

HIGHLIGHTS OF AMENDMENT TO INDONESIA MINING LAW

With recent developments in the mining business in Indonesia, many stakeholders in mining believed that it was urgent to amend Law No. 4 of 2009 concerning Mineral and Coal Mining (“Mining Law”). On June 2020, the Government of Indonesia promulgated Law No. 3 of 2020 concerning Amendment to the Mining Law (“Law 3/2020”), amending several provisions of the previous Mining Law. This Law 3/2020 can be seen as the government’s effort to provide answers to the challenges in Indonesia’s mining industry in, amongst others, mining business licensing, mining areas, processing and refining activities, and divestment obligation. Another matter which has concerned Indonesia’s mining industry in past years is how the Government of Indonesia will provide certainty for the continuation of the operations of holders of Contracts of Work and Coal Contracts of Work, as the older form of mining rights in Indonesia.



What’s new in the Regulation?

At first glance, the Law 3/2020 has more detailed provisions on amongst others the following:

1. Change of Authority in Mineral and Coal Mining

Previously the Mining Law and its implementing regulations, including other regulations on the respective competencies of the Central Government and Regional Governments, stipulated a distribution of competency between the Central Government and Regional Governments (Governors or Regents). For instance, previously the issuance of new mining business licenses would come under the authority of the Minister of Energy and Mineral Resources (MEMR) or the Governor, depending on the location of the mining area. This is no longer the case in Law 3/2020. The change of authority can be seen in Law 3/2020, under some of the provisions below:

- a) The control of Mineral and Coal by the state shall be implemented by the Central Government in accordance with this Law 3/2020 (Article 4, paragraph 2);
- b) Mining businesses shall be operated based on Business Licensing from the Central Government (Article 35, paragraph 1);
- c) Mining Business License Areas for non-metallic minerals shall be granted to business entities, cooperatives, or individual businesses by way of an application for the area to the Minister (Article 54);

- d) Mining Business License Areas for rocks shall be granted to business entities, cooperatives, or individual businesses by way of an application for the area to the Minister (Article 57).

The above provisions emphasizes how the Central Government now intends to play a bigger role in the mining industry in Indonesia.

This shift can be seen as the Government’s proposed solution in handling the mining business issues of long and complicated bureaucracy in processing business licenses related to mining activities. This centralization also reflects to the congruence of Law 3/2020 with the spirit of the Omnibus Law, which is still being discussed in the Indonesian parliament.

2. Forms of Mining Business License

Law 3/2020 introduces the concept of a Business License (*Perizinan Berusaha*), divided into several forms of mining business license. Aside from the previous mining licenses provided for in the Mining Law, Law 3/2020 mentions several new forms of license:

- a) Special Mining Business License as Continuation of Contract/Agreement Operations (*Izin Usaha Pertambangan Khusus sebagai Kelanjutan Operasi Kontrak/Perjanjian*);
- b) Mining Business License for Sales (*Izin Usaha Pertambangan untuk Penjualan*);
- c) Transport and Sales License (*Izin Pengangkutan dan Penjualan*)

- d) Rock Mining License Letter (*Surat Izin Penambangan Batuan – SIPB*); and
- e) Assignment License (*Izin Penugasan*).

Law 3/2020 no longer mentions the following licenses: (i) Special Production Operation Mining Business License for Processing and/or Refining (*Izin Usaha Pertambangan Operasi Produksi Khusus Untuk Pengolahan dan/atau Pemurnian*) and (ii) Special Production Operation Mining Business License for Transport and/or Sales (*Izin Usaha Pertambangan Operasi Produksi Khusus Untuk Pengangkutan dan/atau Penjualan*), which were previously provided for in the Mining Law and its implementing regulations.

Other than the elucidation of Assignment License, which is addressed to the mining of radioactive minerals, Law 3/2020 does not include explanations for the remaining new forms of license. Further detailed elaboration on the above is expected to be provided in new implementing regulations.

3. Minimum Area for Exploration Mining Activities

The Law 3/2020 does not stipulate any minimum area for exploration activities for Metallic Minerals Exploration or Non-Metallic Minerals Exploration. Previously the Mining Law stipulated a minimum of 5,000 (five thousand) hectares for exploration areas under Metallic Minerals Mining Business License Areas and a minimum of 500 (five hundred) hectares under Non-Metallic Minerals Mining Business License Areas.

The discontinuance of the minimum areas for exploration activities can be seen as efforts by the Government to encourage mining businesses to engage in exploration activities more in order to discover new potential mining areas in Indonesia.

4. Continuation Operation to Contract of Work and Coal Contract of Work

The Mining Law previously mentioned that existing Contracts of Work (CoW) and Coal Contracts of Work (CCoW) must be adjusted in accordance with the provisions under the Mining Law, including amongst others the conversion of CoW and CCoW into a Special Mining Business License (*Izin Usaha Pertambangan Khusus*). In the past, there were challenges in this conversion process with regard to the period and size of area for which an IUPK converted from a CoW or CCoW would be granted as the provisions of the Mining Law and its implementing regulations did not provide clear guarantees on the IUPK area and period to be granted for continuation of operation.

In contrast Law 3/2020 includes provisions giving certainty to holders of CoW and CCoW on continuation of their CoW and CCoW. Under this new law, CoW and CCoW holders are guaranteed an extension in the form of a Special Mining Business License as Continuation of Contract/Agreement Operations (*Izin Usaha Pertambangan Khusus sebagai Kelanjutan Operasi Kontrak/Perjanjian*). Another possible assurance that Law 3/2020 provides is that such a license can be granted for the entire area on approval by the Minister as a Special Mining Business License Area (*Wilayah Izin Usaha Pertambangan Khusus – WIUPK*) for the Production Operation activities stage.

5. Transfers of Mining Licenses

The Mining Law prohibited holders of mining business licenses from transferring their licenses to another party, but the implementing regulations then allowed a mining license to be transferred to an affiliate of the license holder.

Under Law 3/2020, the transfer of an IUP and/or IUPK is allowed with an approval from the Minister of Energy and Mineral Resources. The transfer would also be subject to the fulfillment of requirements that the holder of the mining license has at least completed the exploration activities as evidenced by data on reserves and has fulfilled administrative, technical and financial requirements to be further provided in a government regulation.

6. Security over Mining Commodities

Law 3/2020 includes a provision that the holder of a mining license is prohibited from using its Mining Business License (IUP) or Special Mining Business License (IUPK), including mining commodities, as security for other parties.

The inclusion of this provision will affect how mining businesses obtain financial facilities for the purpose of development of their mining operations.

Conclusion

From what we have elaborated above, the major highlight in Law 3/2020 would be the change of authority such that the central government intends to play a major role in the mining industry going forward. This would be in line with the spirit of the Omnibus Law now being prepared for issuance, which in general is intended to have significant impact on the business environment in Indonesia.

We also note a number of provisions in Law 3/2020 which provide more clarity on issues that have been for a matter of concern for Indonesia's mining business industry in past years. This would specifically affect the holders of CoW and CCoW, which now have clarity on how they can continue their mining business in Indonesia.

However, as with many newly promulgated regulations in Indonesia, definitive implementing regulations for the Law 3/2020 will be important for obtaining clarity and legal certainty.

*The article above was prepared by **Maurice Maulana Situmorang** (Partner), **Akbar Bayu Adisono Putro** (Senior Associate), **Carlos William Rettobjan** (Associate), and **Ramadhito Alif Bagaskara** (Associate).*

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