

## Road to Indonesia's Recentralized Mining System: Suspension on Issuance of New Licenses

As mandated in the recently enacted Law No. 3 Year 2020 regarding the Amendment of Law No. 4 Year 2009 regarding Mining of Minerals and Coal ("**Mining Law Amendment**"), Indonesia's mining system is presently undergoing a recentralization reform. The issuance of mining business licenses predominantly falls within the authority of the central government.



To ensure a smooth transition, Article 173C of the Mining Law Amendment provides that the authority of the local government based on the previous mining law would remain valid for 6 (six) months after the Mining Law Amendment comes into force on 10 June 2020 or until the issuance of its implementing regulations. The Minister of Energy and Mineral Resources and the local government shall not issue any new licenses during this period of transition.

To further emphasize the ongoing efforts in materializing the desired centralized system, the acting Directorate General of Minerals and Coal (Mr Rida Mulyana) issued 2 (two) letters, which are Letter No. 742/30.01/DJB/2020 dated 18 June 2020 and Letter No. 809/30.01/DJB/2020 dated 9 July 2020. The aforesaid letters firmly reiterate that the local government (i.e. the governor) cannot issue new licenses. Consequently, new applications submitted to obtain licenses would not be processed.

Nevertheless, this transition would not disrupt the continuation of the present investments and mining activities. The letters underline that the local government could still process applications relating to the existing licenses submitted by business actors, including:

- a. conversion of the Mining Business License (*Izin Usaha Pertambangan*/**"IUP"**) Exploration to IUP Operation Production;
- b. extension of the duration of an existing license that falls within the governor's authority, such as IUP Operation Production specific for transport and sales;



- c. adjustment of an existing license due to change of investment status; or
- d. approval and recommendation relating to the exercise of guidance and supervision of mining business activities (e.g. approval of annual work plan and budget and approval of Chief Mine Officer and Deputy Chief Mine Officer).

In parallel, the central government, local government and ministries are making necessary adjustments to several licensing schemes. Among others, governors shall handover IUP Exploration, IUP Operation Production, Community Mining License (*Izin Pertambangan Rakyat/IPR*), IUP Operation Production specific for transportation and sales, IUP Operation Production for sales, and Mining Services Business License (*Izin Usaha Jasa Pertambangan/IUJP*) that were issued under their authorities to the Minister of Energy and Mineral Resources to be updated within 2 (two) years after the enactment of the Mining Law Amendment. Aside from that, the IUP Production specific for processing and refinery (held by smelter businesses) would be adjusted to the Industrial Business License issued under the authority of the Ministry of Industry.

Lack of adherence (i.e. unlawful issuance of new licenses during the transitional period), however insignificant, could accumulate and worsen the existing issue of overlapping of licenses in Indonesia. In this regard, Indonesia's alleged "*failure to resolve the overlapping licenses and boundary issues*" was previously invoked as a ground by foreign investor Indian Metals & Ferro Alloys Limited to claim a substantive breach of the Indonesia-India Bilateral Investment Treaty before the Permanent Court of Arbitration<sup>1</sup>. While this claim was rejected last year on 29 March 2019, it certainly raised urgency for a quick reform that we are seeing today. Hence, cooperation between all levels of government is critical to implement the centralized mining system in Indonesia.

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<sup>1</sup>PCA Case No. 2015-40 (29 March 2019).



**Author:**  
**Narada Kumara**  
Partner

Practice Group  
Environment, Energy,  
and Natural Resources



**Co-author:**  
**Naila Sjarif**  
Associate

Practice Group  
Environment, Energy,  
and Natural Resources