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Summary of Changes in the Indonesian Mining Law

Overview

Law No.4 of 2009 regarding Mineral and Coal Mining (the Mining Law) has been a legal basis and a guideline for mining management in Indonesia. In its implementation, the Mining Law has been submitted seven times for judicial review to the Constitutional Court (Mahkamah Konstitusi "**MK**"). However, only four requests were granted. In addition, the presence of Article 14 paragraph (1) of Law No. 23 of 2014 regarding Regional Government (UU Pemda) which states that "the administration of government affairs in the field of forestry, maritime affairs, as well as energy and mineral resources between Central and Regional/Provincial Governments, has created new uncertainties in the implementation of mineral and coal mining in the regions. Aside from that, the Mining Law has not yet resolved legal issues related to licensing, processing and/or refining, protection for the affected community, and sanctions. Therefore, on 12 May 2020, the House of Representative (Dewan Perwakilan Rakyat "**DPR**") passed the Bill of the Mining Law. As of 10 June 2020, this Mining Bill was signed by President Joko Widodo and passed into the New Mining Law (Law no. 3 of 2020). This Legal Memo is intended to outline the changes found in the new law.

Main Changes	Minerba Law	New Mining Law
Centralization of Authority	proportionately under the control of the Central Government **(Government)** and Provincial Governments and Regency Governments **(Local Governments)** based on their relevant jurisdiction.	under the control of the **Central Government**.

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New Licensing	Types of licenses for mining activities: 1. Mining Business License (Izin Usaha Pertambangan or "IUP"); 2. Community Mining License (Izin Pertambangan Rakyat or "IPR"); 3. Special Mining Business License (Izin Usaha Pertambangan Khusus or "IUPK").	New additional licenses: 1. IUPK for the Continuation of Operation of Contract of Work (Kontrak Karya or "COW"))/Coal Contract of Work (Perjanjian Karya Pengusahaan Pertambangan Batubara or "CCOW"); 2. Authorization Letter for Rock Mining (Surat Izin Penambangan Batuan or "SIPB"); 3. Assignment License (Izin Penugasan) for radioactive minerals mining activities; 4. Transportation and Sales License (Izin Pengangkutan dan Penjualan); 5. IUP for Sales (Izin Usaha Pertambangan untuk Penjualan).
Transfer of Shares	explicitly prohibited from transferring to other parties, with the exception of the transfer of an IUP or IUPK to an affiliate in which the IUP or IUPK holder owns at least 51% of the shares	allowed to transfer to other parties, with the approval of the Minister of Energy and Mineral Resources.
Conversion of KK and PKP2B to become Operation Continuance IUPK	KK and PKP2B can be converted into an Operation Production IUPK (Government Regulation No.23 of 2010).	KK and PKP2B are guaranteed to get the extension to become Operation Continuance IUPK with terms and conditions.

The Mining Management	Mining activities include general investigations, explorations, feasibility studies, construction, mining, processing and refining, transportation and sales, and post-mining activities.	IUP or IUPK holders are required to continue performing exploration activities, including through the setting aside of an exploration budget. IUP-OP or IUPK-OP holders are also required to set aside a "mineral and coal reserve security fund" (*dana ketahanan cadangan mineral dan batubara*) for new reserve discovery activities. IUP or IUPK holders are also obligated to carry out reclamation and post-mining activities.

We discuss each of the changes below in more detail.

A. Introduction of New Mining Law

The New Mining Law has introduced changes including centralization of authority to grant mining business licenses, new licensing rules, conversion of Contract of Work (Kontrak Karya "**KK**") and Coal Contract of Work (Perjanjian Karya Pengusahaan Pertambangan Batubara "**PKP2B**,"), transfer of Shares and implementation of reclamation and post-mining operations for Mining Business License (Izin Usaha Pertambangan "**IUP**") or Special Mining Business License (Izin Usaha Pertambangan Khusus "**IUPK**"), and downstream industry development.

Under the New Law, mineral and coal mining management is largely under the control of the Central Government. Previously, the Mining Law assigned the authority to regulate and supervise the mining sector in Indonesia proportionally to the Central Government (Government), Provincial Governments and District Governments (Local Governments) based on their relevant jurisdiction.

Having said that, the New Law still leaves some roles to be held by Provincial Governments, which are to determine the Mining Area (Wilayah Pertambangan or "**WP**"), and to issue the Rock Mining License (Surat Izin Penambangan Batuan **"SIPB"**) and the Community Mining License (Izin Pertambangan Rakyat **"IPR"**) through delegation from the Government. For Instance, the involvement of Local Governments will not occur if the Government disagrees. According to the New Law, the authority of Local Government to manage certain aspects of

the mining sector (except issuing new mining licenses) will remain for six months from the promulgation of the Mining Bill.

B. Licensing

A company that wishes to engage in a mining business is required to obtain Business Identification Numbers (Nomor Induk Berusaha "**NIB**"), Standard Certificates (Sertifikasi Standar) and/or licenses (Izin). In accordance with the Mining Law, there are three types of licenses for mining activities, namely IUP, IPR, and IUPK. Minister of Energy and Mineral Resources ("**MEMR**") Regulation No. 7 of 2020 regarding Procedures for the Granting of Areas, Licensing and Reporting of Mineral and Coal Mining Business Activities further stipulates the types of business licences for mineral and coal mining, as follows:

a. IUP Exploration;
b. IUPK Exploration;
c. IUP Production Operation ("**IUPOP**");
d. IUPK Production Operation ("**IUPKOP**");
e. IUPOP specifically for processing and/or refining;
f. IUPOP specifically for transportation and sales; and
g. Mining Service Business License (*Izin Usaha Jasa Pertambangan* "**IUJP**").

Licenses that are provided under the New Law are as follows:

a. IUP
b. IUPK
c. Special Mining Business License for the Continuance of Contract Operation (IUPK sebagai Kelanjutan Operasi Kontrak/Perjanjian or Operation Continuance IUPK);
d. Community Mining License (Izin Pertambangan Rakyat or "**IPR**");
e. Rock Mining License (Surat Izin Penambangan Batuan or "**SIPB**"),
f. Assignment License (Izin Penugasan);
g. Transportation and Sales Permit (Izin Pengangkutan dan Penjualan);
h. Mining Service Business License (Izin Usaha Jasa Pertambangan or "**IUJP**"); and
i. Mining Business License for Sales (Izin Usaha Pertambangan untuk Penjualan)

As compared to the Mining Law, there are a couple of missing licenses from the original licenses that are not listed in the New Law, such as a temporary license for transportation and sales given to the Exploration IUP to sell the commodities found during the exploration stage, and the IUPOP for Processing and Refining. However, IUP, IUPK, IPR, IUPOP for transportation and sales, IUPOP for sales, and IUJP will remain valid; even they shall be adjusted to become business licenses within two years after the promulgation of the Mining Bill.

C. Transfer of Shares and IUP/IUPK

One of the most common obstacles in granting licenses is the transfer of IUP and IUPK. Initially, in accordance with the Minerba Law, IUP or IUPK holders are prohibited from transferring their IUP or IUPK to other parties. On the other hand, the New Mining Law allows IUP or IUPK holders to transfer their IUP or IUPK and their shares to other parties with the approval of the MEMR. This extension only applies to IUP or IUPK holders that:

a. have completed their exploration activities as evidenced by the availability of data on the relevant resources and reserves; and
b. have fulfilled all administrative, technical and financial requirements.

Approval from the MEMR is required for the transfer of IUP or IUPK and their shares. IUP or IUPK holders are prohibited from granting security over their IUP and IUPK, including their mining commodities, to other parties. Further details on the implementation of this regulation will be stipulated in a Government Regulation. The New Mining Law also no longer obligates the discovery of two prospective mining areas as a prerequisite for the transfer of shares on the Indonesian stock exchange as regulated in the Mining Law.

D. Extension of Contract of Work and IUP/IUPK

According to the New Mining Law, KK and PKP2B can be extended to become Operation Continuance IUPK with linked terms and conditions:

a. KK or PKP2B that has not been extended is entitled to obtaining a two-time extension guarantee in the form of Operation Continuance IUPK (conversion), for up to 10 years period each, after such KK or PKP2B expires; and
b. KK or PKP2B that has never been extended is guaranteed to obtain a one-time extension guarantee in the form of Operation Continuance IUPK (conversion), for up to 10 years period, after the first extension of such KK or PKP2B expires.

The above provisions must take into account efforts to increase state revenue in the form of re-determination of tax and non-tax state revenue. The area granted for the Operation Continuance IUPK will be based on the approved contract area development plan or an agreement that has been approved by the MEMR. Such the area will also be considered as WIUPK for operation production. Furthermore, KK and PKP2B holders can apply for additional areas outside the contract area to the MEMR to support their activities. In order to obtain an Operation Continuance IUPK, a KK or PKP2B holder must submit its conversion application at the soonest within 5 years and at the latest by a year prior to the expiration of its KK or PKP2B. MEMR can reject the application if, based on the MEMR's evaluation, the KK or PKP2B holder does not show good performance.

The New Mining Law also introduces incentives for IUP or IUPK holders that are integrated with metal processing and/or refining facilities or coal development and/or utilization activities, among others, a 30-year valid permit, which is extendable for ten years for each extension after fulfilling certain requirements. Meanwhile, non-integrated mining permits are capped at 20 years with two-time extensions. Further, the New Law allows mining businesses to continue exporting raw commodities for a period of 3 years provided that they are developing or have developed refining facilities.

E. Management in Mining Business Activities

Based on the New Mining Law, IUP or IUPK holders are required to prioritize the utilization of local labor, goods, and services in the country, including:

a. to organize community Development and Empowerment program.
b. to fund for the implementation of the Community Development and Empowerment program, the minimum amount of which is determined by the Minister.

The program mentioned above is an attempt to improve the ability of the community, both individually and collectively, so that their life turns better. In preparation to organize Community Development and Empowerment program, IUP or IUPK holders shall consult with the MEMR, Local Government and the community.

The New Law also allows IUP or IUPK holders to continue performing exploration activities, including the preparation of exploration budgets. IUPOP or IUPKOP holders are also required to set aside mineral and coal reserve security funds (dana ketahanan cadangan mineral dan batubara) for new reserve discovery activities.

The New Mining Law also requires IUP or IUPK holders to implement reclamation and post-mining obligations as follows:

a. to ensure a balance between land disturbance and land reclamation; and
b. to carry out reclamation and post-mining activities up to 100% completion rate prior to relinquishing mining areas (for WIUP/ WIUPK).

Under the New Law, IUP or IUPK holders are obligated to hand over their land that has been reclaimed and/ or post-mined to the entitled party with the MEMR's approval. IUP or IUPK holders who do not implement these obligations are subject to prison sentences of up to 5 years and fines of up to Rp10 billion. IUP or IUPK holders may also be charged in cash penalties related to the funds required to carry out the reclamation and post-mining activities.

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