

Mediation: The Cost Effective and Efficient Way of Resolving Commercial Disputes



IFCCI together with MKK organized a Forum Group Discussion entitled "*Mediation: The Cost Effective and Efficient Way of Resolving Commercial Disputes*" on March 1, 2016 at the **Mercantile Athletic Club**, WTC.

Mediation is an alternate dispute resolution that is confidential in nature and is growing in popularity. In a court dispute, the parties are now required to go through mediation with either a private mediator or judge-mediator appointed by the court before trial according to Regulation of the Supreme Court No. 1 of 2016. The decision resulting from mediation is not issued by the mediator; the mediator simply assists the parties in reaching a settlement among themselves. In mediation, there is no agreement until both parties agree on a settlement. A well-trained and experienced mediator is thus required who can create a conducive environment because ultimately, the parties in dispute are the ones who are the decision-makers.

Thank you to **Ms. Jolene Goh**, Senior Business Development Executive at Singapore International Mediation Centre (SIMC), **Mr. Raymond Lee**, Senior Advisor at the Indonesian Mediation Center (*Pusat Mediasi Nasional*, PMN), and also **Mr. Made Barata** from Mochtar Karuwin Komar Law Firm as the moderator of this event.

Legal News

Geothermal power: the green crucible

By the MKK geothermal team

Geothermal projects are categorized as ‘sustainable’ or ‘green’ energy projects, and a number of international institutions (including UN institutions) encourage them because they have a less significant impact on the environment than ‘brown’ energy projects, such as coal power plants. However, this does not mean that geothermal projects are risk-free or 100 percent environmentally-friendly. In fact, for ‘green’ projects as well as ‘brown’ ones, if the business operations are categorized as activities, which are deemed to have a significant impact on the environment, they need to have an **AMDAL** and Environmental License. *The project owner must keep in mind that there are numerous environmental implications that must be carefully considered and monitored when building and operating a geothermal power plant.*

Though generally not associated with environmental damage, noise and air pollution is a major concern for power projects. Coal is a major offender since coal-fired power plants need to be constantly fed; this means that access roads must be built, and there is a constant stream of trucks rumbling by and unloading coal. For geothermal power, since there is no resource being burned or trucked in to burn, on the surface it would seem that noise pollution is not an issue.

However, there are noise issues: the air or water cooler can be very loud. Silencers are fitted to minimize the noise, but the constant whine of escaping subterranean gases can be very loud. Drilling operations are noisy by their very nature and seismic surveys and blasting (although this only occurs during exploration phase) are noisemakers as well. Access roads must still be built and there will be occasional traffic.

General laws governing environmental business activities

- Law 39/2009 - Environmental Law
- PP 27/2012 - Environmental License
- PP 101/2014 - Hazardous Toxic Materials and Hazardous Toxic Waste Management
- Permen 16/2012 - Guidelines to Prepare Environmental Documents

- Permen 17/2012 - Guidelines on Community Participation in Process to Prepare Environmental Impact Assessment (AMDAL) and Environmental License
- Permen 8/2013 - Procedure for Evaluation and Assessment of Environmental Documents and Issuance of Environmental License.
- Permen 5/2012 - Type of Business/Activities required to have Environmental Impact Assessment (AMDAL)
- Permen 2/2013 - Guidelines to Implement Administrative Sanctions for Environmental Matters
- Others - Quality standards (*baku mutu*)

Coal-fired plants are major culprits in terms of air quality since coal dust and smoke are inevitable when transporting and then burning tons of coal on a daily basis. Geothermal energy seems at first glance to be free of such dangers, but there are concerns for air quality as well. Emissions are released during geothermal drilling, as gases that have been trapped under the earth for millions of years are released into the atmosphere. Many of these gases are toxic, such as boron and arsenic, and nearby crops will be damaged or destroyed. Road construction, sump pit construction and the drilling of injection wells also stand to adversely affect air quality.

It is difficult to anticipate the environmental issues that a particular project will encounter since each power plant is unique in terms of interconnection, type of turbine, subsurface resources, geology/chemistry of the manifestation, flow rate, temperature, etc. etc., however, whatever the configuration of the plant will be, the impact on the local ecosystem of a geothermal project will be significant. Surveying and drilling will change the use of the land and will have a significant impact on the surrounding wildlife. Drilling only occurs during the exploration phases, but the well pads take up a considerable area and will occupy the land for the duration of the project (30 years plus). Building of access roads will necessitate further use of land for the duration of the project as well. Land is also required for a control building, cooling tower, fire station and so on. The power island does not take up a significant amount of land, but it will occupy such land for the duration of the project.

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Environmental consulting firms can assist in making an estimate as to how biodiversity would be affected, and the effect is usually significant since most geothermal projects tend to be in forested areas. Drilling may lead to erosion of topsoil, and different soil horizons could be compacted with a negative impact on vegetation and loss of some species.

Sump pits are used to treat toxic sludge, and their presence on the site is a continual hazard. During the course of drilling and exploitation, geothermal vapors and fluids are released into the atmosphere and soil. Oil, filters, scrap metal and other materials and garbage are often strewn around the site during the exploration phase. Any wildlife coming into contact with toxic materials would obviously be affected, and the end result could be contamination and migration of wildlife away from the affected areas. Geothermal areas should ideally be fenced off to prevent this from happening.

Water management: the way forward

In terms of minimizing negative environmental impact, I would opine that management and manipulation of water is the most important component. Almost every type of power production requires water. For geothermal power production, steam is used to turn the turbine, and then is cooled and re-injected into the ground while some evaporates and is blown off during operations. Water in general is an essential component to keeping a site safe: not only does it cool the turbine and the pipes but it can be used for dust control, construction (making concrete) and drilling.

Water will have to be trucked in or taken from groundwater. In any case, large quantities will be needed in most projects. Coolers for the plant can be air-cooled or water-cooled. Air-cooled towers are less expensive but also less effective. Water-cooled towers need refilling since during the course of cooling much is lost in steam. A considerable amount of power is required to bring water to the site and to pump it into and out of the system.

If geothermal fluids were to enter the ground water table, it would be disastrous for the ecosystem. Surface runoff into the sea is also a danger. Drilling can create new paths for geothermal fluids which could potentially rise from the ground and enter groundwater. Although measures can be taken to minimize these risks, well blowouts can occur that can result in burst pipes or well heads. Overflows in sump pits are another danger to the ecosystem since such spills can seep into the soil.

Recent studies have been carried out to formulate a hybrid system of air/water cooling to capture the best attributes of both: an efficient system which gives the desired results but which requires a minimum amount of water. The refinement of this technique could greatly increase the efficiency of some geothermal power projects: imagine how much energy could be saved if energy did not need to be wasted trucking in water, pumping it into the cooler as well as storing it, disposing of it, etc. Power plant efficiency could be greatly increased if water management could be improved, and the ensuing effect on the bottom line could be significant. Subsequently, the overall viability of geothermal projects would be enhanced, and local members of the community could rest assured that the environment would be safe because water is truly the key to safe and profitable operations. *It is the dynamic living link between the environment and the power plant itself. Focusing on the manipulation of water rather than viewing it simply as a cost could reap great dividends.*

Conclusion

From the above discussion, it is clear that sound and air pollution, the danger of toxic waste spills, the use of land, the effects on biodiversity and the control of waste water are all issues in the operation of geothermal 'green' technology that must be carefully monitored. According to the prevailing regulations in Indonesia, if a company's environmental license is at risk of being revoked, the company's business license can be revoked as well. It is thus essential that management understands the prevailing standards and regulations with regard to environmental licensing and, given the complexity of the above discussion and the many environmental challenges facing geothermal operators, this is no small task.

We have noted a variety of threats to the environment in the form of land use, air pollution, noise pollution and waste water, yet in the green crucible of geothermal power, there is also a glimmer of opportunity via effective water management.

Legal News

Update on the photovoltaic solar power industry

By the MKK Solar Team

Pursuant to Investment Law No. 25/2007, foreign investment must be in the form of a limited liability company (foreign investment company - PT PMAs) incorporated in Indonesia. The level of foreign ownership depends on the sector and the activity engaged in, and the list of industries and activities that are open and closed changes from time to time. There is a high possibility that this year, the government of Indonesia will issue a new regulation relating to the negative investment list containing new permitted levels of foreign ownership. At present, foreign ownership may come to 95 percent of a power generation project which is greater than 10MW, except in the case of public-private partnerships (PPP) for which 100 percent foreign ownership is allowed.

The government of Indonesia has committed itself to increasing the use of renewable energy through a series of international accords (*the Manila Declaration, Addis Ababa Accord, Paris Agreement*, among others); however, the Indonesian Association of Solar Panel Producers (“**APAMSI**”) brought a suit before the Supreme Court to revoke MEMR Reg. no. 17/2013 (**‘Reg 17’**), regarding *Power Purchase by PLN of Photovoltaic Power Plants* on the grounds that solar power projects with no local components were being approved by PLN. PLN’s prevailing feed-in tariff scheme favors producers who opt for locally-made panels with a preferential feed-in tariff, but the association asked the Supreme Court to go a step further by completely removing the possibility of using imported photovoltaic panels.

As a result of the Supreme Court decision to revoke **Reg 17**, all current solar power projects using foreign-made panels are currently on hold. Since foreign funding is typically predicated on using foreign-made panels, this has put a stop to many future projects as well. Even though the Supreme Court in its decision has requested MEMR to revoke **Reg 17**, to date still there has been no replacement of such regulation.

Notwithstanding the foregoing, there are positive signs in the industry: it has been widely reported in the media that the government is mulling over creating a new utility, which would be independent of PLN and which would focus exclusively on approving renewable energy projects. This new Renewable Utility would not answer to PLN and would have access to its own funding.

In addition, the recent 5MW photovoltaic project in Kupang is a good sign that the industry is moving forward. The project was carried out between state-owned PT Len industry as the project owner and PLN as the off-taker. Even though the size of the project is admittedly very small, hopefully it will be the pilot project that will serve as the trail-blazer for a wave of many such solar projects to come using the same PPP model.

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