Transitional provisions
Chapter 11: Closing provision

TYPES OF DRINKING WATER SUPPLY SYSTEM (SPAM)

- Pipeline network, including unit of raw water, unit of production, unit of distribution, and unit of services;
- Non-pipeline network, including shallow wells, well pumps, rain water tank, water terminals, and wellspring catcher building

SPAM PROVISION

- Development of Drinking Water Supply System, including new development, increasing of capacity, and expansion of services;
- Management of Drinking Water Supply System, including operation & maintenance, services, development of human resources, development of institutional

PREVENTION OF WATER POLLUTION

Implementation of sanitation:
- Waste Water Management System
- Waste Management
PP SPAM – (2) SPAM Activities

AUTHORITY & RESPONSIBILITY

- The implementation of Drinking Water Supply System shall be the responsibility of the central or local government according to its respective authority;
- To carry out such authority, central or local government establishes or appoints BUMN/BUMD;
- In case there is any area not covered by BUMN/BUMD services, central or local government may establish Technical Implementation Unit / Local Technical Implementation Unit (“UPT/UPTD”);

SPAM ACTIVITIES

Can be done by:
- BUMN/BUMD (which can cooperate with private sector when there is a lack of funding)
- UPT/UPTD
- Local Community
- Business Entity, in the context of SPAM provision for interest

SPAM ACTIVITIES BY LOCAL COMMUNITY

- In case there is still area not covered by existing BUMN/BUMD or UPT/UPTD, any local community may carry out SPAM activities for their own daily basic need
- There is a reporting obligation to the local government for above activity
- If above activity requires large amount of water or ones that may alter natural conditions of water resources, the relevant local community must obtain permit
- In undertaking SPAM activities, the local community must preserve the water resources
PP SPAM – (3) SPAM Activities by Business Entity for Own-Interest

(1) Business Entity may conduct SPAM activities to fulfill its own-interest in area which is not yet covered by BUMN/BUMD or UPT/UPTD, provided that it doesn’t serve general public.

(2) Business Entity shall obtain a license to conduct SPAM activities for own-interest.

(3) Tariff shall be determined by central or local government according to its respective authority by considering the ability to pay of customers.

(4) Central or local government (as relevant) will monitor quality, quantity and continuity of services provided to customers.

(5) In conducting above activity, Business Entity shall preserve water resources.
PP SPAM – (4) Cooperation between BUMN/BUMD and Private Sector

**COOPERATION BETWEEN BUMN/BUMD AND PRIVATE SECTOR**

- In the case where BUMN/BUMD is *not able to fund* the piped water supply activity within or outside its service area, such BUMN/BUMD can cooperate with private sector provided that: (1) Water Utilization Permit has to be owned by the BUMN/BUMD; and (2) such cooperation shall prioritize low income community.

- Cooperation between BUMN/BUMD and private sector can be done in the form of:
  1. **Investment in SPAM construction and development of raw water unit and production unit**
  2. **Investment in distribution unit, which shall be further operated and managed by BUMN/BUMD**
  3. **Investment in operation and maintenance technology for an efficient and effective SPAM management by mechanism of performance-based contract**

- Procurement of private sector in cooperation with BUMN/BUMD shall be done in accordance with prevailing regulations.

- For such cooperation, central and/or local government can give its support according to its respective authority.

**TARIFF, RETRIBUTION AND CONTRIBUTION**

- Customers shall pay tariff for water supply services provided by BUMN/BUMD or UPT/UPTD.

- The determination of tariff shall consider:
  1. affordability and fairness,
  2. quality of service,
  3. cost recovery,
  4. water use efficiency,
  5. transparency and accountability,
  6. raw water protection.

- Components that are taken into account in the calculation of drinking water tariff including:
  1. operation and maintenance costs,
  2. depreciation/amortization,
  3. loan interest,
  4. other costs; and/or
  5. reasonable profit.

- Tariff shall consists of several group of customers with a structured progressive tariff, which shall serve as cross-subsidy between different group of customers and accommodate low-income households in fulfilling its daily basic needs.

- Water tariff for services provided by BUMN/BUMD shall be proposed by the board of directors to the board of trustees. Once approved, it shall be submitted to the relevant Minister of Public Works/ regional head according to its respective authority.
PP SPAM – (5) Customers Rights and Obligations

Customers Rights:
- Receive water supply services that met the requirements of: quality, quantity and continuity according to applicable standards
- Be informed on: (1) amount and structure of tariff in the bill and (2) special incident that potentially may cause changes in quality, quantity and continuity of services

Customers Obligations:
- Pay the bill for water supply services
- Save any water consumption
- To also maintain any SPAM infrastructure
- Follow the procedures and guidelines issued by the SPAM operator

(1) Any SPAM provision by business entity for own-interest which has been conducted prior to the issuance of this regulation shall be adjusted so as to conform with this regulation before the expiry of its Water Utilization Permit.

(2) Any SPAM provision through the mechanism of cooperation between local government or BUMN/BUMD with private sector which has been conducted prior to the issuance of this regulation shall remain valid until the expiry of the relevant cooperation agreement.
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