

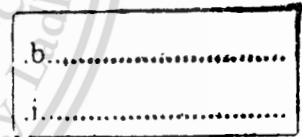
**THE FUTURE OF INDONESIAN MINING ACTIVITIES AFTER THE
IMPLEMENTATION OF THE LAW NUMBER 4 OF 2009
CONCERNING MINERAL AND COAL MINING
(THE NEW MINING REGULATION)**



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Thesis Title The Future of Indonesian Mining Activities after the Implementation of the Law Number 4 of 2009 Concerning Mineral and Coal Mining (The New Mining Regulation)

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ABSTRACT

In the early of 2009, Indonesia was officially instituted the Law Nr. 4 of 2009 Concerning Minerals and Coal Mining. This new mining law carried out some principles changes in the world mining industry in Indonesia. The objectives of this research are to provide an overview of existing mining regulation in Indonesia, to analyze the contents of the policy due to comprehensively describe the regulation in force in Indonesian mining today, as well as figuring out the prospect of this industry in the future. This research is also emphasizing the factors that the stakeholders must concern to maintain the economic growth generated by the mining investment activities towards the era of sustainable mining in Indonesia.

Based on a SWOT analysis, it is found that the strengths of the new mining law are the enactment of mining licensing system, decentralization of mining authority between the central and local government, emphasizing the role of parliament, accommodating the interests of domestic industry development, and the obligation of environmental concern. Conversely, weaknesses of this policy are the permission to use public infrastructures for mining purpose, mining license in respect with administration boundaries only, unregulated public participation mechanism, and the articles contradiction. Moreover, the opportunities of this policy are the strong desire from the government, encouragement from industrials and professionals, the perception of mining as an “agent of change”, the improvement of world economic performance after the 2007 global economic crisis, and also the escalation of minerals and coal domestic market capacity. Finally, the new mining regulation facing threats in term of the lack of the government’s human and financial resources, overlapping of different regulations, and differences in perception regarding community participation and social justice in the context of social level.

After the implementation of this new mining regulation, furthermore, both the minerals and coal domestic industry will grow significantly. This is because the requirement to process minerals domestically for the minerals companies, as well as the enforcement of the domestic market obligation for coal companies. In addition, the environmental and social problems seem to insist a greater attention from stakeholders who engage in mining activities due to maintain the economic growth generated by the mining investments in the long run.

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First and foremost I offer my sincerest gratitude to my supervisors, Prof. Dr. Jan C. Bongaerts, who has supported me throughout my thesis for the useful comments, remarks and engagement through the learning process of this master thesis and to Prof. Dr. Dr. h.c. mult. Carsten Drebenstedt for spending time reading this thesis and providing useful suggestions about this thesis. I am also thankful to Jiangxue Liu for all her helps to write this thesis and assistance to coordinate my IMRE colloquium.

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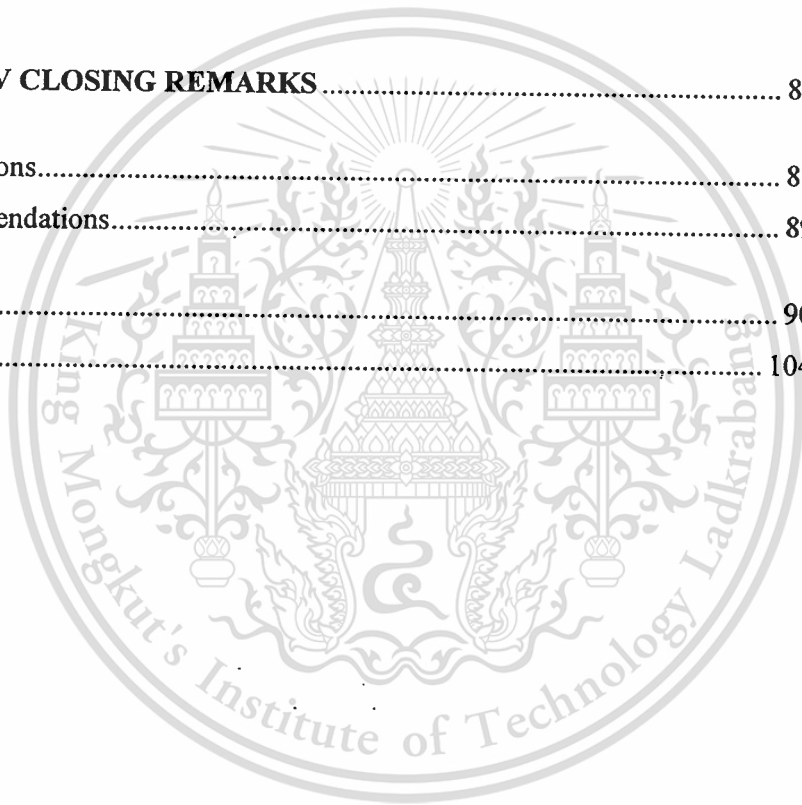
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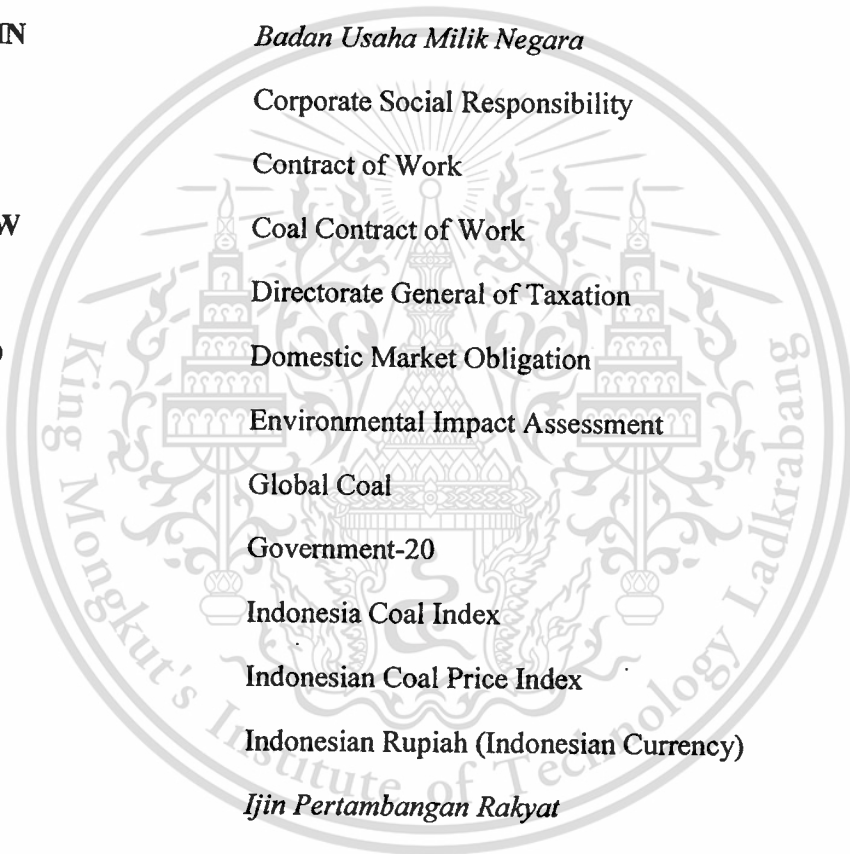
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LIST OF ABBREVIATIONS



AMDAL	<i>Analisis Mengenai Dampak Lingkungan</i> (Environmental Impact Assessment)
AML	Artisanal Mining License
ARI	Acute Respiratory Infections
BJ	Barlow Jonker
BUMN	<i>Badan Usaha Milik Negara</i>
CSR	Corporate Social Responsibility
CoW	Contract of Work
CCoW	Coal Contract of Work
DGT	Directorate General of Taxation
DMO	Domestic Market Obligation
EIA	Environmental Impact Assessment
GC	Global Coal
G-20	Government-20
ICI	Indonesia Coal Index
ICPR	Indonesian Coal Price Index
IDR	Indonesian Rupiah (Indonesian Currency)
IPR	<i>Ijin Pertambangan Rakyat</i>
IUP	<i>Ijin Usaha Pertambangan</i>
IUPK	<i>Ijin Usaha Pertambangan Khusus</i>
JORC	Join Ore Reserve Committee
KP	<i>Kuasa Pertambangan</i>
LED	Local Economic Development

MA	Mining Authority
ML	Mining License
MoEMR	Ministry of Energy and Mineral Resources
MW	Megawatt
NGOs	Non-Government Organizations
NPWP	<i>Nomor Pokok Wajib Pajak</i> (Taxpayer Identification Number)
Prp	<i>Peraturan Pemerintah Pengganti Undang-Undang</i> (Government Regulation in Lieu of Law)
PT	<i>Perseroan Terbatas</i> (Limited Liability Company)
PT...Tbk	<i>Perseroan Terbatas Terbuka</i> (Open Limited Liability Company)
RI	Republic of Indonesia
SML	Special Mining License
SOEs	State Owned Enterprises
SWOT	Strengths, Weaknesses, Opportunities and Threats
UKL	<i>Upaya Pengelolaan Lingkungan</i> (Environmental Management)
UPL	<i>Upaya Pemantauan Lingkungan</i> (Environmental Monitoring)
VAT	Value Added Tax
WHT	With Holding Tax

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CHAPTER I

INTRODUCTION

1.1. Background

On the 16th of December 2008, after nearly 4 years of discussion, in its plenary session, the House of Representative of Indonesia approved the application of the new mining regulation, replacing the previous mining law that has been enforced for nearly 40 years at once. 3 weeks after that in January 2009, the President of Republic of Indonesia officially signed the Law, as well as designating the enactment of the new mining regime. Once instituted, the law is known as Law Nr. 4 of 2009 Concerning Mineral and Coal Mining.

Some new things are introduced by this new Act, one of which is the licensing system, known as the Mining License. This system is entirely new in the mining business in Indonesia. Previously, Indonesia only recognizes Contract of Work (CoW) and Coal Contract of Work (CCoW), and later appeared at the end of the 1980s is Mining Authority (MA).

This new mining regulations also emphasized how mining companies should be concerned with the environmental aspects in their production operation activities. Previously, the issue of the environmental impact of mining activity was not a matter regulated by the Law Nr. 11 of 1967 concerning old mining law, but entered under the agreement between private parties or contractors who wanted to conduct the mining with the government. Another novelty found in the new mining law is the obligation to invite the community to participate in particular stages of mining, which also did not ever set in the previous regulations.

Many people enthusiastically and optimistically responded to this new mining law, even though not a few viewed it skeptically. Those who optimistically believe this new mining law will improve the investment climate in Indonesia amid the uncertainty felt so far. Conversely, for those who are skeptical doubt and pessimism there will be an improvement, and they even tend to think that the mining circumstance would get worse after this law is enacted.

In this paper, the author will conduct an analysis of the new mining regulation in Indonesia from different sides to understand the content of the regulation and its derivatives outlining more detail of the technical issues mandated by the Act. Thus, readers will better

understood the contemporary condition of existing mining business in Indonesia and its possible direction in the future.

1.2. Research Question

How is the future of the mining industry in Indonesia after the implementation of the new mining regulation?

1.3. Objectives

The objectives of this research are to provide an overview of the existing mining regulation in Indonesia, to analyze the contents of the policy due to comprehensively describe the regulation in force in Indonesian mining today, as well as figuring out the prospect of this industry in the future. This research is also emphasizing the factors that stakeholders must take into account to maintain the economic growth generated by the mining investment activities towards the era of sustainable mining in Indonesia.

1.4. Scope of Research

This paper will focus on the discussion of Law Nr. 4 of 2009 concerning mineral and coal mining and its derivative rules by using a SWOT analysis. The mining regulation that existed before, and several other regulations related to the mining issues will also be briefly discussed to support the author's argument.

1.5. SWOT Analysis: a Tool for a Regulation Implementation Analysis

This research is conducted by means of a SWOT analysis (Strengths, Weaknesses, Opportunities, and Threats) to elaborate the content of the law.

The SWOT analysis was developed as a strategic planning tool by Robert Stewart, Alfred Humphrey and co-workers at Stanford Research Institute in the 1960s to help firms define their strategies in the context of fluctuating and competitive environments. This decision-making tool owes its name to the fact that it examines the strengths and weaknesses within the firm, as well as the opportunities and threats of the market. However, the use of a SWOT analysis not only serves marketing planning purposes, but also strategic reflections about public policy purposes. City and

regional authorities were amongst the first agencies in the public sector to use a SWOT analysis in the 1980s as a framework for reflection on different development scenarios. The tool is now frequently used as a component of the planning and ex ante evaluation of regional development programs¹.

Adopted from Ferrel and Harline (2011), a SWOT analysis encompasses both internal and external environments of a subject, say a regulation. Internally, the framework addresses regulation strengths and weaknesses on key dimensions while assesses the regulation opportunities and treats externally, and seeking a fit between the two perspectives². Furthermore, strengths and weaknesses tend to focus on the present and the past circumstances, the internal factors that can be controlled, meanwhile opportunities and threats tend to focus on present and future state, and talking a more outward-looking (Brassington and Pettitt, 2000)³.

A SWOT Analysis is an effective way of identifying the strengths and weaknesses of the impact of legislation and of examining the opportunities and threats of the organization/state may face as a result of implementing such policies (Williamson, 2009)⁴. Many consider a SWOT analysis as a very effective tool to analyze the implementation of regulation because of SWOT analysis is simple and has a clear framework as guidance in conducting a comprehensive analysis.

1.6. Structure

This research is divided into 5 sections. The first part of this paper will briefly explain the profile of Indonesia as a country, continue by giving a picture of the reserves of minerals and coal of this archipelago, and conclude with a history of mining policy in Indonesia from the early days of independence until now.

¹ European Union. (2010), Retrieved May 10, 2011 from http://ec.europa.eu/regional_policy/sources/docgener/evaluation/evalsed/sourcebooks/method_techniques/collecting_information/swot/index_en.htm.

² Ferrel, O.C., and Harline, Michael., (2011), *Marketing Management Strategies, Fifth Edition*. United States. Cengage Learning.

³ Brassington, Frances and Pettitt, Stephen., (2000), *Principles of Marketing, Second Edition*, Pearson Education Limited, Essex, England

⁴ Williamson, Graham., (2009), *SWOT Analysis, Speech Therapy Information and Resources*. Retrieved May 10, 2011, from <http://www.speech-therapy-information-and-resources.com/swot-analysis.html>

In the second section the author invites to understand how the contents of the new mining policy in Indonesia, specializing in four important points, namely ownership of minerals and coal, licensing application, taxation and royalties, and the last concerning the environmental protection.

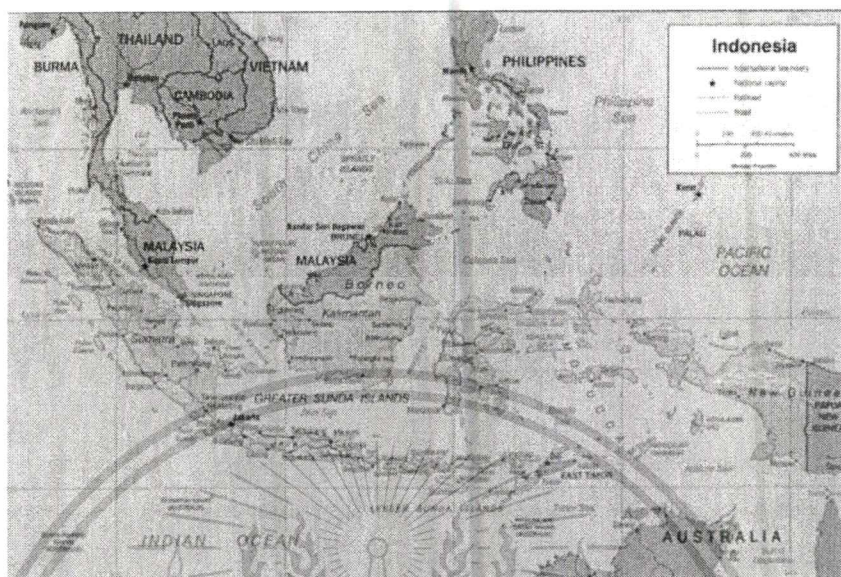
The analysis of Strengths, Weaknesses, Opportunities, and Threats of the new mining regulation will be discussed in the third section to establish the basis to assess the mining business climate in Indonesia.

After conducting the SWOT analysis, in the fourth section, this paper will elaborate on Indonesia's mining sector in the future after the implementation of the new mining regulation. For a better understanding, the mining sector section will be divided into two parts, minerals and coal.

Finally, this thesis will state the findings based on the results obtained during this study, along with necessary suggestions which can be given to both readers and next mining regulation researchers.

1.7. Indonesia, a Brief Overview

The Republic of Indonesia (RI) or familiar Indonesia is a country in Southeast Asia. Indonesia is located on the equator and not only situated between Asia and Australia but also between the Pacific and Indian Ocean. Jakarta is the capital city of Indonesia. Because it lies between two continents and two oceans, Indonesia is also called Nusantara. It consists of 17,508 islands and Indonesia is considered as the largest archipelagic country in the world (figure 1.1).



Source: Indonesia 2002 CIA map. http://memory.loc.gov/cgi-bin/map_item.pl

Figure 1.1
Map of Republic of Indonesia

With a population of more than 237 million people in 2010⁵, Indonesia is the fourth most populated country in the world with the largest Muslim population, even though it is not an officially Islamic state. Indonesia is a republic and the House of Representatives and the president are directly elected. Indonesia is bordered by Malaysia, Singapore, and Philippine in the north, with Papua New Guinea on the Papua island in the east and East Timor on the island of Timor in the south-east.

Indonesia consists of various ethnics, linguistics and religious differences. The Javanese are the largest ethnic group and most politically dominant. The country's national motto, "Bhinneka Tunggal Ika" ("Unity in Diversity"), means that diversity builds the country. Besides

⁵ Based on the results of Population Census enumeration 2010, the Indonesian population is 237,556,363, people consisting of 119,507,580 male and 118,048,783 female. Distribution of Indonesia's population is still concentrated in Java that is equal to 58 percent, followed by Sumatra by 21 percent. Next to islands or group of islands in succession is as follows: 7 percent in Sulawesi, 6 percent in Kalimantan, 6 percent in Bali and Nusa Tenggara and 3 percent in Maluku and Papua. Retrieved May 28, 2011, from http://www.bps.go.id/65tahun/SP2010_agregat_data_perProvinsi.pdf

having a large population and a dense region, Indonesia has a second largest natural area that supports the level of biodiversity in the world.

The history of Indonesia has been influenced by other nations. The Indonesian archipelago became an important trade area at least since the 7th century, when the Kingdom of Srivijaya set up religious and trade relations with China and India. Kingdoms of Hinduism and Buddhism have developed in the early AD centuries, followed by the traders who brought Islam, and various European countries fought one another to monopolize the spice trade in the Moluccas during the era of ocean exploration. After the years of Dutch rule, Indonesia declared its independence in 1945⁶.

1.8. The Profile of Indonesia's Minerals and Coal

1.8.1. Minerals

Resources

Indonesia is a rich country in term of mineral resources. Indonesia's resource potential is ranked above Zimbabwe, South Africa, Bolivia, Mongolia, Western Australia, Chile, Nevada, Russian and Congo (figure 1.2).

It is estimated that around 30 types of main minerals are found in Indonesia. These minerals are gold, silver, copper, nickel, tin, lead, aluminum, iron, manganese, chromic, petroleum, natural gas, coal, iodine, various salts, various industrial minerals (asbestos, bentonite, zeolite, sulfur, phosphates, limestone, etc.), precious stones, including diamonds, and building materials.

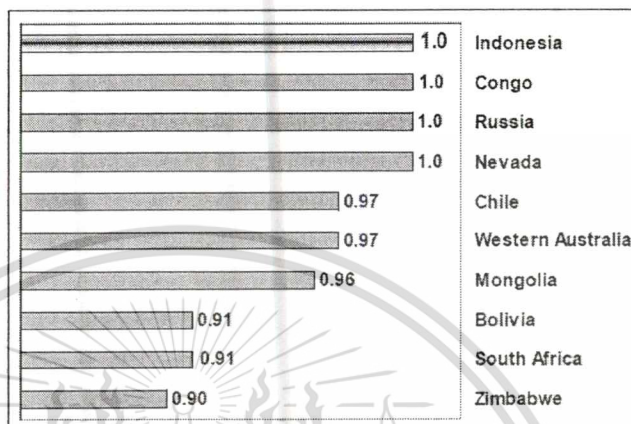
The current situations of Indonesia's minerals resources are⁷:

- Gold resources around 6,369 tons with mineable reserves of approximately 3,254 tons (7th rank of world gold reserve)
- Copper resources around 68.11 million tons with mineable reserves of approximately 31.85 million tons (7th rank of world copper reserve)
- Tin resources around 0.622 million tons with mineable reserves of approximately 0.462 million tons (5th rank of world tin reserve)

⁶ See more: <http://www.indonesia.go.id>

⁷ Yusgiantoro, Purnomo, Ministry of Energy and Mineral Resources of Republic of Indonesia (2008), *Recent Developments in Indonesia's Mining Industry Situation and Policy* [PowerPoint slides]. Retrieved from http://www.iea.org/work/2008/asean_training_coal/Indonesia.pdf

- Nickel ore resources around 1,412 million tons with mine able reserves of approximately 485.33 million tons (8th rank of world nickel reserve)



Note: Resource Potential, Top Score = 1.0

Source: Fraser Institute 2005/5 Survey of Mining Companies in Wall Street Journal, February 7, 2007, in Bhasin and Venkataramany⁸

Figure 1.2

Indonesia's Minerals Potential

Production

According to the U.S. Geological Survey Minerals Yearbook in 2009, Indonesia was among the five leading producers of copper and nickel in the world and its tin output was ranked second after China. In the same year, it was also ranked among the world's top 10 countries in the production of gold (Kuo, 2009)⁹. In 2008, Indonesia produced 632,600 metric tons of mined copper and 226,051 kilograms of mined silver. However, in 2009, production of mined copper and silver decreased slightly by an estimated 4% and 5%, respectively, owing to the lower grade

⁸ Bhasin, Balbir and Venkataramany, Sivakumar. (2008), *Mining Law and Policy: Replacing the 'Contract of Work' System in Indonesia*. Retrieved February 4, 2011, from <http://www.dundee.ac.uk/cepmlp/journal/html/volume18.php>

⁹ Kuo, Chin S., (2009). *The Mineral Industry of Indonesia*, U.S. Geological Survey Minerals Yearbook, USA. Retrieved May 10, 2011, from <http://minerals.usgs.gov/minerals/pubs/country/asia.html>

of the ore mined at Grasberg¹⁰. The output of smelted and refined copper remained at the same level as in 2008 (260,000 and 180,000 metric tons)¹¹. Moreover, based on exports of nickel-cobalt laterite and cobalt content of matte produced, the output of cobalt metal in 2009 was 1,200 metric tons – a decrease by an estimated 8% of 2008 production (1,300 metric tons). However, the output of bauxite and aluminum, mined nickel and nickel matte, and mined tin and tin metal increased slightly, due to higher commodity prices (see appendix A).

Although the number of new metal mines has declined in recent years, Indonesia's mineral prospects remain high. Extensive exploration is expected to result in the discovery of more mineral deposits. Production of copper is expected to increase owing to higher grades mined at Grasberg, expanded capacity of copper smelter and refinery operated by PT. Smelting¹², and the production of copper cathode by heap leaching in the next 2 to 3 years. With several gold-silver projects going on in either production or exploration, Indonesia is expected to increase gold output in addition to the gold produced from Grasberg¹³.

So far, most mining products in Indonesia are mostly exported in the form of ore or concentrate, and only some are exported in the form of alloy metal, such as ferronickel and nickel matte. This fact implies that the downstream industries using minerals as raw materials are in a nearly stagnant position. Consequently, the mining sector does not provide a significant added value to national economic performance.

In 2009, the government introduced a new policy in order to increase the added value of mineral products by enforcing the investors to process all of the metal mining products in

¹⁰ The Grasberg Mine is located in the province of Papua in Indonesia. It is the largest gold mine, the third largest copper mine and highest open pit mine in the world and majority owned through a subsidiary by Freeport-McMoRan, own 90.64% of PT Freeport Indonesia, the principal operating subsidiary in Indonesia, including 9.36% owned through its wholly owned subsidiary, PT Indocopper Investama. The Government of Indonesia owns the remaining 9.36% of PT Freeport Indonesia. See more: <http://www.fcx.com/operations/grascomplx.htm>

¹¹ U.S. Geological Survey Minerals Yearbook-2009. Retrieved May 10, 2011, from <http://minerals.usgs.gov/minerals/pubs/country/asia.html>

¹² PT Smelting was established in February 1996 as the first copper smelter and refinery in Indonesia. The plant was originally designed to produce 200,000 tpy of "LME Grade A" copper cathode from 660,000 tpy of copper concentrate supplied by domestic mining companies. Currently copper cathode production level has been expanded to over 270,000 TPY. See more: <http://www.smelting.co.id/>

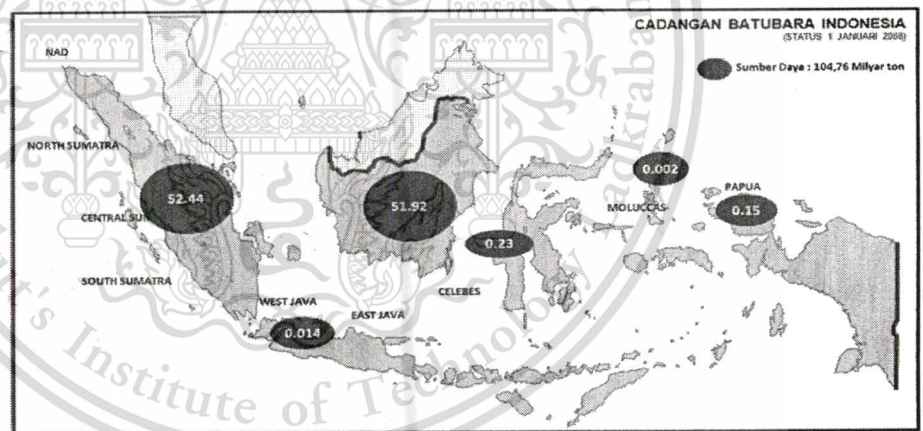
¹³ Kuo, Chin S., *loc. cit.*

Indonesia, either by setting up their own smelter or use other company smelting facilities. This policy is part of the new mining law. Therefore, within 5 years since 2009, it is no longer allowed to export mining commodities in the form of raw materials.

1.8.2. Coal

Resources

Indonesia is ranked in the 15th of world coal reserves, and, as released by Indonesian Ministry of Energy and Mineral Resources (MoEMR) in 2008, it has 104.74 billion tons of (thermal) coal deposits, found mainly in Kalimantan (51.92 billion tons) and Sumatra (52.44 billion tons) (figure 1.3). The deposits consist of 1% of very high quality, 13 % in high quality, 62% in medium quality, and 24 % in low quality coal (figure 1.4). However, it remains uncertain on what basis the reserves and resources are reported — as-received or air-dried — and whether the data have been collected according to the 2004 Joint Ore Reserves Committee (JORC) standard or some other standard¹⁴.

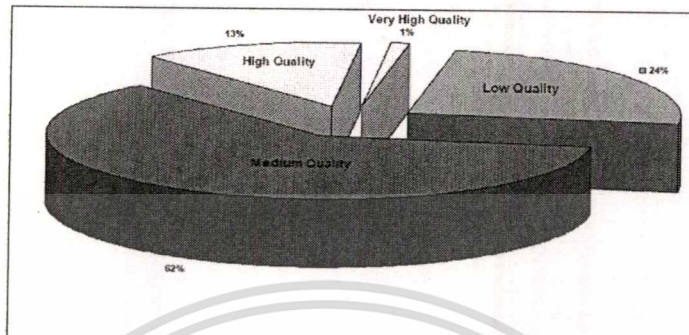


Source: Ministry of Energy and Mineral Resources of Indonesia, 2008

Figure 1.3

Coal Reserves Distribution in Indonesia

¹⁴ Lucarelli, Bart., (2010), *The History and Future of Indonesia's Coal Industry: Impact of Politics and Regulatory Framework on Industry Structure and Performance*, Program on Energy and Sustainable Development, Freeman Spogli Institute for International Studies, Stanford University, Stanford, California, USA. Retrieved May 10, 2011, from http://iis-db.stanford.edu/pubs/22953/WP_93_Lucarelli_revised_Oct_2010.pdf

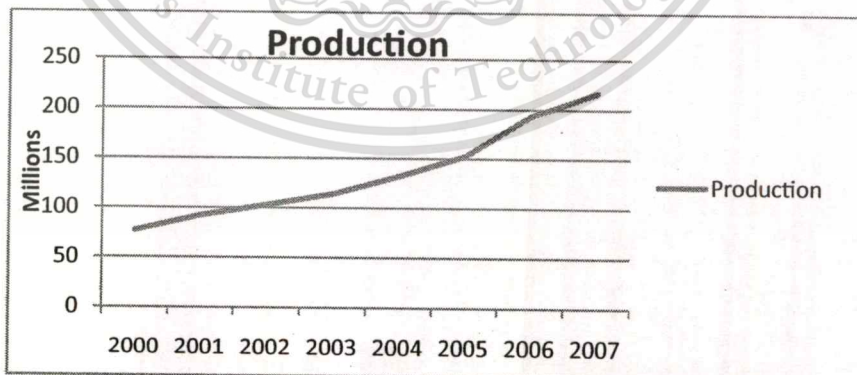


Source: Ministry of Energy and Mineral Resources of Indonesia, 2008

Figure 1.4
Indonesia's Coal Quality Proportion

Production

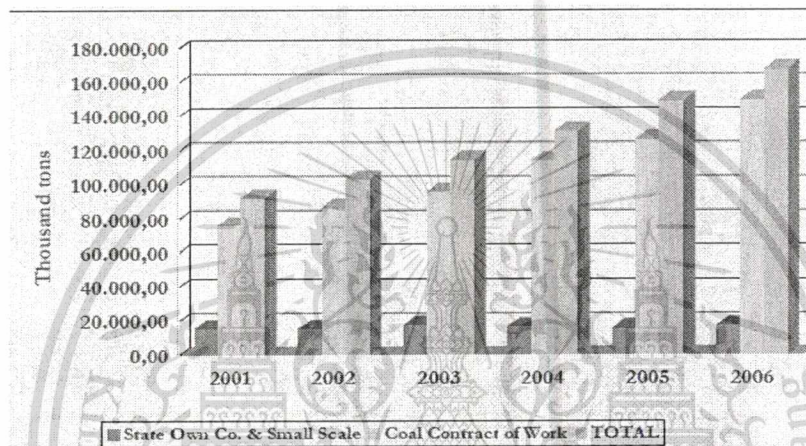
Indonesia's coal production tends to increase amazingly in the last several years, from 132 million tons in 2004 to around 193 million tons in 2006, again in 2007 to slightly more than 200 million tons, or almost three times higher than 2000 production (77,014,956 tons) (figure 1.5). This increase is due to increased exports to several countries including Japan, China, India, and South Korea to meet increased consumption resulting from economic growth in Asia.



Source: Ministry of Energy and Mineral Resources of Indonesia 2009, data processed

Figure 1.5
Indonesia's Coal Production 2000-2007

In 2007, Indonesia contributed 4.2% of world coal production, and was the seventh largest coal producer in the world. Most of Indonesia's coal production is dominated by (1) Coal Contract of Work holders – private companies which signed a contract of work with the central government for a coal business, (2) the state own company (PT. Bukit Asam, Tbk¹⁵) and (3) a small amount by small and medium scale companies (figure 1.6).



Sources: Hartoyo, Bambang., Directorate of Managing Mineral and Coal Enterprises Development, 2007¹⁶

Figure 1.6
Indonesia's Coal Production from 2001- 2006

¹⁵ The coal mining in Tanjung Enim was initiated by the Dutch Colonial Government in 1919 by operating the first coal mine using open pit mining method in Air Laya. When the Dutch Colonial period ended in Indonesia, the mining workers fought for the nationalization of the mines. In 1950, the Indonesian Government approved the establishment of State-Owned Bukit Asam Coal Mine or Perusahaan Negara Tambang Arang Bukit Asam (PN TABA). In 1981, PN TABA converted its status to a limited liability company under the name of PT Tambang Batubara Bukit Asam (Persero) Tbk, further called the Company. To develop coal industry in Indonesia, in 1990 the Government merged Perum Tambang Batubara with the Company. On December 23, 2002 the Company became a publicly listed company on the Indonesian Stock Exchange under the code of "PTBA". See more : <http://ptba.co.id/en/about/content/id/17/history>

¹⁶ Hartoyo, Bambang., (2007), *Outlook of Indonesian Domestic Coal Supply and Demand Toward 2025*, Presented in the Asia Pacific Economy Cooperation (APEC) Clean Fossil Energy Technical and Policy Seminar, Hanoi, Vietnam. Retrieved December 10, 2009, from http://www.egcfe.ewg.apec.org/publications/proceedings/CFE/Hanoi_2007/3-2_Hartoyo.pdf

Moreover, even Indonesia is one of the ten largest coal producers in the world, most of its coal is put on the international market. Data from the Directorate General of Mineral, Coal and Geothermal, MoEMR, show that, in 2001, Indonesia exported 70% of its total coal production and maintained that proportion until 2007.

Some reasons can be given why coal producers in Indonesia prefer to put their coal for export. First, the price on the export market was higher than the domestic one, and, hence, exporting coal was much more attractive than to keep it domestically. Second, some companies are sisters of overseas companies, for instance steel factories or power plants. They were set up to supply their sister's needs of energy. The third reason is related to the domestic infrastructure. The domestic infrastructure in Indonesia is not able to absorb total coal production. There was no balance between the ability to supply coal and the ability to consume. Moreover, Indonesia's infrastructure is still focused on natural gas and oil as sources of energy for power plants and other factories. Therefore, in 2007, Indonesia burned more natural gas and oil than coal (69% of the total fuel consumption compared with 27%).

1.9. History of Indonesian Mining Industry and Policy

The history of mining activities in Indonesia began even long before the country declared its independence as a sovereign state. Following Syahrir (2008)¹⁷, this paper deals with the history of Indonesian mining industry and policy after the independence of Indonesia, excluding the colonialism era. There are 3 general phases that Indonesia has experienced after Independence Day; they are Old Order (*Orde Lama*), New Order (*Orde Baru*), and Reformation Order (*Orde Reformasi*).

1.9.1. Old Order (1945-1966)

At the beginning of its independence, like other newly independent countries, Indonesia needed huge financial resources to finance the state. In this situation, mining commodities such as petroleum, coal, tin and other minerals were expected to be the best potential sources.

¹⁷ Syahrir, R (2008), *Reflections on 100 Years of National Awakening and the Industry Mining History in Indonesia, a Comparative Historical Approach, (in Indonesian)*, Indonesian Mining Professional Association, the XII Annual Meeting, Palembang, Indonesia

Nevertheless, since legislation at that time was a colonial legacy, the law still provided an extremely strong power and right to private enterprises, most of them Dutch companies, as holders of mining concessions. Then the state found that it faced a problem in controlling those resources. Therefore, based upon the motion of Mr. Teuku Mohammad Hasan on a change of the colonial mining law legacy¹⁸, the government instituted the first Indonesian mining law, Law Nr. 78 of 1958, replacing colonial law.

The spirit of Indonesian independence spread out to all sectors of people life. Mr. Teuku Mohammad Hasan's motion was set off from the spirit of nationalism which emerged in the mining sector. The law Nr. 78 of 1958 stated that the vital mining industry was closed to foreign investment. Therefore, the mining companies controlled by foreign enterprises, particularly the Dutch investors, were to be nationalized under the law Nr. 86 of 1958. This law then gave legitimacy to the Old Order government to nationalize foreign mining companies, especially the Dutch enterprises. Following up the bill, the government issued two Statements to take over the Singkep Mining Company¹⁹ and one Government Regulation regarding the takeover of foreign companies, including mining companies. Furthermore, through the Law Nr. 10 of 1959 concerning the Revocation of Mining Rights, the government decided to terminate the contract of several mining companies which provided little financial contribution to the state. After the institution of this law, the government found that 2,871 mining rights had been issued by the

¹⁸ The motion contains the following: 1. Urging the government for a one month period to form a State Commission concerning the oil issue, with the following tasks: a. Investigates the problem of oil processing, tin, coal, gold, silver and other mining products immediately. b. Drafting the petroleum law which is in harmony with the current situation. c. Assist the government with opinion proposals about the worth attitudes should be taken by the government regarding the status of oil mining in North Sumatra in particular and other mining in general. d. Assist the government with proposals of mining in Indonesia. e. Assist the government with opinion proposals regarding the tax of oil production and price conditions. f. Present other proposals relating to mining problems in order to increase the income of the country, completing the job within three months and submitted to the government and parliament. 2. Urging the government to postpone the granting of new concessions and exploration permits until the task given to the State Commission on the subject of mining is completed. 3. Propose to the government in a short time to review the *Wet Mijn Indische 1899*, the colonial laws that still remain instituted as a base of oil management in Indonesia (Prasetyo, 2010). Retrieved May 10, 2011, from <http://nusantaracentre.co.id>. (In Indonesian).

¹⁹ Now it is known as *Unit Pertambangan Timah Singkep* - (UPTS), or mostly called as *PT. Timah Singkep* or *Perusahaan Timah Dabo Singkep*. Retrieved May 10, 2011, from: <http://www.dabosingkep.com/2011/04/sejarah-unit-pertambangan-timah-singkep.html> (In Indonesian)

colonial government which contained 245 mining permit investigations, 60 exploration contracts 5a, 66 5a exploration-exploitation contracts, 272 exploitation concessions, and 21 applications for an exploitation concession and a lot of these mining rights were not actively operated anymore. Through the enforcement of the Law Nr. 10 of 1959, the legal status of several mining companies became clear so that the government could freely sign a new policy in the mining sector, which was the Mining Law Nr.37 of 1960.

1.9.2. New Order (1967-1997)

The changes in government leadership from Soekarno²⁰ in the Old Order to Soeharto²¹ in the New Order who had a different political view impacted the shifting of the government paradigm. Nationalist principles and soul entrenched in the leadership of Soekarno since the beginning of the independence declaration was replaced by the pragmatic goal of economic development in the New Order. To implement the idea of economic development, and as a symbol the mind frame, the new regime instituted its first law, the Law Nr. 1 of 1967 concerning Foreign Investment.

Several perspectives can be used to analyze the entry of this law. First, this law represented what government thought at the time. From the perspective of the New Order government, economic development can be achieved only by increasing foreign capital investment. Second, this law was a manifestation of government's swap with foreign parties as payoff assistance when the new order regime overthrew the old order. Following that foreign investment law, the New Order government instituted the Law Nr. 11 of 1967 concerning Basic Provisions of General Mining (figure 1.7). This law enacted as the cancellation of the Law Nr. 37 Prp/1960 concerning Mining, which stated that the minerals are controlled by the state. According to the economic development paradigm adopted by the New Order government, law Nr. 11 of 1967, provided a great opportunity to private companies and individuals to become involved in mining. However, in reality the mining industry became monopolized by foreign private enterprises and State-Owned Enterprises (SOEs/BUMN). In fact, the individual mining activities which existed before then became sidelined afterward.

²⁰ The first president of Indonesia, leader of the old order from 1945 until 1966.

²¹ The second president of Indonesia, leader of the new order from 1966 until 1998

After the implementation of the Law Nr. 11 of 1967, the New Order regime signed hundreds of Contracts of Work (CoW) and Coal Contract of Work (CcoW) for both (mostly) multinationals and (few) local firms.

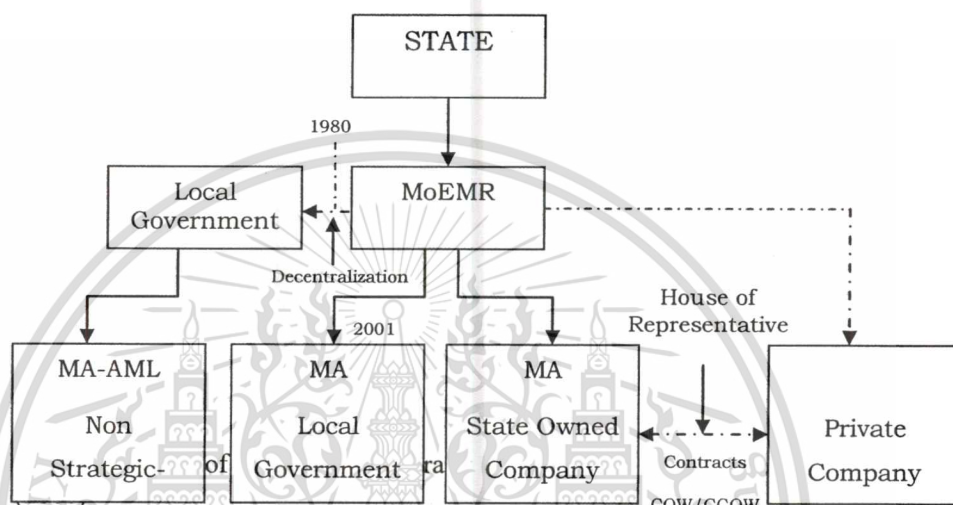


Figure 1.7
Structure of the Mining Engagement Process in the Law Nr. 11 of 1967

There is no constitutional reason in principle by the government to refuse mineral extraction in Indonesia. A mandate by article 33 of the 1945 Constitution states the clear wish for exploitation of minerals for the greatest prosperity of the people. However, as long as the government adopts the contract system with companies, it must frequently monitor and negotiate with companies to obtain an optimal result. Adam Przeworski (2003) demonstrated the better position held by the private sector in a situation of regulation by government because the knowledge of private parties is more relevant than that of regulators²².

1.9.3. Reformation Order (1998-Present)

The change from the New Order to the Reformation Order did not provide a new understanding of mining practices, particularly among the governments. This fact contrasts with

²² Przeworski, Adam., (2003) , *States and Markets, A Primer in Political Economy*, New York, Cambridge University Press.

the change from the Old Order to the New Order which actually eroded the nationalist paradigm. However, even though there was no fundamental shift regarding mining paradigm, the fall of the New Order became one of most important momentums of the Indonesian mining industry development.

The most crucial change after the Reformation Order was seen in the instability of security and legal uncertainty of the investment climate. The wave of democratization reforms in all sectors of public life generated an escalated number of institutions to take a part in mining activities, including conflict of interests between central and local governments, and inter-departments arrogance generating political instability. After the fall of the New Order regime, virtually no CoW and CcoW were signed. No major investments were made.

Moreover, the change of Indonesia's political system also had its consequences. Local governments, which hold more power since this Reformation Order, signed thousands of Mining Authorizations (MA) (*Kuasa Pertambangan/KP*). Unlike the CoW and CcoW signed by the (central) government, these mining authorizations settled under the local government's authority, even though they operate under the same laws.

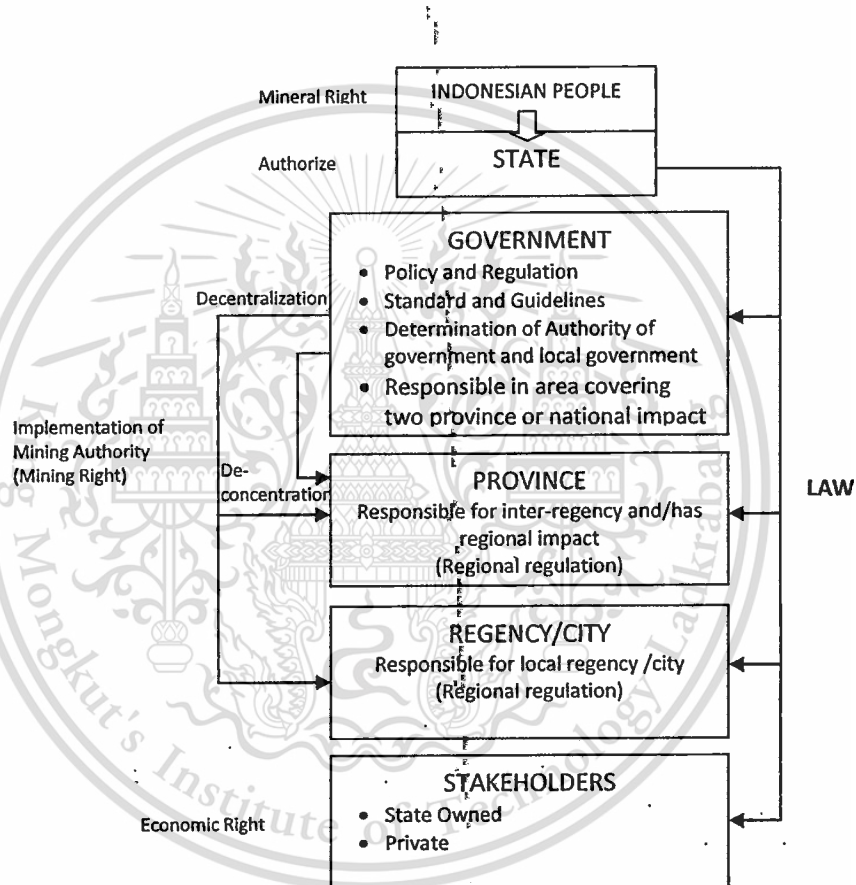
1.9.4. The New Regulation in the Indonesian Mining Industry

After almost four years of discussions, the Bill on Minerals and Coal Mining was finally passed by the House of Representatives on 16 December 2008 and was signed by the President on 12 January 2009 as Law Nr. 4 of 2009.

The New Mining Law introduces many important changes and some new provisions. Beside this, the institution of the New Mining Law brings the mining sector under a new licensing regime whereas from 1967 to 2008 foreign investors had to sign a CoW or CCoW to engage in mining (see comparison between the Law Nr. 11 of 1967 and the Law Nr. 4 of 2009 in Appendix B).

The New Mining Law not to differentiate between mining licenses for domestic and foreign investors. All investors must have either a Mining Business License (ML) (*Izin Usaha Pertambangan-“IUP”*), an Artisanal Mining License (AML) (*Izin Pertambangan Rakyat-“IPR”*) or a Special Mining Business License (SML) (*Izin Usaha Pertambangan Khusus-“IUPK”*) to engage in mining activities. Each type of ML/SML (IUP/IUPK) has its own terms and area limitations. Moreover, a ML/SML (IUP/IUPK) is restricted be transferred, but the ownership or

shares in a company holding a ML/SML (IUP/IUPK) is allowed. The transfer of ownership or shares on the Indonesian stock exchange is only allowed if (i) the company has found two prospective areas during the exploration period, and (ii) there is prior notification to the Minister, Governor, or Regent/mayor in accordance with their authorities and the transfer is not contrary to the prevailing laws and regulations.



Source: Ministry of Energy and Mineral Resources of Republic of Indonesia (2008)

Figure 1.8
Mining System in Republic of Indonesia
(Constitution 1945 & Law 32/2004)

Another provision included in the Law Nr. 4 of 2009 is about mine production. After consultation with the House of Representatives, the Central Government must determine a policy

on giving priority to minerals and coal for domestic interests, including the authority to determine production levels for each commodity in each year on a Province-by-Province basis. In addition, the ML and SML holders have to increase the value of their minerals and/or coal resources through the mining, processing and refining, and the use of the minerals and coal. Entities must process and refine the minerals and coal domestically and build their own processing facilities or use existing processing facilities. Existing Contracts of Work (CoWs) which are already in the production phase, have a 5 year grace period to comply with this obligation. After 5 years of production, all companies must divest any shares owned by foreign parties to the Central/Regional Government, a State/Region owned enterprises or local companies. This provision will be regulated further in a government regulation.

Unlike the Law Nr. 11 of 1967, Law Nr. 4 of 2009 recognizes the concept of corporate crime. Sanctions may be imposed on contractors as legal entities. If the crime is committed by a legal entity, the legal entity and/or its management will be charged with the crime. Besides criminal sanctions, business licenses may be revoked from an entity and it may even have its legal status abolished. Any dispute arising from the implementation of a ML, AML or SML (IUP, IPR or IUPK) is to be settled through the courts and domestic arbitration under the prevailing laws.²³

In conclusion, the changes from one government regime to another have their implications for mining regulations. As a result, the change from the New Order to the Reform Order generated the institution of the Law Nr. 4 of 2009 Concerning Mineral and Coal Mining. This Law is described in more detail in the chapter II.

²³ Makarim and Taira, S. (2009) Minerals and Coal Law in Indonesia. World Services Group. Retried May 8, 2011, from <http://www.worldservicesgroup.com/publications.asp?action=article&artid=2809>.

CHAPTER II

UNDERSTANDING THE NEW MINING POLICY IN INDONESIA

To understand the mining system in Indonesia under the new mining law, this chapter focuses on four main concepts in the law: the concept of minerals ownership, mining license, taxation and royalty, and environmental protection.

2.1. The Ownership of Minerals

Ownership is the status of exclusive rights and control over property, which may be an object, land/real estate or intellectual property. Ownership involves multiple rights, collectively referred to as title, which may be separated and held by different parties²⁴. Ownership of minerals implies the status or fact of exclusive rights and control over minerals. Ownership of minerals involves multiple rights: exploration, exploitation, loading and transporting, and selling, collectively referred to as a title which may be separated and held by different parties, i.e. government or private parties. In this terms, an owner can transfer or lose ownership of minerals by selling it for money or transfer it to another party according to certain legal and business obligations.

Under article 33 of the Constitution 1945 of the Republic of Indonesia, natural resources (i.e., land, water and natural riches contained therein) are under the authority of the state and made use of for the people.

The 1945 Constitution:

Article 33

...

(3) The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.

As a result, the state (i.e., the government of the Republic of Indonesia) is deemed to have title to minerals in the ground as well as to mined and processed minerals and metals. Parties granted mining rights under the Mining Law are in effect 'contractors' of the government and do

²⁴ ownership. (n.d.). © *Encyclopedia Britannica, Inc.*. Retrieved November 21, 2010, from Dictionary.com website: <http://dictionary.reference.com/browse/ownership>

not by virtue hold mining rights or titles to minerals in the ground or when mined (Watkins, et.al 2006)²⁵.

According to the (old) Mining Law Nr. 11 of 1967 which was replaced by the (new) Mining Law Nr. 4 of 2009, mineral ownership is not transferable. Mineral ownership remains in the hands of the state, and the private sector developing mineral resources is positioned as contractor to the state. Putting together these two rules one can state, although surface ownership is transferable, the government, on behalf of the state, has all discretion to assign any land for mineral development. The landowner has no power to claim any right of ownership, since he has no vertical jurisdiction of his land. In addition to that, the government claims its right to develop mineral as stipulated in the constitution, which stipulate that mineral in controlled by the state (Wiriosudarmo, 2001)²⁶.

2.2. Licensing Application Process

A license is a special permission to do something on, or with, somebody else's property which, were it not for the license, could be legally prevented or give rise to legal action in tort or trespass²⁷. Philosophically, the granting of a license may occur on the basis of authority or rights of ownership. The purpose of a license is supposedly to guarantee that laws and regulations have been obeyed, but they also are a source of public revenue²⁸.

The new mining law simplifies the mining administration by eliminating distinctions between foreign and domestic investors. Under the law, both domestic and foreign investors can operate mines under the authority either of a Mining License (ML) (*Izin Usaha Pertambangan- "IUP"*), an Artisanal Mining License (AML) (*Izin Pertambangan Rakyat- "IPR"*) or a Special

²⁵ Watkins, et.al. (2006). *Indonesian Mining 2006*. This article first appeared in *Getting The Deal Through – Mining 2006*. Retrieved November 18, 2010 from http://www.ssek.com/lib/article/ARTICLE_49.pdf

²⁶ Wiriosudarmo (2001). *Baseline Study and Gap Analysis on Mining in Indonesia*. Retrieved November 18, 2010 from <http://pubs.iied.org/pdfs/G00613.pdf>

²⁷ Duhaime Org, License definition, Retrieved November 21, 2010, from <http://www.duhaime.org/LegalDictionary/L/License.aspx>

²⁸ permit. (n.d.) *The People's Law Dictionary*. (2005). Retrieved November 21, 2010 from <http://legal-dictionary.thefreedictionary.com/permit>

Mining License (SML) (*Izin Usaha Pertambangan Khusus-“IUPK”*). With the exception to AML, all mining licenses are conducted through auctions or bids, except for the state owned mining company (BUMN). Consequently, the cost that entities should spend in order to get a mining license may vary depend on the concessions worth.

Law Nr. 4 of 2009:

Article 51

Metal mineral Mining Areas shall be authorized to entities, cooperatives, and sole proprietorships through bids.

Article 60

Coal Mining License Areas shall be authorized to entities, cooperatives, and sole proprietorships through bids.

Article 75

...

(2) Special Mining Licenses as intended by section (1) may be granted to entities of Indonesian legal entity, either in the form of state-owned entities, region-owned entities, or private entities.

(3) State-owned entities and region-owned entities as intended by section (2) shall have priority in obtaining Special Mining License.

(4) To obtain Special Mining Licenses as intended by section (2), private entities shall bid for Special Mining License Areas in Special Mining Areas.

Regulation of the Government of the Republic of Indonesia Nr. 23 of 2010:

Article 8

(1) Mining License Areas as intended by Article 7 item (a) shall be authorized for:

- a. radioactive Mining License Areas;*
- b. metal mineral Mining License Areas;*
- c. coal Mining License Areas;*
- d. nonmetal mineral Mining License Areas; and/or*
- e. rock Mining License Areas.*

...

(3) Metal mineral and coal Mining License Areas as intended by section (1) item (b) and item (c) shall be authorized through a bidding process.

ML, AML, and SML are licenses to engage in mining, which consists of two types. An Exploration License is granted to carry out general investigations, explorations, and feasibility studies, and a Production License is granted after the implementation of the Exploration License has been completed.

2.3. Taxation and Royalty

As described in the sub-chapter 2.2 that the only way for entities to be engaged in mining is through bidding, means that the last price of bidding is the cost that entities must pay to be granted a mining license. Legally speaking, this is the only cost that entities must spend to get a mining license. However, once operated, mining companies have to pay taxes and royalties to the government.

Taxation

Taxation can be defined as a way of governmental finance of expenditures by imposing charges on citizens and corporate entities²⁹. In the taxation system applied to mining, license holders pay for activities under the license held as a fiscal income from the state.

Fiscal income from mining can be an important contribution to the local economy where a mine is operated with a potential of accelerating sustainable economic and social development (Yupari, 2010)³⁰. In the mining industry, taxes may also have a very important role associated with mine rehabilitation efforts and community policy (Andrews-Speed and Rogers, 1999)³¹. Therefore, taxation is a relevant economic aspect worth consideration.

In article 128 of the new mining law, it is stated that the mining license holders should pay state income and regional income tax. The amount of the tax is to be determined under provisions of laws and regulations

²⁹ taxation. BusinessDictionary.com. Retrieved May 6, 2011, from BusinessDictionary.com website: <http://www.businessdictionary.com/definition/taxation.html>

³⁰ Yupari, A. (2010). *Economic Liberalisation, Sustainable Development, and Mining Policy, The Peruvian Case*. Saarbrücken, Germany. Lambert Academic Publishing AG & Co. KG.

³¹ Andrews-Speed, P., and Rogers, C. (1999). *Mining Taxation Issues for the Future*. Resources Policy Volume 25, Issue 4. Pages 221-227

Law Nr. 4 of 2009:

Article 128

(1) Mining License holders or Special Mining License holders must pay state income and regional income.

(2) State income as intended by section (1) shall include tax income and nontax state revenues.

(3) Tax income as intended by section (2) shall include:

a. taxes within the authority of the Government under the provisions of laws and regulations in the field of taxation; and

b. customs and excise duties.

Article 131

Amounts of taxes and nontax state revenues that are levied from Mining License holders, Artisanal Mining License holders, or Special Mining License holders shall be determined under provisions of laws and regulations.

Following from PricewaterhouseCoopers 2010³², the new mining law stipulates that any tax facilities for a mining project should be provided in accordance with prevailing laws (table II.1), except as otherwise stated in the ML/SML³³. This indicates that tax concessions outside of the prevailing tax law/regulations may still be available. However, it appears that there is a strong intention of the government to apply the prevailing tax laws/regulations to ML/SML holders. Therefore, special tax provisions with overriding status (*lex specialis*) status may not be available in an ML/SML.

Furthermore, a company holding an ML/SML is required to register for tax and obtain a tax registration number called *Nomor Pokok Wajib Pajak* ("NPWP"). The ML/SML company is also required to register for tax at the local tax office where the mine operates, which includes the obligations for VAT (if applicable and not centralized in the head office) and Withholding Tax ("WHT").

³² PricewaterhouseCoopers Indonesia. (2010, May). *Mining in Indonesia, Investment and Taxation Guide*. Retrieved from <http://www.pwc.com/id/en/publications/assets/Mining-Investment-And-Taxation-Guide-2010.pdf>

³³ See more: The New Regulation in the Indonesian Mining Industry in Chapter I.

Table II.1
Taxes for a Mining Project in Indonesia

Nr	Type of Taxes	Amount	Explanation
1	Corporate Income Tax	o 25% (flat rate)	A company is subject to corporate income tax on its net taxable profit. Net taxable profit is calculated based on gross income minus allowable expenditures. A 5% reduction is applicable for a company listed on the Indonesia Stock Exchange, subject to meeting certain requirements
2	Value Added Tax (VAT)	o 10%	Delivery of goods and services in Indonesia is generally subject to VAT, except for delivery of certain pre-determined types of goods and services
3	Withholding Tax (WHT)	o 15%	Mining companies are obliged to withhold tax on payments for dividends, interest and royalties and is paid to Indonesian
Note: in the case of dividends, provided that the dividend is sourced from retained earnings and the Indonesian corporate shareholder owns at least 25% of the mining company's shares, the dividend will not be subject to income tax, including WHT			
Source: Summarized from PricewaterhouseCoopers 2010			

Royalty

A Royalty is a compensation, consideration, or fee paid for a license or privilege to use an intellectual property (brand, copyright, patent, process) or a natural resource (fishing, hunting, mining), computed usually as a percentage of revenue or profit realized from the use³⁴. A royalty interest is the right to collect a stream of future royalty payments to describe a percentage

³⁴ royalty. BusinessDictionary.com. Retrieved December 2, 2010, from BusinessDictionary.com website: <http://www.businessdictionary.com/definition/royalty.htm>

ownership of future production or revenues from a given leasehold, which may be divested from the original owner of the asset³⁵.

In context of mineral resources, a royalty is the portion of minerals retained by the licensor on execution of a lease or their cash value paid by the licensee to the licensor or to one who has acquired possession of the royalty rights, based on a percentage of the gross production from the property free and clear of all costs except taxes³⁶. In reality, in a royalty system, there is a transfer of mineral ownership to the mining licensee holder. This can be seen from the authority of the license holder to exploit and sell the mine product on behalf of itself (Muhajir, 2007)³⁷.

All ML/SML holders are required to pay production royalties over the life of the mine, or in the other words, as long as they are producing minerals or coal. The rates of which will vary depending on the mining scale, production level, and mining commodity price. This means royalties are paid higher in accordance with an increasing of production level and commodity price so does the other way around.

Law Nr. 4 of 2009:

Article 132

(1) Production royalty rates shall be determined under levels of business, production, and prices of mining commodities.

(2) Production royalty rates as intended by section (1) shall be determined under provisions of laws and regulations.

³⁵ Royalties. (n.d.). In *Wikipedia*. Retrieved December 2, 2010 from <http://en.wikipedia.org/wiki/Royalties>

³⁶ Royalty Definition. (n.d.) Retrieved December 2, 2010 from <http://oilglossary.com/royalty.html>

³⁷ Muhajir, M. loc. cit.

Table II.2
Production Royalty Rates (of Net Sales)

Commodity	Production Royalty Rates (of Net Sales)
Coal	
o Open Pit	3%-7%
o Underground	2%-6%
Nickel	4%-5%
Zinc	3%
Tin	3%
Copper	4%
Iron	3%
Gold	3.75%
Silver	3.25%
Iron Sand	3.75%
Bauxite	3.75%

Source: PricewaterhouseCoopers Indonesia, May 2010

Currently, a range of percentages of sale proceeds applies for different types of coal and minerals, and it is expected that this arrangement will continue under the new Mining Law. Holders of an SML will be required to pay an additional royalty of 10 percent of net profit. Since this additional royalty is determined on net profit, it is expected that the government will have a greater monitoring role over capital expenditure and mining operating costs in the case of SMLs. The current production royalty rates for a selection of key Indonesian commodities are set out in the table II.2.³⁸

2.4. Environmental Protection Obligations

Environmental protection is a practice of protecting the environment, on individual, organizational or governmental level, for the benefit of the natural environment and (or)

³⁸ Ibid., p.20

humans³⁹. Environmental protection may also refer to any activity to maintain or restore the quality of environmental media through preventing the emission of pollutants or reducing the presence of polluting substances in environmental media⁴⁰. The relationship between environmental protection and sustainable development exist in mining sector so that the environmental protection has become one of the most critical points of sustainable development issues in mining industry.

In the past, a mine could be abandoned after mineable reserves were exhausted. The abandoned or badly closed mines would be a difficult problem for government, community, company, and eventually would ruin the image of the company and the mining industry. The mining industry realized that its future is closely linked with efforts to achieve sustainable development, which means it must operate in a way that is consistent with community expectations and recognize that business must share responsibility with the government and the wider community, to help in facilitating the development of strong and sustainable community. Since 2008, the government of Indonesia has developed a series of environmental protection policy as a part of sustainable development policy framework. The series of policy now function as the driving factor for a better working practice. Environmental protection in Indonesia is governed by various laws, regulations and decrees, and non-compliance may result in fines and penalties and revocation of licenses and/or Licenses in extreme cases.

Before the derivative rule of the new Mining Law was signed, the Minister of Energy and Mineral Resources (MoEMR), who has responsibility for mining activity aspects, issued a regulation regarding mine reclamation and mine closure, as described in Ministerial Regulation Nr. 18/2008. The regulation states that a company is required to provide mine reclamation and mine closure reserves which may be in the form of a time deposit, bank guarantee or insurance, with duration according to the reclamation schedule. The mine reclamation reserves may also be in the form of an accounting reserve, if the company is either a publicly listed company or the company has paid up capital of at least US\$25 million as stated in the audited financial statements. As a time deposit, the mine closure guarantee may be placed in Rupiah (IDR) or US\$

³⁹ Environmental protection (n.d.) In *Wikipedia*. Retrieved December 7, 2010 from http://en.wikipedia.org/wiki/Environmental_protection

⁴⁰ OECD, . (2001). *Environmental Protection*. Retrieved Nov. 22, 2010, from Glossary of Statistical Term, New York. Web site: <http://stats.oecd.org/glossary/detail.asp?ID=836>.

funds with a state owned bank in Indonesia on behalf of the MoEMR, Governor or Mayor, qq the relevant company, with a duration according to the mine closure schedule⁴¹.

In the new mining law, the environment is receiving serious consideration. In this mining law, all mining activities should be managed under and aims, one of them, environmental soundness.

Law Nr. 4, 2009:

Article 2

Mineral and/or coal mining shall be managed under the principles of:

...

d. sustainability and environmental soundness;

Elucidation of Article 2 d:

“Sustainability and environmentally-sound principles” means the principles that in a planned manner integrate economic, environmental, and socio-cultural dimensions throughout mineral and coal mining business to realize the present and future welfare.

Article 3

In support of sustainable national development, management of mineral and coal shall aim the following:

...

b. to ensure the benefit of sustainable and environmentally-sound mineral and coal mining;

Environmental considerations also become one of the requirements to determine the mining license area by the government as stated in the article 18 and 32.

Law Nr. 4, 2009:

Article 18

The criteria under which 1 (one) or several Mining License Areas within 1 (one) Mining Area is determined shall be as follows:

...

b. conservation principles;

⁴¹ Ibid., p.58

Article 32

The criteria under which 1 (one) or several Special Mining License Areas in Special Mining Areas within 1 (one) Special Mining Area is determined shall be as follows:

...

c. carrying capacity of environmental conservation;

From the side of the parties who want to conduct mining business, entities should also meet the environmental requirements determined by the government as stated in the article 65, 86, 96 and 97.

Law Nr. 4, 2009:

Article 65:

(1) Entities, cooperatives, and sole proprietorships as intended by Article 51, Article 54, Article 57, and Article 60 that conduct mining business must meet administrative requirements, technical requirements, environmental requirements, and financial requirements.

Article 86

(1) Entities as intended by Article 75 section (2) that perform activities in Special Mining License Areas in Special Mining Areas (WIUPK) must meet administrative requirements, technical requirements, environmental requirements, and financial requirements.

Article 96

In the application of good mining engineering principles, Mining License holders and Special Mining License holders must:

...

c. conduct management and monitoring of the mining environment, including reclamation and post-mining activities;

...

e. conduct management of mining waste in solid, liquid, or gas form to meet the standard quality of the environment prior to disposal to an environmental medium.

Elucidation of Article 96 e:

"Mining waste" shall include, inter alia, coal tailings and waste.

Article 97

Mining License holders and Special Mining License holders must ensure the application of standards and standard quality of the environment to regional characteristics.

In line with the new mining law, the environmental law was recently updated in Law Nr. 32 of 2009. It requires the Central Government and Regional Governments to prepare a strategic environmental analysis and ensure that the principles of sustainable development have been integrated into the development of a particular region.

Both the Mining Law and the Environmental Law in conjunction require mining companies conducting exploitation of natural resources that have an environmental or social impact to obtain and maintain an environmental impact planning document (*Analisa Mengenai Dampak Lingkungan or AMDAL*), which consists of an environmental impact assessment, an environmental management plan and an environmental monitoring plan. An environmental management effort document, *Upaya Pengelolaan Lingkungan (UPL)* and *Upaya Pengawasan Lingkungan (UKL)* generally need to be prepared in any situation where the *AMDAL* document is not required.

Even though not specifically regulating the environmental problems settlement, the new mining law states that the type of disputed should be settled under the provisions of laws and regulations

Law Nr. 4 of 2009

Article 166

Any problem arising in the implementation of Mining Licenses, Small-Scale Mining Licenses, or Special Mining Licenses in connection with environmental impacts shall be settled under provisions of laws and regulations.

Sanctions applied in respect of breach of the Environmental Law range from three to 15 years of imprisonment and/or a fine of IDR 100 million to IDR 750 million⁴². The new Environmental Law now also stipulates minimum penalties which apply, depending on the nature of the breach.⁴³

Summarizing this chapter, it becomes clear that minerals in Indonesia are belong to the state and the government of Indonesia has a right to grant a mining license to an entity who wants to engage in mining. According to the mining law, entities, in conducting their business, have obligations to pay taxes and royalty as well as to meet environmental protection regulations as

⁴² Exchange rate when this research conducted is IDR 8,600 equal to USD 1.00

⁴³ *Ibid.*, p.59

required by the government. In chapter III, a SWOT analysis is conducted in order to deeply elaborate the contents of the new mining law.



CHAPTER III

SWOT ANALYSIS OF THE NEW INDONESIAN MINING REGULATION

The implementation of the new mining regulation, as well as replacing the old regulation, obviously has business implications for the mining industry in Indonesia. The discussion was carried out for quite a long time, almost 4 years in the House of Representative, and involved different parties with their respective interests, brings a wish that the new regulation not only as about a development, but also solution to the various weaknesses and limitations faced in the former mining law enactment.

3.1. Strengths

3.1.1. Mining Licensing System

The concept of a licensing system as adopted in the new mining law is recognized by various different names in different countries in the world. In Chile, the mining license is known as the Exploration and Mining Concession. In the case of Chile, mining concessions transfer ownership of all minerals contained above and or below the earth surface within the concession area to the holder of the concessions. In Australia, one of the most advanced countries in mining, mining licenses are recognized by the term of Exploration License, or Mining License.

Unlike the contract system under the previous mining law, the licensing concept clearly recognizes the ownership status of minerals and the owner has a stronger and more emphasize legal position. In the contract system as applied under the Law Nr.11 of 1967 (the former mining law), the government's position was not only ambiguous as regulator and party entering into a contract, but also substantially lowering its position as state to the equivalent level of contractor. Therefore, the legal implications of this system changed under the Law Nr.4 of 2009 (the new Mining Law) by restoring the Principle of State Tenure to the proper position in terms of the state administration. By strengthening this state tenure, including the control of natural resources, the

government is considered to be a sovereign authority in regulating, managing and overseeing the management of mining companies⁴⁴.

Another significant different between a contract and a license system is found in the legal sources on which the operational execution of mining activities are based. As can be seen from table III.1, the legal base used as a reference in the license system is all enforced laws in the host country. In a contract system, the legal base refers to the contents of the contract or agreement itself, which certainly will be very limited both in term of scope and condition. Therefore, the sovereignty of the legal base is becomes more prestigious and well recognized in the license system than in the contract system.

Table III.1
Comparison between Licensing System and Contract System

Subject	Licensing System	Contract System
1. Legal relationship	Public, State administrative law instruments	Civil/Private law
2. Law enforcement	By Government	By Both parties
3. Choice of Law	No legal options	Legal options applicable
4. Legal consequences	Unilateral	Due to the bilateral agreements
5. Settlement of dispute	Administrative Court	Arbitration
6. Legal certainty	More certainty	Due to the bilateral agreements
7. Rights and obligations	More rights and obligations from the Government side	Rights and obligations are relatively equal between engaged parties
8. Sources of Law	Legislation	Contract / Agreement itself

Source: Sri Nur Hari Susanto (2009)

From the point of view of potential disputes, should the parties face any conflicts, disputes, and abuses in the mining activity works, under the license regime, they settle their case in a state court, which means in the Indonesian Administrative Court. This is a consequence of the legal system and enforced legislation in Indonesia. In the contract system, the litigants settle

⁴⁴ Susanto, S.N. (2009, December). *Local Authority on the Minerals/Mining Resources in the Local Autonomy Perspective* (in Indonesian). National Seminar: *Legal Aspect of the Local Authority on the Minerals Resources*, Faculty of Law, Universitas Diponegoro, Semarang, Indonesia.

the dispute in arbitration, both domestically and or internationally, which may be subject to pressure from powerful law firms representing the stronger and wealthier party⁴⁵. This type of pressure is pretty often found in developing countries' experiences.

In other words, the regime change from contract to license is no longer positioning an alignment between the government and the contractor. In a licensing system, the government acts as the regulator and provider of a mining license. In this case, the government has full authority to enforce the existing rules in accordance with the prevailing laws and regulations. On the contrary, in the contract system, the government and the contractor have equal level positions, and the implementation of the law cannot be enforced entirely and solely by the government, but must be done by both engaged parties. Under a contract regime, the state sovereignty represented by the government is often questionable.

3.1.2. Decentralization in Mining Authority (Central and Local Government)

Another strength contained by Indonesia's new mining regulations is the adoption of a central-local government distribution authority concept, also called decentralization. In the old mining law, the central government (government) had almost absolute authority in controlling the natural resources in Indonesia, where local government has very limited. In the new mining regulation, local governments obtain a larger portion of authority than in the past. This fact is in line with the spirit of decentralization that occurred in Indonesia after the implementation of Law Nr.32 of 2004 concerning local governance in this reformation order. Furthermore, the new mining regulation shares a distribution of authority among central, provincial and local government.

In general, according to the Law Nr. 4 of 2009, the (central) government has exclusive authorities in term of:

- a. Determination of national policy;
- b. Institutions of laws and regulations;
- c. Determination of standards, guidelines and criteria;
- d. Determination of national mineral and coal mining licensing system;

⁴⁵ Arbitration. (n.d.). In *Wikipedia*. Retrieved May 9, 2011 from <http://en.wikipedia.org/wiki/Arbitration>

- e. Determination of the mining area after consultation with the local government and Parliament.

Beyond those mentioned above, the distribution of authorities among central, provincial and local government in principle, especially in the authority of licensing, are the same each other and only differ in the term of coverage scale area (table III.2).

Table III.2
Minerals and Coal Authorities Distribution

Level of Government	Central	Provincial	Local/District
Authorities			
To grant Mining License, directing, communal conflicts settlement and supervising mining business, mining location, and production operation with direct environmental impacts in the area:	cross-boundaries of provinces and or the territorial sea exceed 12 miles of shoreline	cross-boundaries of cities/districts and or the territorial sea from 4 miles to 12 miles of shoreline	cities/districts and or the territorial sea up to 4 miles of shoreline (include to grant Artisanal Mining License)

Source: Law Nr. 4 of 2009, processed.

As described in table III.2, in addition to exclusive authorities of the Central government, the roles of Central government, provincial and local are relatively equal. The difference is merely seen in the distribution of mining activities administratively and geographically.

3.1.3. Emphasizing the role of Parliament

In addition to accommodate the concept of decentralization, one of the strengths of the new mining law is embracing the central and region integrated system by emphasizing the role of Parliament. The Parliament (House of Representatives) is a high state institution and according to Indonesian law its position is equal with the president. The position of the Parliament is very strategic in directing the state development policies, including the policies associated with mining industry.

Considering mining investment as one of the State's strategic development sectors, in the new mining law, Parliament is engaged in particular provisions, especially in the approval of

Mining Zones⁴⁶ determination. According to the new law, the Plan of every Mining Zone is adopted by the Minister only after coordinating with governor, mayor and consultation with the House of Representatives of the Republic of Indonesia.

Law Nr. 4 of 2009:

Article 5

(1) In the national interests, the Government upon consultation with the House of Representatives of the Republic of Indonesia may adopt a policy on preference for domestic mineral and/or coal needs.

(2) National interests as intended by section (1) may be realized by exercising supervision for production and export.

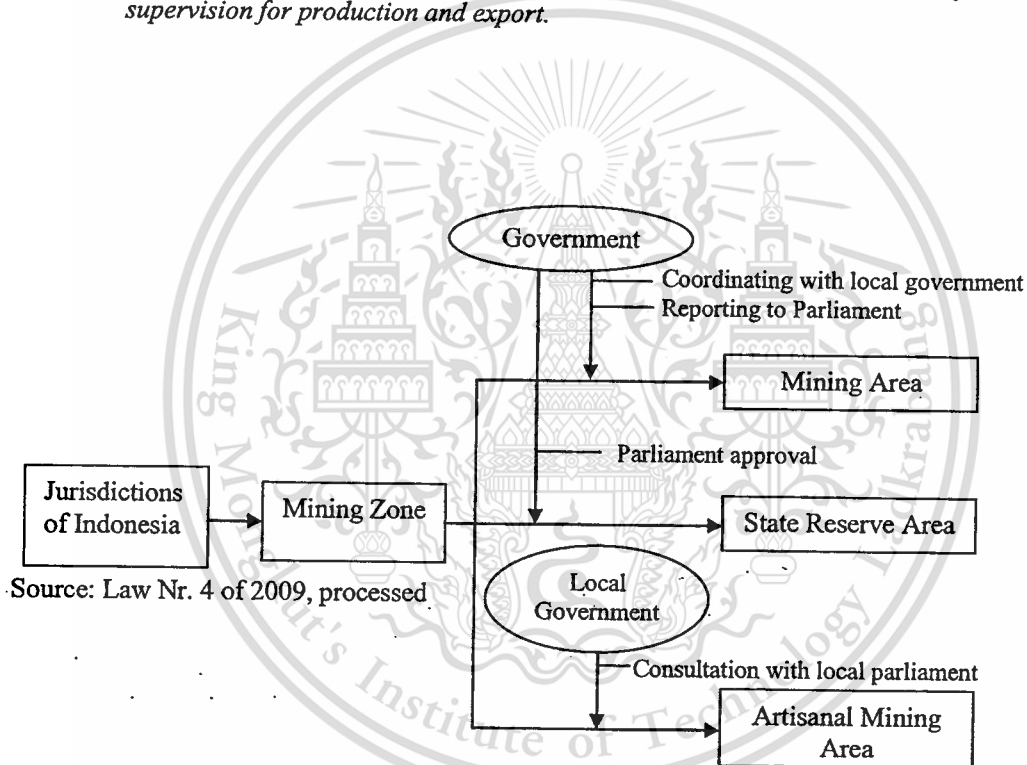


Figure 3.1

The Role of Government, Local Government, and Parliament in Mining Zone Planning According to Law Nr. 4 of 2009

⁴⁶ Mining Zone means a zone with potential minerals and/or coal and not bound by governmental administrative boundaries as part of the national spatial planning. Mining Zones shall include: a. Mining Areas; b. Artisanal Mining Areas; and c. State Reserve Areas. Source: Law Nr. 4 of 2009

Article 6

(1) Authority of the Government in the management of mineral and coal mines shall be, inter alia:

...

e. to determine Mining Zones upon coordination with the regional governments and consultation with the House of Representatives of the Republic of Indonesia.

Article 9

...

(2) Mining Zones as intended by section (1) shall be determined by the Government upon coordination with the regional governments and consultation with the House of Representatives of the Republic of Indonesia.

Article 14

(1) Mining Areas shall be determined by the Government upon coordination with the regional governments, and shall be delivered in writing to the House of Representatives of the Republic of Indonesia.

Article 21

Artisanal Mining Areas as intended by Article 20 shall be determined by the regents/mayors upon consultation with the Regional House of Representatives of district/cities.

Elucidation of Article 21: Determination of Small-Scale Mining Areas shall be on a planning basis by synchronizing data and information through the Mining Zone information system

By emphasizing the role of Parliament through its position and function in approving the proposed mining zones, it is expected that a variety of different interests can be well accommodated, considering the House is representative of all people of Indonesia. This is a distinctive strength for the new mining law to avoid unnecessary conflicts of interest emerging when a Mining License is granted.

3.1.4. Accommodating the interests of domestic industry development

The effort of the new mining regulation to accommodate the interests of domestic industrial development is expressed in the obligation of adding value to minerals resources domestically before export.

Although mining in Indonesia began since the Dutch colonial era, most mined minerals were exported without being processed to increase their additional value. As a result, Indonesia

must import final metal products to meet domestic needs. As an example, Indonesia still imports 66% of its domestic need for iron while most of the iron ore mined is exported to be processed overseas, especially to China. Similarly, this also happens to aluminum, copper and other metal minerals.

The institution of the new mining law gradually improves this limitation and reduces sales of raw materials mined to overseas, as Mining License holders are required to produce added value to the mined minerals by process them domestically, as stated in article 102 and 103 paragraph (1)

Law Nr. 4 of 2009:

Article 102

Mining License holders and Special Mining License holders must increase added value to mineral and/or coal resources in undertaking mines, processing and refining/smelting as well as utilizing minerals and coal.

Elucidation of Article 102:

Added value in this provision is intended to increase end products of mining business or utilization of associated minerals.

Article 103

(1) Production Operation Mining License holders and Special Mining License holders must process and refine/smelt mining products domestically.

Elucidation of Article 103 (1):

Obligations to process and refine/smelt domestically are intended to, inter alia, increase and optimize the mine value of products, supply of industrial raw materials, worker absorption, and state revenues.

This regulation also concerns local entrepreneurs who have limited ability to invest in mineral processing plant alone or to concessions which contains less resources for which it is not economically feasible to be processed by themselves. In these cases, the mining license holders are allowed to perform processing elsewhere in Indonesia, as stated in article 103 paragraph (2):

Law Nr. 4 of 2009

Article 103

(2) Mining License holders and Special Mining License holders as intended by section (1) may process and refine/smelt mining products of other Mining License holders and Special Mining License holders.

In addition, the Domestic Market Obligation (DMO) is also mandated by the current energy regulation in the form of Ministerial Regulation (Ministerial) of Energy and Mineral Resources (MoEMR) Nr. 34 of 2009 concerning Prioritization of Mineral and Coal Supply for the Domestic Needs

MoEMR Regulation Nr. 34 of 2009

Article 2

(1) Mineral and Coal Enterprises shall give priority to supplying the needs of mineral and coal for domestic purposes.

Article 3

(1) Due to the preferential supply of minerals and coal for domestic purposes as referred to in Article 2 Mineral and Coal Enterprises must sell the minerals or coal produced to the Mineral User or Coal User.

The license holders may conduct export sales only when they meet the DMO specified by the government, as stated in article 5 MoEMR Regulation Nr. 34/2009.

MoEMR Regulation Nr. 34/2009

Article 5

Mineral and Coal Enterprises as referred to the article 3 in paragraph (1) are allowed to perform the export of minerals or coal after meet the Minimum Mineral Sales Percentage or Minimum Coal Sales Percentage.

As a consequence, each company is obligated to sell its coal mined in respect with the Minimum Percentage of Sales of Minerals/Coal appointed by the Minister and stated in the sell-purchase agreement of minerals/coal between the Agency for Mineral and Coal Enterprises with users of minerals/coal.

The existence of the obligation to conduct a domestic minerals processing accompanied by the DMO provides an excellent opportunity for domestic industrial growth. Surely this is fully supported by the Indonesian people and became one of the new mining regulation's strengths.

3.1.5. Environmental Concern

Environmental problems arise due to poor management of mines in Indonesia has led to a variety of very complex issues. This is not a coincidence, considering that the old mining law did not obviously regulate mine reclamation issues.

The environmental problems were not considered as a directly integrated part of mining activities. This is evidently found in the regulatory environment which was standing alone in the Environmental Law with a very broad coverage for all industrial and human activities, not just mining. As a result, the government was not able to focus on dealing with environmental problems of mining. Environmental problem has been absolutely neglected in the old mining regulations.

Article 33 section (3) of the 1945 Constitution asserts that the land, the waters, and the natural riches contained therein shall be controlled by the state and exploited in the greatest prosperity of the people. Given that minerals and coal as natural riches contained in the land are nonrenewable natural resources, the management thereof needs to be optimally conducted in efficient, transparent, sustainable, environmentally-sound, and just manners in order to reap the continuous benefits in the greatest prosperity of the people⁴⁷. In contrast to the old mining regulations, the new mining regulation provides a great attention to good environmental management efforts. This new law has the rationale to create sustainable development, mining business activities must be performed with due regard to the principles of the environment, transparency, and public participation.

The impact of mining activities on water quality as a source of people's life is also the concern of the State in the new mining law. It is stated that all mining activities should maintain the sustainable functions and carrying capacity of water resources under provisions of laws and regulations.

Law Nr. 4 of 2009:

Article 98

Mining License holders and Special Mining License holders must maintain the sustainable functions and carrying capacity of water resources under provisions of laws and regulations.

Elucidation of Article 98:

⁴⁷ Source: General elucidation of Law Nr. 4/2009 concerning Minerals and Coal Mining

This provision is intended to prevent mining business on water sources from resulting in change in the morphology of water sources, either in upstream or downstream areas.

The concern of the government to protect the environment from damage caused by mining activities is also confirmed by certain obligations for mining license holders. One of the obligations to be fulfilled when applying for an Operation Production-Mining License is to submit reclamation plans and post-mining plans where implementations are in accordance with post-mining land use.

Law Nr. 4 of 2009:

Article 99

(1) Any Mining Permit holder and Special Mining Permit holder must submit reclamation plans and post-mining plans when filing an application for a Production Operation Mining Permit or Production Operation Special Mining Permit.

(2) Reclamation and post-mining activities shall be performed to the functions of post-mining lands.

Furthermore, still associated with reclamation and mine closure, the mining license holders must provide reclamation guarantee/reserve funds and post-mining guarantee funds before conducting the exploitation activities. In case the license holders fail to carry out the mining reclamation and closure as planned, the Minister, governors, or regents / mayor in accordance with the authority assign a third party to conduct the reclamation and post-mining financed by the guarantee fund of reclamation and mine closure deposited.

Law Nr. 4 of 2009:

Article 100

(1) Mining Permit holders and Special Mining Permit holders must set up reclamation deposit funds and post-mining deposit funds.

(2) The Minister, the governors, or the regents/mayors may within their authority assign a third party to conduct reclamations and post-mining by deposit funds as intended by section (1).

(3) The provision as intended by section (2) shall apply if Mining Permit holders or Special Mining Permit holders fail to conduct reclamations and post-mining to the approved plans.

The great concern for environmental issues reaped an overwhelming response from various mining stakeholders both domestically and internationally. This spirit is in line with international environmental campaign held in various parts of the world lately.

Due to the institution of this new mining regulation, the international community considers Indonesia to be seriously involved in world efforts in order to prevent global warming and extremely climate change. This will greatly assist the implementation of environmentally sound mining policy in Indonesia since many of the operating companies today are multinational enterprises.

3.2. Weaknesses

In addition to strengths contained in the new mining regulations, there are also weaknesses that might hinder the implementation of the policy. Some of these weaknesses include:

3.2.1. The Use of Public Infrastructures for Mining

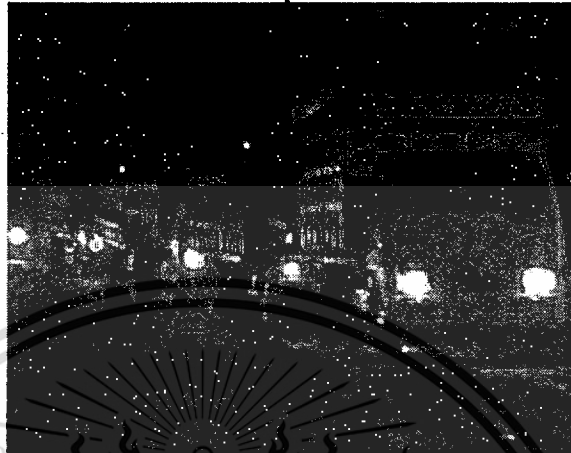
One weakness of the new mining regulation is the permissibility of the Mining License holders to use the public facilities and infrastructures for mining purposes as provided in Article 91:

Law Nr. 4 of 2009:

Article 91

Mining License holders and Special Mining License holders may use the benefit of public infrastructure and facilities for mining needs upon meeting provisions of laws and regulations.

The existence of this rule will obviously generate problems to local communities because the operation of the mining activities continuously uses heavy transportation and equipment. It is true to say that the utilization of public facilities must comply with statutory provisions in force, but this article does not give clear boundaries regarding the intensity and frequency of this utilization permission.



Source: Susanto (2010) retrieved from
<http://www.mediaindonesia.com/read/2010/11/22/183108/126/101/Truk-Batu-Bara-Dilarang-Masuk-Kota-Bengkulu>

Figure 3.2
The Utilization of Public Road for Coal Hauling

Eventually, the implementation of this new mining regulation will probably meet resistance from people. This is because a lot of problems arise from the use of public facilities and infrastructure for mining activities. For instance, in Kalimantan, 27% of the land roads are heavily damaged condition due to the use by mining trucks. Apart from that, the use of these roads mixed with public transportation may also cause serious accidents or Acute Respiratory Infections (ARI). In Sumatra (figure 3.2), the use of public roads for coal mined trucks causes a tremendous traffic jam most of the day, which led to increase inter-city travel time by more than 2 times. This fact is clearly harmful to society because it reduces the people productivity to a very low level.

3.2.2. Mining License in Respect with Administration Boundaries Only

The existing mining licensing system in the new mining law is enacted in accordance the mine site administrative boundaries as well as the impact of activities assessment which may be

generated⁴⁸. Furthermore, communities recognized as group or communities affected by mining activities are the groups of people who are directly affected by the negative impact of mining operations, as stated in the article 145.

Law Nr. 4 of 2009

Article 145

(1) The public directly affected by negative impacts of mining business activities shall have the right to:

a. recover reasonable damages resulting from faults in the conduct of mining business activities under provisions of laws and regulations.

b. file a claim with the court for damage resulting from the conduct of mining business that is other than in accordance with the requirements.

Elucidation of Article 145 (1): "The public" means those that are directly affected by negative impacts of mining business activities.

However, according to Siti Maemunah (2008)⁴⁹, the definition of affected communities is often restricted to people around and or in the mining concession area only. In reality, the impact of mining activities in principle does not recognize boundaries of concessions, and even across districts, provincials and even countries administrative boundaries. For example, the coal mine owned by Kideco Jaya Agung, in Paser, Kalimantan Timur affects the villages of Dayak Paser in Suateng, Damit, Bekoso, Lempesu, Suweto, to the estuary area, which are ignored by this South Korean company even though they also affected by mining. Kendilo River, the main sustaining of their livelihood, was damaged by coal excavation in the upper side of the river. Those five groups of villages were forced to move to a new location, located 2-10 km from the old villages. They built schools and other public facilities without any support by the company because they were not inside the mining area.

The same situation was suffered by villagers along the Ok Briam, Mal, Muyu, Kao, and Digoel River in Digoel, Papua. They reported that the Ok Tedi mine tailings operated by BHP

⁴⁸ See more table III.2

⁴⁹ Maemunah, S. (2008, December 26) *Mining Law and the Problem of Human Rights* (in Indonesian). Kompas. Retrieved from <http://www.jatam.org/content/view/634/1/>

Billiton in the neighboring country, Papua New Guinea, also impacted their village. Many fish died and farms along the river are no longer fertile. These phenomena show how destructive force of mining is flowing and spreading across the administrative boundaries.

To overcome this weakness, a specific policy governing the communities or groups that suffer impacted by mining activities may be needed, either directly or indirectly with the solution or the rules implementing that policy.

3.2.3. Unregulated Public Participation Mechanism

Public participation is a crucial process for business continuity and it is also recognized in the international community. The Delhi Declaration of Principles of International Law Relating Sustainable Development proclaims that public participation is instrumental both to sustainable development and good governance as long as it is conducted transparent, accountable and responsive government conditions and for the active engagement of civil society. Therefore, public participation can help mitigate misunderstanding or disagreement with stakeholders (Yupari, 2010).

Although the new mining regulation recognizes the principle of community participation, this assertion is still too general which means there is no any particular or more detail rule concerning public participation mechanisms and how it must be implemented. The rule is limited to the provincial government authority in order to increase public participation (article 7).

Law Nr. 4 of 2009

Article 7

(1) Authority of the provincial governments in the management of mineral and coal mines shall be, inter alia:

...

i. to foster and improve public participation in mining business with due regard to the environmental sustainability;

The problem is that public participation should be managed by the government at all levels, not only the province, but also the central and district/city, considering each level of government is responsible for determining the mining zones in accordance with its respective authorities as stated in article 10:

Law Nr. 4 of 2009

Article 10

Mining Zones as intended by Article 9 section (2) shall be determined:

- a) *in transparent, participatory, and responsible manners;*
- b) *integrated with due regard to the opinions of the relevant government agencies, the public, and in consideration of ecological, economic, and socio-cultural aspects as well as environmental-soundness; and*
- c) *With due regard to regional aspirations.*

Thus, despite the obvious statement that public participation is absolute, the mechanism to enforce any term of participation is not explicitly and detailed governed in the new Mining Law, is not mandated to be regulated. This new mining law is not mandates a lower regulatory such as government regulation to regulate clearly and firmly the issue of public participation mechanisms. Eventually, this provision could be differently interpreted by each party and it is a weakness of this regulation. In addition, the importance of participation should not only be taken into account when the government intends to determine the mining zone, but also the in the stage when the government wants to grant a Mining License.

3.2.4. Articles contradiction

Articles contradiction is a debatable weakness in the new mining regulations. The articles contradiction refers to the transitional provision (article 169), where on the one side, this law allows CoW and existing CCoW to remain in effect until the contracts are over, but, on the other side, the provisions of the contracts and agreements must be adapted to the new law. That is, CoW and existing CCoW remain valid but must be adapted to the new mining law.

Law Nr. 4 of 2009

Article 169

Upon effectiveness of this Law:

- a. *Contracts of works and coal contracts of works already in existence prior to the effectiveness of this Law shall remain valid until the contracts/agreements expire.*

b. The terms that are stated by articles of Contracts of works and coal contracts of works as intended by point (a) shall be adjusted at the latest 1 (one) year of the promulgation of this Law, with the exception of state revenues.

Elucidation of Article 169 (b):

All of the articles that are contained in contracts of works and coal contracts of works are subject to adjustment to the Law.

The problem arises because there are many differences between the old and the new mining law. One of them regards the validity period of the contracts. In the old mining regulation, the validity of CoW and CCoW was 30 years, whereas a Production-Operation (PO) Mining License is valid 20 years maximum. Thus, according to the old regulation, if a CoW was signed in 1997 for 30 years, the validity period of the contract remains until 2027. However, under the new regulation in, the CoW has to be adjusted and the validity period of the CoW which was signed in 1997 is until 2017 only.

Eventually, it can be concluded that, on the one hand, in accordance with article 169 (a), the CoW will be valid until 2027, but, on the other hand according to article 169 (b), where the validity time of the CoW should be adjusted to the new regulation, it becomes effective until 2017 maximum only. The existence of this contradiction will lead to the question, what happens if the mining company who holds the CoW is not willing to adjust the contract since they feel aggrieved. This the answer is not easy given the fact that the mining company conducted a feasibility study before start-up of the project, definitely considering the duration of the project until 2027 and not 2017. This may lead to disputes between the government and the mining company to be settled in arbitration since the positions of the disputing parties at the same or equal levels.

However, Hikmahanto Juwana (2009), state that article 169 paragraphs (a) and (b) in the new mining law basically do not contradict each other. He argues that these two paragraphs in the same article even reinforce each other. The professor considered that article 169 (a) contains a tribute to the CoW and CCoW which has been signed before the mining law was passed. This is

also important to prevent government conducting an abuse of power. This statement refutes the opinion of many parties, who assess the contents of the article 169 are not consistent each other⁵⁰.

3.3. Opportunities

3.3.1. Strong Desire from Government to Implement the Law Nr. 4 of 2009

There is a strong desire from all levels of government, from the central, provincial and district levels to implement this new regulation. As has been stated that the contents of this new regulation provide not only emphasize the authority distribution among the levels of governments but also to set a pattern of integration between central-local interests, the institution of it has been welcomed very well both by the governments and by the parliament. This good response is one of the opportunities by the new mining law to be implemented well.

3.3.2. Full Support from Industrials and Professionals

Legal certainty is a factor that must be met in order to attract mining investors to invest anywhere in the world, including in Indonesia. This is understandable considering that mining is a high risk, complicated and long term business. Initially, a number of foreign associations and survey institutions considered that the contents of article 169 (b) were contrary to those of article 169 (a), about the CoWs and CCoWs signed before the institution of the Mining Law, and their remaining in force until the end of the contract period.

However, as stated by Bambang Setiawan, the former General Director of Minerals, Coal, and Geothermal, MoEMR, investors do not have to worry about opinions expressed by foreign associations and survey institutions, because, basically, the contents of article 169 letter (b) is to strengthen the state recognition of CoWs and CCoWs as stated in subparagraphs (a).

Moreover, the taxation system as agreed under the CoW and CCoW regime will not be affected and changed by the implementation of this new mining law. Thus, this warranty also provides legal certainty for entitles who want to engage in mining in Indonesia. In fact, after the Mining Law was passed, a number of investors from China and India became interested to invest

⁵⁰ Lagaligo, A. (January 21, 2009). *Article 169 Paragraph (a) & (b) Mining Law are not Contradictive* (in Indonesian). *Majalah Tambang*. Retrieved May 8, 2011 from http://www.majalah tambang.com/detail_berita.php?category=18&newsnr=1028

in the mining sector because they believe that investing in the mining sector has legal certainty eventually⁵¹.

Furthermore, according to the viewpoint of an existing mining company, PT. Aneka Tambang Tbk (Antam), the institution of the new mining regulation has created a legal certainty in this mining field. Corporate Secretary Bimo Budi Satria said that Antam has no problem if its Mining Authority (MA) is replaced by Mining License (ML) because there is a legal certainty for the licenses holder. Local government cannot arbitrarily alter, revoke or cancel the licenses legally issued to an enterprise⁵².

Finally, from the side of mining professionals, Herman Afif Kusumo (2011)⁵³ asserted that they are in full support because the law improves the mining investment climate. He stated that the law guarantees the country's sovereignty and the domestic companies involved in mining.

3.3.3. Mining as an "Agent of Change"

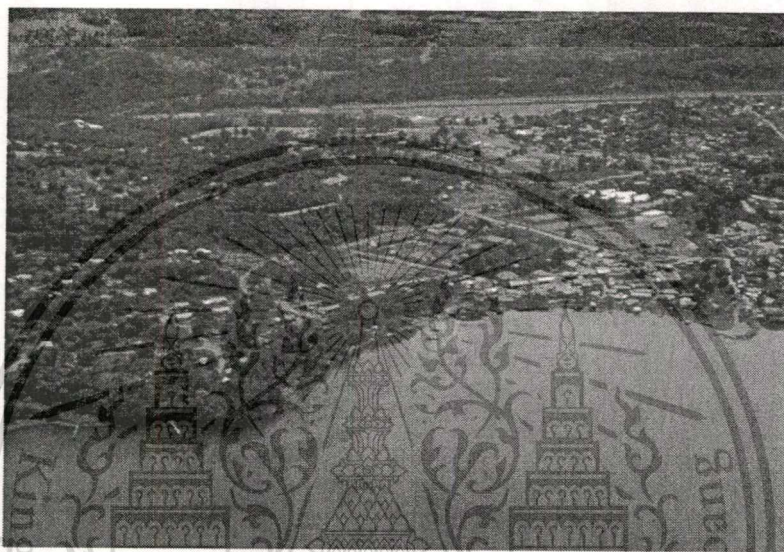
Mining industry activities are viewed as "agents of change" who are able to be the prime mover of underdeveloped areas. In general, Asia, including Indonesia has been a large source of minerals in the world. The high potential of minerals and coal resources became an opportunity for Indonesia to be one of the mining investment destinations in the world. However, the characteristic of potential mining sites in remote areas is one reason why mining represents a high capital and risk investment. In most cases, minerals and coal resources are found in rural areas which do not have adequate public facilities and infrastructure. As a consequence, companies must conduct their own facilities and infrastructure if they intend to start operations.

⁵¹ Lagaligo, A. (May 12, 2009) *Bambang Setiawan: CoW and CCoW Taxes are not Changed* (in Indonesian). *Majalah Tambang*, Retrieved May 8, 2011 from http://www.majalahtambang.com/detail_berita.php?category=18&newsnr=1488

⁵² *Mining Law Gives Legal Certainty* (in Indonesian). (December 18, 2008). *Republika Online*. Retrieved May 9, 2011 from http://koran.republika.co.id/koran/0/21088/UU_Minerba_Berikan_Kepastian_Hukum,

⁵³ He is a member of the advisory board of the Indonesian Chamber of Commerce and Industry. Retrieved May 10, 2011 from <http://www.thejakartapost.com/news/2011/04/12/r%E2%80%99s-mineral-resources-controlled-major-foreign-firms.html>.

Furthermore, in addition to the infrastructure development directly associated to the mining production and processing facilities, companies must also build other infrastructure and facilities such as land roads, housing, hospitals, religious facilities and other supporting facilities. The developed infrastructure and facilities thus provide an opportunity for people to use it, either the employees who work in mines, their families, as well as other groups of community.



Source:
<http://brigaterossoneri.files.wordpress.com/2010/11/sorowako3.jpg>

Figure 3.3
Sorowako, Sulawesi Selatan, Indonesia

In many cases, the entry of mining industry into a rural area leads to the initial development of that region. Sometimes, a city then emerges after the exploitation of minerals or coal and later in its development process mining activity becomes the economic pulse of the community. Sorowako in Sulawesi Selatan (figure 3.3), Batu Hijau in Sumbawa and Timika in Papua, all in Indonesia are real examples of cities emerging as a result of mining activities. Assuming that the mining industry is an agent of change which is able to accelerate the development of underdeveloped regions, this is also an excellent opportunity for the new mining regulations in Indonesia.

3.3.4. The Improvement of World Economic Performance after the 2007 Global Economic Crisis

Externally, the improved performance of the world economy after the global crisis of 2007 is also an opportunity for the implementation of the new mining regulations.

In early 2007, the world underwent an economic crisis originating from the United States. In a matter of months, this crisis spread across the entire world including Asia. Although the impact of this economic crisis did not have a significant impact on Indonesia's national coal exports (Syahrir, 2010), but on the minerals sector in general, it inhibited the rate of investment. However, the improving world economy by the end of 2009 has made Indonesia's mining industry again become excited. Indonesia's economic conditions are being taken into account in the world economy constellation since the inclusion of Indonesia in the 20 main economic group (G-20). This is considered as a proud achievement and challenge to continue accelerate the economic growth. Thus, in the future Indonesia will be able to compete with the developed countries like the United States and other countries in Europe and Asia.

After the 2007 global economic crisis, thermal coal trading in the global markets has reached 758 million tons during 2010, an increase by 5%, driven by China, Japan, Korea and India. This Asian import market growth has a positive impact to the coal exporters. The global coal trade in 2011 is predicted to rise and because of Asian emerging countries imports and a moderate consumption growth which is expected to occur in industrialized countries in the European Union⁵⁴. The improving of world economic performance will certainly help the capital availability for the global mining investors to optimize the momentum of legal certainty offered by the institution of Indonesia's new mining regulation.

3.3.5. Domestic Market Escalation for Minerals and Coal

The existence of the obligation to prioritize domestic coal sales mandated by the new mining regulation also balances with the government's efforts to construct supporting infrastructures and facilities for domestic coal consumption. Today, the government is developing

⁵⁴ Setyowati, R. (March 21, 2011). *The Coal Keep Smoldering* (in Indonesian). Retrieved May 15, 2011, from <http://bataviase.co.id/node/610330>

an integrated coal transportation system to link coal mines and terminals in Sumatera and Kalimantan. In addition, the government also builds several power plants in order to supply 10,000 MW of electricity, and convert 7,753 MW of diesel-fired power plants into coal fired-power plants. With the construction of power plants, coal consumption in 2010-2014 is expected to continuously rise. In 2014 it is estimated that the coal consumption is 95.3 million tons, increase from 40.8 million tons this year.

One requirement to realize this government's plan is the availability of exploited coal. Thus, this requirement is also an opportunity for the new mining regulations to be implemented properly. The increased capacity of the domestic market for coal and minerals, combined with the appropriate prices standard, becomes one of the main attractions for investors to engage in mining business in Indonesia. In other words, this momentum is a big opportunity for the enactment of the new mining regulation.

3.4. Threats

The last part of the SWOT analysis consists of the threats. Threats is defined as something which is negative and come from the external of the component analyzed. In the new mining law, there are threats that must be anticipated in the process of its enforcement, including:

3.4.1. Lack of the Government's Human Resources

The issue of human resources weakness of the government to properly understand the content of the new mining regulation is a concern for the mining business actors. It is a serious problem in Indonesia, where the officials have inadequate capacity to implement regulations. This is particularly the case with local level governments units which generally lack human resources to understand the content of the regulation holistically. It is commonsense that a new and improved regulation does not automatically attract more investments. In fact, despite a more favorable regulation, the poor performance of governance structures and non-performing

regulatory regimes in the mining sector constitutes a regulatory risk for foreign investors, and as a result, may lead to lower levels of foreign investment⁵⁵.

The low competency of local officials became a problem when the decentralization process was implemented, and this process has diluted central government authority and empowered local level government units. The increase role of local government is not balanced with the increase of its officers in quality and local governments sometimes misunderstood the contents and substance of a regulation. Consequently, different perceptions between central and local governments are often found in many cases. Nevertheless, with conflicting perspectives with central government, local government exercises their powers. The differences between perceptions have led to the failure of several mining projects even though they were in accordance with the legislation in force. The reluctance of certain local governments to consent mining projects shows that some local government units have come into conflict with the mining-based development paradigm pursued by the respective national government.

Furthermore, the lack of human resources caused serious problems for local governments to properly understand the new mining regulation. This is unsurprising, given the chronic shortage, across regions, of adequately trained compliance and enforcement officers many of whom find employment in the far more rewarding private industry. Attracting and retaining skilled and professional staff is a big problem in Indonesia where the salaries in the private sector tend to be much higher than in the public sector (Government of Western Australia, 2009 in Vivoda and O'Callaghan, 2010)⁵⁶. Consequently, in many cases, the government can engage in business deals and sign "unofficial" or "under table" contracts with third parties who want to engage in mining under their authority. Another example of this lack of competence is seen in the low quality of environmental impact assessment (EIA) prior to the establishment of operations. EIAs are frequently only an on-paper exercise and even appropriate EIAs do not necessarily lead

⁵⁵ Vivoda and O'Callaghan. (2010). *Regimes, Mining Investment and Regulatory Risk in the Asia-Pacific Region: Comparative Evaluation and Policy Implications*. Retrieved May 6, 2011 from <http://regulation.upf.edu/dublin-10-papers/514.pdf>

⁵⁶ Ibid.p 20

to effective enforcement (Resosudarmo, et al., 2009)⁵⁷. This is because the government does not have enough skills to supervise the implementation of EIAs in the field.

Another issue related to human resources is the uneven distribution of skilled officials of local governments in welcoming a larger share of authority given by laws. Some areas have relatively well educated officials compared to the other regions. Ironically, in the areas with significant minerals and coal resources, precisely at the same time are underdeveloped regions where government officials are not enough educated. Given this disparity, the threats faced by the new mining regulations to be properly understood and well equally implemented is something concrete in the reality.

3.4.2. Lack of Financial Resources

The lack of government financial resources, particularly of local governments to identify any potential resources area is also a weakness of the new mining law. Considering the process to engage in mining through bidding, government, in respect of its authority, should provide data and information to be considered by any potential investors in order to propose applications for bidding. Since governments at any levels always face the classical problem of lack of financial resources, they fail to conduct their obligations mandated by the law. It is commonly know that to provide such a valid and reliable geological data is not simple and cheap. It requires a complex and complicated exploration in a certain period of time. The larger the area, the longer the time. Consequently, the cost of exploration is also far higher. Should the government still offer a mining concession through the tender process without complete and accurate data and information, it will victimize itself by offering a concession that does not conform to the real specifications in the field.

⁵⁷ Resosudarmo, B.P., Resosudarmo, I.A., Sarosa, and Subiman. (2009) *Socioeconomic Conflicts in Indonesia's Mining Industry*, in Cronin and Pandya (ed). *Exploiting Natural Resources Growth, Instability, and Conflict in the Middle East and Asia*. Washington DC. The Henry L. Stimson Center retrieved from http://people.anu.edu.au/budy.resosudarmo/2006to2010/Mining_Reso.pdf

3.4.3. Overlapping Regulations

One serious problem often complained about by mining investors in Indonesia is the regulations overlap, particularly those horizontally residing in different departments. The degree of regulatory confusion and overlap in the governance of the mining sector is a critical issue for the Indonesian government. In particular, given the lack of fit between the Mining Law and the Forestry Law, as a result, there is significant regulatory overlap between The Ministry of Energy and Mineral Resources (MoEMR) and The Ministry of Forestry (O" Callaghan, 2010). It is well known that forestry regulation through the Law Nr. 41 of 1999 concerning forestry undercut or interrupted the mining activities which have been running for decades.

Law Nr. 41 of 1999

Article 38

...

(4) In the protected forest area it is prohibited to conduct open-pit mining.

According to Law Nr. 41 of 1999 concerning Forestry, article 38 stipulates that protected forests are closed to open-pit mining activities. This is based on the interests to save the Indonesia's tropical forest ecology. Many CoW, CCoW and MA however, already cover areas considered as protected forests since the previous decades due to the large number of minerals and coal resources reserves identified in those areas. As a consequence, it generates a point of disputes between the government and mining companies, which may lead mining industry slightly difficult to grow.

This problem has generated a legal uncertainty for the mining business in Indonesia, until the government signed a Government Regulation in Lieu of Law Nr. 1 of 2004 on Amendment of the Law Nr. 41 of 1999 concerning Forestry to guarantee the mining activities in forested areas for contracts signed before this law was enacted.

Government Regulation in Lieu of Law Nr 1 of 2004 concerning Amendment of Law Nr 41 concerning Forestry:

Article 83A

All licenses or agreements in the field of mining in forest areas which existed before the enactment of Law Nr. 41 of 1999 of Forestry shall remain in force until the expiration of a license or agreement in question.

The problem of overlapping regulations was not solved by the new mining regulation and it may have negative effects on mining investments. As can be seen in the table III.3 Indonesia is considered as a country with low performance in term of regulatory overlap.

Table III.3
Regulatory Performance Index in the Mining Sector of the Asia-Pacific Region

Key Indicator	Indonesia	China	Western Australia
1 Regulatory Overlap	0.13	0.13	0.38
2 Effectiveness of Enforcement and Compliance Mechanisms	0.33	0.17	0.58
3 Impartiality in Decision Making	0.25	0.25	1.00
4 Independence from Sectoral Influence/Capture and Government	0.00	0.13	0.50
5 Investor Access to the Regulator	0.40	0.50	0.95
6 Other Stakeholders' Access to the Regulator	0.17	0.46	0.92
7 Public Access to Information	0.25	0.80	0.90
8 Recruitment Independence and Transparency	0.00	0.63	0.94
9 Resources of the Regulator	0.25	0.50	0.75
Regulatory Performance Index (RPI)	0.20 Low	0.39 Medium	0.77 High

Source: Vivoda and O'Callaghan, 2010, Processed

The findings show considerable variance in the performance of regulatory regimes governing foreign mining investment across three jurisdictions in the Asia-Pacific region, Indonesia, China, and Western Australia where Indonesia has the lowest performing regulatory regime characterized by relatively poor performance of their respective regulatory regimes.

3.4.4. Differences in Perception regarding Community Participation and Social Justice

One important question as a weakness as well as a threat of the new mining regulation in Indonesia is how the mining industry offers social justice. This will be the challenge for mineral

development. In a democracy, it is important that mining operators obtain a “social license” from the locals. Appropriate socio-cultural considerations have increasingly become central to successful mining operations in Indonesia. While this is not easy, government and the private sector should move forcefully in this direction. Hence, governments need to ensure that stakeholder engagement legislation is efficient, fair to all parties and, above all, how to concern the local society interest. However, the dominance of the foreign investment in Indonesia would be an obstacle for government to meet that challenge, for the meaning of social justice to foreign investors would be much different from that demanded by particularly the local people. It is not only a government responsibility to reconcile the differences, but also of entities who intend to conduct mining in Indonesia.

Since the mechanism of public participation in mining activities is not governed by any single regulation in Indonesia, the chances of differences in perception become much larger. If is not taken seriously by the concerned parties especially by the government in accordance with their respective authorities and the mining companies, the resistance to the new mining regulation will definitely arise.

Summarizing this chapter, table III.4 shows the result of the SWOT analysis of the Law Nr. 4 of 2009.

Legally speaking, this new mining regulation is a good law in term of legal certainty, since it does not differentiate between local and foreign investors; all of them are treated under the same circumstances. In addition, the authorities among governments are proportionally well governed. This law also a good legal source to attract long term investors by obligating companies to process mineral domestically, instead of export them in the form of raw mined minerals. This law can be positioned as a filter to prevent Indonesia from any investors who want to gain short term benefits without concerning added value of minerals and environmental conservation. In chapter IV, the future of mining business in Indonesia after institution of the new mining regulation is comprehensively analyzed as well as emphasizing factors that stakeholders must concern to lead mining as a sustainable industry.

Table III.4
SWOT Analysis of the Law Nr. 4 of 2009

	Positive factors	Negative factors
Internal factors	<p>Strengths:</p> <ul style="list-style-type: none"> ○ the enactment of mining licensing system ○ decentralization of mining authority between the central and local government ○ emphasizing the role of parliament ○ accommodating the interests of domestic industry development ○ obligation of environmental concern 	<p>Weaknesses:</p> <ul style="list-style-type: none"> ○ permission to use public infrastructures for mining purpose ○ mining license in respect with administration boundaries only ○ unregulated public participation mechanism ○ articles contradiction
External factors	<p>Opportunities:</p> <ul style="list-style-type: none"> ○ strong desired by the government ○ encouragement from industrials and professionals ○ the perception of mining as an “agent of change” ○ the improvement of world economic performance after the 2007 global economic crisis ○ escalation of minerals and coal domestic market capacity 	<p>Threats:</p> <ul style="list-style-type: none"> ○ the lack of the government’s human and financial resources ○ overlapping of different regulations ○ differences in perception regarding community participation and social justice in the context of social level

Source: Self Prepared

CHAPTER IV

THE FUTURE OF MINING BUSINESS IN INDONESIA

After institution of the Law Nr. 4 of 2009, the mining industry in Indonesia is being re-born. A lot of problems encountered previously have been considered as an excuse why this sector contributes less to the development of the country. Legal uncertainty, overlapping regulations, unclearly distribution of authorities among government agencies and many other issues have made this nation considered as less successful in optimizing its natural resources. Consequently, a cynical view on the industry emerged from enterprises, local governments, NGOs, and academics. In reality, mining frequently faces resistance by local society, particularly from people who live in the vicinity of mines. The discoveries of minerals or coal resources in a rural area sometimes are considered as disasters rather than graces.

Starting from dissatisfaction with the old mining system, supported by an incredible wave of democratization, this country then decided to enforce a new mining regime under the Law Nr. 4 of 2009 concerning Minerals and Coal Mining. Since it was first signed by the President, there have been a few fundamental improvements in the grassroots level as required by this regulation.

Indeed, 2 years after enforcement is not a long time to fix and improve all the circumstances occurred during the previous decades, but this short time is sufficient to convince that the Indonesian mining industry in the future will increasingly prosper and delivers maximum benefits for the people of Indonesia as has been mandated by the constitution.

4.1. Minerals

The most fundamental change in the minerals sector will mainly generated by the obligation to do minerals processing domestically. These changes will trigger a tremendous growth for the minerals industry in Indonesia. However, processing the minerals domestically gives a larger benefit opportunity to the state compared by relying upon the ores and concentrates export. In reality, according to Auty and Mikesell (1998), a high proportion of countries with large export shares of resources intensive goods failed to grow as fast as the relatively resource-poor developing countries.

Processing mined minerals domestically will increase the number of workers involved, so enhance their work experience and knowledge as well. It is important to remember that globalization will open a free competition in all respects, including the labor market.

However, until the day of this research, there are only few smelters operating in Indonesia including the processing plant operated by PT. Smelting Gresik. This plant is processing copper concentrate produced by PT. Freeport Indonesia and PT. Newmont Nusa Tenggara. Other smelters are belonging to PT. Inco and PT. Aneka Tambang to process nickel ore into nickel matte and ferronickel. PT. Timah and PT. Kobatin and several small scale smelters to process tin ore. The only aluminum manufacturer is Indonesia Asahan Aluminium (Inalum) which is now in the process of renewal of contract with the government.

Under the obligation to process all extracted minerals to be metal products domestically, investors are interested to build smelters in different locations in respect with the distribution of the resources. For example Nusantara Smelting Corp., National Aluminium Co., Jogja Magasa Mining Iron and Manganese Consortium plan to build a smelter in Nusa Tenggara Timur. In addition, PT. Aneka Tambang, the state-owned company, plans to build at least five smelters and mineral processing plants i.e. Ferronickel (FeNi) in Halmahera in collaboration with Jinchuan Group Ltd. & Hanson Group, Chemical Grade Alumina (CGA) Tayan, Smelter Grade Alumina (SGA) in Mempawah, a steel mill in South Kalimantan in partnership with Krakatau Steel and Nickel Pig Iron plant (NPI) in Mandiodo. PT. Timah after setting up a tin plant in Riau, is now completing the project tin chemical factory in Cilegon, Banten. PT. Bumi Resources Minerals (BRM) is preparing the development of Zinc and Lead mining projects in Dairi, Sumatra Utara, Gold-Copper in Palu, Sulawesi Tengah and Molybdenum in Gorontalo and also Batu Hijau mine in Sumbawa Barat through the 18% indirect shareholding in Newmont Nusa Tenggara (NNT), PT. Rio Tinto, an Australian mining company, will realize its nickel mining project in Konawe, Sulawesi Tenggara and in Morowali, Sulawesi Tengah⁵⁸.

Moreover, minerals processing centers will be established in several strategic places, to accommodate the processing of minerals from small-medium scale of mines at a particular location. This is possible given the small-medium scale of mines have limited capital and

⁵⁸ Media Data Riset. (November, 2010). *Minerals Mining Business Opportunity in Indonesia 2010 (After the Mining Law)* (in Indonesian). Retrieved May 9, 2011 from <http://www.scribd.com/doc/47238476/Peluang-Bisnis-Pertambangan-Mineral-di-Indonesia-2010>

technology to pursue their own minerals processing, including the limitation of resources contained in the concession area. It is commonly known that small and medium mines are mostly identical with less resources so that it is not economically feasible to conduct modern self-minerals processing both in terms of amount of resources as raw materials and the duration of exploitation. Thus, the opportunity to join with other mines to establish a processing plant, or to process the mined minerals in a plant owned by a different company seems to be the most rational and economical options.

Furthermore, Indonesia will gain many advantages following the enactment of this new mining regulation through the development of the minerals sector. A first advantage could be gained if prices of mining products increase, because the processed minerals are more valuable than the raw minerals. The minerals' value escalation is certainly followed by a significant increase of their selling prices, and income will increase resulting from mining activities. Another advantage is the opening of new job opportunities which would absorb workforces in significant numbers, ranging from experts in the field of minerals processing to unskilled workers with limited education. The minerals industry sector will absorb labor and lead to the decrease of unemployment.

The third advantage is the control of minerals processing technology within Indonesia, which means the utilization and processing of natural resources will go effectively and sustainably. The core of sustainability, in the opinion of the author, relates to the conversion of natural resources contained under the earth of Indonesia into human capital to deliver intelligent and advanced generations of the nation. By processing domestically, the value of the minerals will further increase within the country, which may lead to increased state revenue and people wealth. In reality, a rich country can provide a better education to its people than a poor country.

4.2. Coal

Over the last few years Indonesia has become the most aggressive country in escalating its production rate. When compared to 2009, Indonesia's production growth was the highest among the coal producers in the world. Indonesia's coal export is expected to grow by 11% to 260 million tons in 2010 and is expected to rise by 4% in 2011⁵⁹.

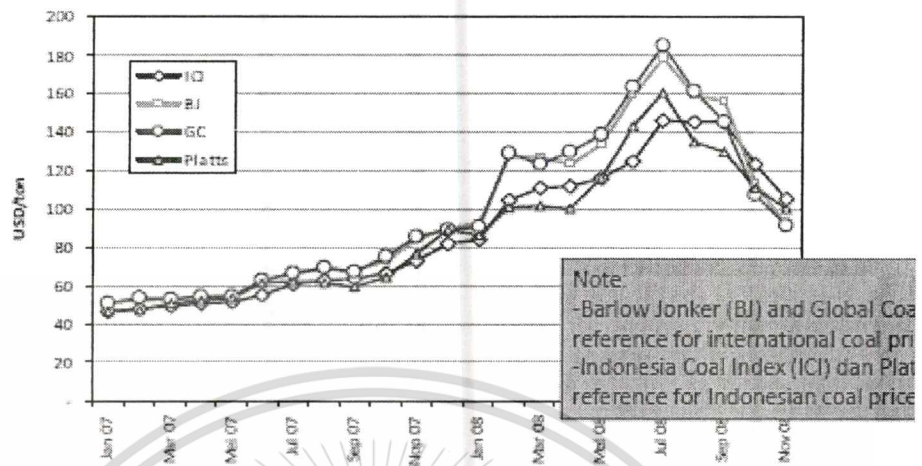
⁵⁹ Setyowati, R. loc. cit

Parameters with great influence on the direction of Indonesia's coal mining investment in the future are the determination of the Indonesian Coal Price Reference (ICPR)⁶⁰, the enforcement of the DMO, the construction of domestic infrastructures and facilities associated with the coal production and consumption, and increased liability for entitles who engage in mining sector to meet the environmental standards determined by the government.

By the determination of the coal basic price reference through the ICPR, the state revenue will be well optimized as well. The ICPR is determined by the government, in this case by the Minister of Energy and Mineral Resources, the authority responsible for domestic energy supply security. With the ICPR, the prices of export and domestic coal market are relatively uniform. This is very important to maintain a balance between the domestic supply and the export sales so that both domestic and export markets are the same attractive for the coal suppliers.

Accordingly, the implementation of the DMO declared by the government would also be much easier to be enforced due to the existence of ICPR. This is because the coal suppliers will no longer experience less benefit or even suffer losses to supply their products domestically. Conversely, before the existence of the ICPR, coal export prices were sometimes much higher and, as a result, an extreme disparity of Indonesia's coal exports compared with domestic supply occurred (70% export and 30% domestic). While waiting for the infrastructure optimization to absorb the coal production domestically, the suppliers can continue to export in accordance with the signed contract with their overseas buyer. However, in the future, these numbers will slowly balance between export and domestic markets so that the consumption of coal will balance the consumption of oil and natural gas which has been the mainstay of industries in Indonesia.

⁶⁰ The ICPR is the standard for coal in calorie quality of 6322 kkal/kg (gross as received). ICPR uses a formula which refers to the average index ICI-1 (Indonesia Coal Index), Platts-1, NEX (Newcastle Export Index) and GC (Newcastle Global Coal Index). ICPR applies for the spot price (sales contract under 12 months). Source: Ministry of Energy and Minerals Resources of Indonesia. Retrieved from: <http://www.esdm.go.id/news-archives/coins/52-coal/4495-the-benchmark-coal-price-hba-of-may-2011-decreased-.html>



Source: Ministry of Energy and Mineral Resources, 2009

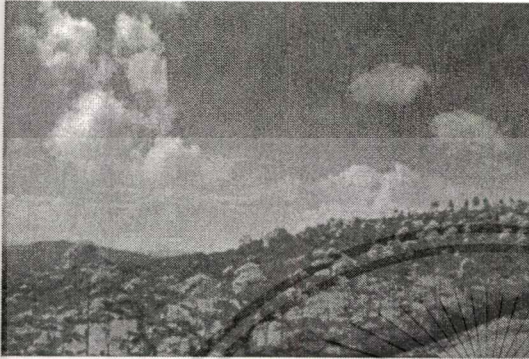
Note: Calculated in 6322 kcal/kg GAR

Figure 4.1
Example of Reference Index for ICPR

Another phenomenon which will appear in Indonesia's coal mining industry is a significant increase of coal mining activities especially for medium and low coal quality, as already described in chapter II. In majority, the quality of coal in Indonesia is in the range of medium and low caloric value. At present, there are around 8.475 of coal mining concessions under verification of the MoEMR to be converted from MA to Mining License. This is a logical consequence of the improved infrastructure of domestic coal needs. Thus, medium and low quality coal, where, in the past, were classified as not economically feasible, in future will be economically feasible so that the level of exploitation will potentially increase.

However, one issue not to be ignored due to the potential increase of mining activities is environmental protection (figure 4.2a and 4.2b). A logical consequence of the increased activity of coal exploitation is the increasing surface area to be excavated, which means more land will become mining-outs. Any environmental damage that may occur should be anticipated as early as possible particularly by government in order to prevent any losses that might be arising. Reclamation and mine closure activities should be conducted in accordance with the allotment of lands to ensure the environmental capacity remains well maintained. Should the State be

negligent to prevent environmental damage since the beginning, then the damage will continuously happen which certainly lead to a natural disaster that will befall the people.



Source : Eviline (2008) retrieved from <http://syiwahoney.blogspot.com/2008/09/bagaimana-reklamasi-tambang-yang-benar.html>



Source: <http://iwantolet.files.wordpress.com/2008/04/tambang-1.jpg>

Figure 4.2a

Mine-out with Reclamation in Sorowako, Sulawesi Selatan, Indonesia

Figure 4.2b

Mine-out without Reclamation in Kalimantan, Indonesia

Another possibility that might be arising in Indonesia in the future related to the coal industry is the emerging of coal gasification and liquefaction projects on industry scales. These projects aim to convert coal, in particular of medium and low quality, into liquid or gaseous fuel. It is commonly known that liquid and gaseous fuels are considered easy to be handle and environmentally friendly. However, such projects still need to be further studied, especially regarding the issues of the projects economic feasibility.

4.3. Maintaining Growth

The future of the mining industry in Indonesia still has two opposing sides. If its positive impacts as already described above by increasing the number of labor absorbed by the industry, opportunities for community prosperity, and will ultimately increase the State revenue, then on the other hand, potential conflicts which may disturb the development of the mining industry can also occur in case they cannot be anticipated as early as possible.

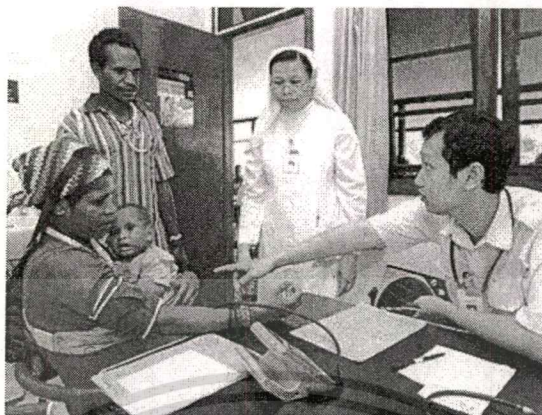
The most frequent problem is the increase in revenue due to mining investment in a particular area that not well distributed. In general, the benefit of this investment is gained only

by the central level or by the governments both at central and local only. However, people living in mining areas, the local communities, gain a relatively less significant benefit. This fact often leads to conflict between the communities and the mining entities.

The new mining regulation actually tries to reduce the potential of this conflict by incorporating the community participation component. However, as described in chapter III, the public participation mechanism is not clearly governed, giving rise to the potential understanding ambiguity among mining stakeholders.

Facing this potential social conflict, Auty and Mikesell (1998) offer two attempts to reduce the conflict between mining companies and local communities. First, a company can hire an independent third party to conduct a social audit as well as evaluating the adequate social compensation awarded. The second possibility is to improve the minerals revenue stream into a sustainable and equitable long-term economic growth. When the first pathway to give the mandate to a third party as a facilitator to reduce conflict through an independent audit and evaluation, then in this second alternative, the role of a competent and reliable institution is significant to safely deliver the revenue to the party entitled.

Such institutions are expected to prevent the government and politicians to intervene in an effort to seek short-term and temporary profit from mining investment activities, and invite them to participate in supporting the mining companies' long-term programs to convert natural resource into something that is sustain, for example, efforts to reduce the number poverty or increase the level of people's health and education. Figure 4.3 shows an example how local people can utilize the public health facility provided by mining company through a Corporate Social Responsibility (CSR) program.



Source:
http://www.ptfi.com/social/pelayanan_kesehatan.asp

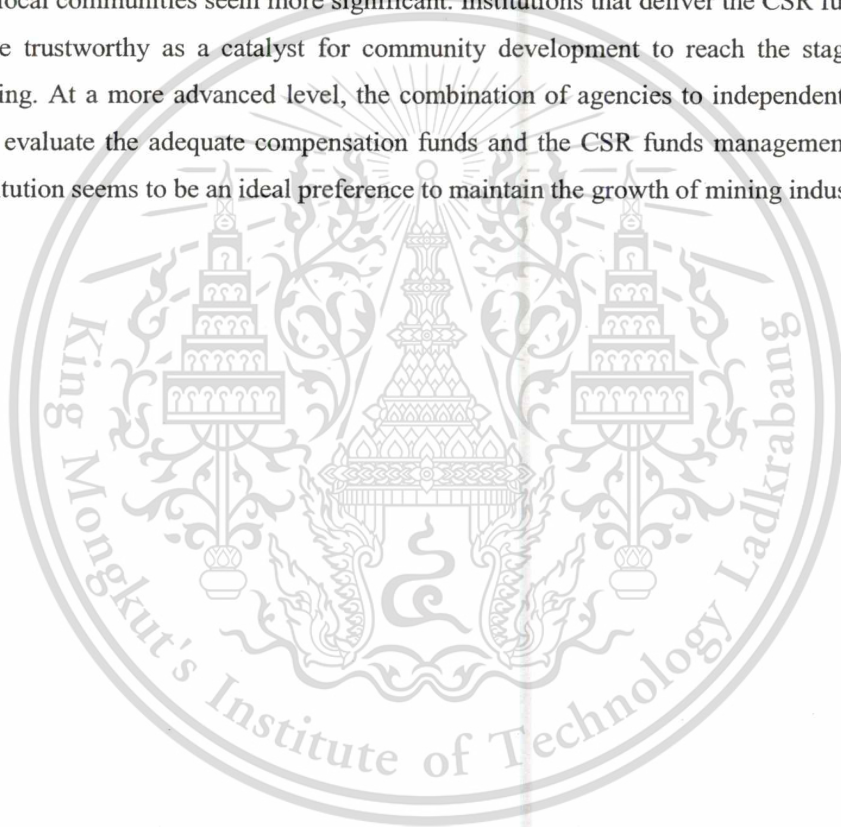
Figure 4.3
CSR in Public Health

In Indonesia, it seems that none of the ways presented above can be solely implemented, given the complexity of the existing problems. To ensure a sustained mining industry in the future, companies must not only provide compensation in the form of payment which is considered as appropriate based on an evaluation conducted by a third party, no matter how independent it is. This is because local people in general do not have enough skills and knowledge to properly manage the finances, so that the benefits provided as compensation would be wasted in a very short time. Mining companies, particularly at small and medium scale, are also reluctant to hire an independent party to conduct audit and evaluation as this is considered as an increase of the company's costs only.

So far, mining companies prefer to directly negotiate with the local communities which would aim to provide a maximum benefits to them, although often interpreted as an effort to fool the local people, which in turn often led to generate conflicts in the future. Requiring the government and politicians' magnanimity to do not behave pragmatically against the mining investment is not realistic in this short term, too. Even if the government often acts as an agent to receive and distribute the community development funds, in practice, these funds are often not optimally delivered to the community. The governments sometimes perform as bottle neck of the community development program driven by the mining investment.

Nevertheless, earmarking the community development funds management institutions seems the most reasonable way to be developed for maintaining the economic growth in the long run. Recently, this method is favored by several large-scale companies where these companies mandate an institution which is considered as competent and independent entitle, such as educational institution or university, the right to manage their CSR funds.

Even though the conflicts of interests between fund management institutions CSR with the government and politicians are still sometimes exist so far, but the positive results obtained by the local communities seem more significant. Institutions that deliver the CSR funds in reality are more trustworthy as a catalyst for community development to reach the stage of sustainable mining. At a more advanced level, the combination of agencies to independently conduct audit and evaluate the adequate compensation funds and the CSR funds management by the capable institution seems to be an ideal preference to maintain the growth of mining industry in Indonesia.



CHAPTER V

CLOSING REMARK

5.1. Conclusions

The institution of the new mining law has brought a potential of fundamental change in the world of mining industry in Indonesia. The content of this new mining policy has some strengths, such as the enactment of mining licensing system, the decentralization of mining authority between central and local government, emphasizing the role of parliament, accommodating the interests of domestic industry development, and the obligation of environmental concern. Conversely, there are some weaknesses of this policy, such as the permission to use public infrastructures for mining purpose, mining license in respect with administration boundaries only, unregulated public participation mechanism, and the articles contradiction.

Moreover, the opportunities of this policy are strongly desired by the government, encouragement from industrials and professionals, the perception of mining as an “agent of change”, the improvement of world economic performance after the 2007 global economic crisis, and also the escalation of minerals and coal domestic market capacity. However, to strengthen the positive development of the mining industry in Indonesia, the new mining regulation faces threats in terms of the lack of the government’s human and financial resources, overlapping of different regulations, and differences in perception regarding community participation and social justice in the context of social level.

However, after the implementation of this new mining regulation, both the minerals and coal domestic industry will grow significantly. This is due to the obligation to process minerals domestically as well as applying the export ban to all unprocessed mined minerals.

In addition, the government also requires a DMO in the coal sector to support domestic industry growth, ensuring energy availability for national development. However, each growth including the development of the mining industry always has a potential conflict as its logical consequence.

Environmental problems seem to insist a greater attention from stakeholders who engage in mining activities. Since it has been mandated by the new mining law, neglecting the

environmental conservation may generate social conflicts in the future, other than those caused by the problem of unfair distribution of community welfare, particularly in the local level. Without attention to these issues, the strengths and opportunities owned by the new mining policy will turn into weaknesses and the mining industry in Indonesia is difficult to be maintained in the future.

Finally, the concern about the environmental conservation, issues of local community welfare, as well as converting the natural resources into human capital is a necessary circumstance to be fulfilled by all entities who engage in mining. Only by considering these issues, economic growth generated by mining investments will be able to be maintained even in the long run, known as sustainable mining.

5.2. Recommendations

Completing this research, there are four recommendations for mining stakeholders. The first recommendation is addressed to the government of Indonesia both at central and local levels. Government should improve its human resource capacity in order to properly oversee the implementation of regulations and synchronize the understanding of the content of the mining law among the officials so that the misconception can be prevented and avoided.

The second recommendation is for entities who engage in mining to be fully aware to comply all rules and regulations, applying the principles of good mining practices optimally so that the financial benefits can be achieved without sacrificing the environment and surrounding communities.

For local people and communities to be more open and critical minded and in dealing with existing mining activities, problems raised from mining activities should be wisely and prudently solved and bring benefit to all parties. This is the third recommendation.

The last recommendation is addressed to the next researchers. Further researches on the mining regulation in Indonesia, viewed from a technical, economic, as well as environmental perspective are needed to be conducted as part of academic literature in the mining industry development in Indonesia. Comparative studies between the mining policy in Indonesia and other countries are also important to contribute a scientific research comprehensively and holistically.

BIBLIOGRAPHY

- Akabzaa, et.al. (September, 2003). *Factoring in Governance is not enough, Mining Codes in Africa, Policy Reform and Corporate Responsibility*. In Campbell, Bonnie (ed). Minerals & Energy. Raw Materials Report. vol. 18, no 3, pp. 2-13.
- Andrews-Speed, P., and Rogers, C. (1999). *Mining Taxation Issues for the Future*. Resources Policy Volume 25, Issue 4. pp 221-227.
- Annual Report 08-09*. (2009). Government of Western Australia, Department of Mines and Petroleum.
- Arbitration. (n.d.). In Wikipedia. Retrieved May 9, 2011 from <http://en.wikipedia.org/wiki/Arbitration>
- Attracting New Mining Investment, Indonesia Policy Briefs - Ideas for the Future*. (January, 2005). The World Bank. Website: <http://www.worldbank.or.id>
- Auty, R and Mikesell, R. (1998). *Sustainable Development in Mineral Economies*. Oxford, New York. Oxford University Press.
- Badan Pusat Statistika. (2010). *Results of Population Census 2010 Data Aggregate per Province (in Indonesian)* (PDF). Retrieved May 28, 2011, from http://www.bps.go.id/65tahun/SP2010_agregat_data_perProvinsi.pdf
- Balkau F. and Parsons A. (1999). *Emerging Environmental Issues For Mining In The PECC Region*. United Nations Environment Programme. The paper was presented at the 1st Pacific Economic Co-operation Committee Minerals Forum in Lima, Peru on 22 April 1999.
- Bhasin, Balbir and Venkataramany, Sivakumar. (2008). *Mining Law and Policy: Replacing the 'Contract of Work' System in Indonesia*. Retrieved February 4, 2011, from <http://www.dundee.ac.uk/cepmlp/journal/html/volume18.php>
- Bhattacharyya, S. C. and Timilsina, G.R. (March, 2009). *Energy Demand Models for Policy Formulation, A Comparative Study of Energy Demand Models*. Policy Research Working Paper 4866. The World Bank Development Research Group Environment and Energy Team- Development Research Group. Website: <http://econ.worldbank.org>.
- Brassington, Frances and Pettitt, Stephen. (2000). *Principles of Marketing, Second Edition*. Pearson Education Limited, Essex, England.
- Chairil, Ryad. (2002). *Draft of Mining Law: Mining License VS Mining Authority* (in Indonesian). Melbourne, Australia, Faculty of Law, Melbourne University.
- Consiglieri, F.J., Kuyek, J., and Pizzaro, R. (2004). *Mining Royalties, Mining and Sustainable Development Series*. Avenida Brasil. Mining Policy Research Initiative, International Development Research Centre. Website: www.iipm-mpri.org
- Dabosingkep. (2011). *The History of Singkep Tin Mining Unit (UPTS)* (in Indonesian). Retrieved May 10, 2011, from: <http://www.dabosingkep.com/2011/04/sejarah-unit-pertambangan-timah-singkep.html>
- Domingues, J. M. (2002). *Environmental Protection, Tax System and Green Taxes. Brazil and Japan: Problems in Common*. Retrieved Nov. 22, 2010, from Rio de Janeiro State University Faculty of Law, Rio de Janeiro. Web site: <http://www.japonartescenicass.org/.../environmentalprotection.pdf>

- Duhaime Org. *License definition*. Retrieved November 21, 2010, from <http://www.duhaime.org/LegalDictionary/L/License.aspx>
- Edward, Elgar. (n.d.). *History of Taxation*. Retrieved May 6, 2011 from <http://business.mapsofindia.com/india-tax/concepts/history-taxation.html>
- Elwart, D.L. Jr. and Vaughn, R. (May, 2009). *Indonesian Coal. Review the Indonesian Thermal Coal Industry*. US. Marston & Marston Inc. Website: www.worldcoal.com
- Environmental protection (n.d.) In Wikipedia. Retrieved December 7, 2010 from http://en.wikipedia.org/wiki/Environmental_protection
- European Union. (2010). Retrieved May 10, 2011 from http://ec.europa.eu/regional_policy/sources/docgener/evaluation/evalsed/sourcebooks/method_techniques/collecting_information/swot/index_en.htm
- Ferrel, O.C., and Harline, Michael. (2011). *Marketing Management Strategies, Fifth Edition*. United States. Cengage Learning.
- Freeport-McMoRan Copper & Gold (n.d.) Retrieved May 10, 2011 from <http://www.fcx.com/operations/grascomplx.htm>
- Geografi Indonesia* (in Indonesian). Retrieved May 10, 2011 from <http://www.indonesia.go.id>
- Goode, David, R. (2008). *Transportation Issue Facing International Coal Trade*. In Priddle (Ed). *The Future Role of Coal Market, Supply and the Environment*. Paris: International Energy Agency
- Government of Indonesia. (1967). Law of the Republic of Indonesia Nr. 11 of 1967 Concerning Provision of General Mining.
- Government of Indonesia. (2008) Law of the Republic of Indonesia Nr. 36 of 2008 Concerning Fourth Amendment of Law Nr. 7 of 1983 Concerning Income Tax.
- Government of Indonesia. (2009). Law of the Republic of Indonesia Nr. 4 of 2009 Concerning Mineral and Coal Mining.
- Government of Indonesia. (2009). Law of the Republic of Indonesia Nr. 32 of 2009 Concerning Environmental Protection and Management.
- Government of Indonesia. (2009). Ministry of Energy and Minerals Resources Regulation Nr. 34 of 2009 Concerning Supply Priority of Minerals and Coal for Domestic Interest.
- Guseh, J.S. and Yengbeh, V.A.Jr. (September 30, 2008). *Harmonisation of artisanal and small-scaled mining policy, legislative and regulatory frameworks in the Mano River Union countries: a comparative study*. Monrovia, Liberia. United Nations Development Programme.
- Hartoyo, Bambang. (2007). *Outlook of Indonesian Domestic Coal Supply and Demand Toward 2025*. [power point slides]. Presented in the Asia Pacific Economy Cooperation (APEC) Clean Fossil Energy Technical and Policy Seminar, Hanoi, Vietnam. Retrieved December 10, 2009, from http://www.egcfe.ewg.apec.org/publications/proceedings/CFE/Hanoi_2007/3-2_Hartoyo.pdf
- James, S. (1998). *A Dictionary of Taxation*. Cheltenham, UK.
- Karim, M. A., and Mills. Karen. (June 24, 2003). *Indonesian Legal Framework in the Oil, Gas, Energy, and Mining Sectors; Including Dispute Resolution*. Jakarta. KarimSyah Law Firm.

- Kuo, Chin S. (2009). *The Mineral Industry of Indonesia*. U.S. Geological Survey Minerals Yearbook, USA. Retrieved May 10, 2011, from <http://minerals.usgs.gov/minerals/pubs/country/asia.html>
- Lagaligo, A. (January 21, 2009). *Article 169 Paragraph (a) & (b) Mining Law are not Contradictive* (in Indonesian). *Majalah Tambang*. Retrieved May 8, 2011 from http://www.majalahtambang.com/detail_berita.php?category=18&newsnr=1028
- Lagaligo, A. (May 12, 2009) *Bambang Setiawan: CoW and CCoW Taxes are not Changed* (in Indonesian), *Majalah Tambang*, Retrieved May 8, 2011 from http://www.majalahtambang.com/detail_berita.php?category=18&newsnr=1488
- Leer, Steven, F. (2008). *The Abundance of Coal as a Physical and Economic Resources*. In Priddle (Ed). *The Future Role of Coal Market, Supply and the Environment*. Paris: International Energy Agency.
- License*. BusinessDictionary.com. Retrieved November 21, 2010, from BusinessDictionary.com website: <http://www.businessdictionary.com/definition/license.html>
- Lucarelli, Bart. (2010). *The History and Future of Indonesia's Coal Industry: Impact of Politics and Regulatory Framework on Industry Structure and Performance, Program on Energy and Sustainable Development*. Freeman Spogli Institute for International Studies, Stanford University, Stanford, California, USA. Retrieved May 10, 2011, from http://iis-db.stanford.edu/pubs/22953/WP_93_Lucarelli_revised_Oct_2010.pdf
- Maemunah, S. (December 26, 2008). *Mining Law and the Problem of Human Rights* (in Indonesian). Kompas. Retrieved from <http://www.jatam.org/content/view/634/1/>
- Makarim and Taira, S. (2009). *Minerals and Coal Law in Indonesia*. World Services Group. Retrived May 8, 2011, from <http://www.worldservicesgroup.com/publications.asp?action=article&artid=2809>.
- McKay, Jennifer and Bhasin, Balbir. (2001). *Mining Law and Policy in Indonesia: Issues in Current Practice that Need Reform*. *Journal of Energy and Natural Resources Law* Vol 19 No 4.
- McMahon, F. and Cervantes, M. (February, 2009). *Annual Survey of Mining Companies 2008/2009*. Fraser Institute.
- Media Data Riset. (November, 2010). *Minerals Mining Business Opportunity in Indonesia 2010 (After the Mining Law)* (in Indonesian). Retrieved May 9, 2011 from <http://www.scribd.com/doc/47238476/Peluang-Bisnis-Pertambangan-Mineral-di-Indonesia-2010>
- Mining Law Gives Legal Certainty* (in Indonesian). (December 18, 2008). *Republika Online*. Retrieved May 9, 2011 from http://koran.republika.co.id/koran/0/21088/UU_Minerba_Berikan_Kepastian_Hukum,
- Muhajir, M. (2007). *The Different Between Mining Royalty and Tax* (in Indonesian). Retrieved Nov. 21, 2010, from Katalog Hukum, Jakarta. Web site: <http://kataloghukum.blogspot.com/2007/11/perbedaan-antara-royalti-dan-pajak.html>.
- OECD. (2001). *Environmental Protection*. Retrieved Nov. 22, 2010, from Glossary of Statistical Term, New York. Web site: <http://stats.oecd.org/glossary/detail.asp?ID=836>.
- Otto, J, [et al.]. (2006). *Mining Royalties A Global Study of Their Impact on Investors, Government, and Civil Society*. The International Bank for Reconstruction and Development / The World Bank. Washington DC. Retrieved December 2, 2010 from

- <http://siteresources.worldbank.org/INTOGMC/Resources/336099-1156955107170/miningroyaltiespublication.pdf>
- Ownership. (n.d.) TheFreeDictionary.com. (2010). Retrieved November 21, 2010 from <http://encyclopedia.thefreedictionary.com/ownership>
- Ownership. (n.d.). © Encyclopedia Britannica, Inc.. Retrieved November 21, 2010, from Dictionary.com website: <http://dictionary.reference.com/browse/ownership>
- Panggabean, S. (April 11, 2011). *RI's mineral resources controlled by major foreign firms*. Retrieved May 10, 2011 from <http://www.thejakartapost.com/news/2011/04/12/ri%E2%80%99s-mineral-resources-controlled-major-foreign-firms.html>
- Parsons, Bob. (1998). *Comparative Mining Tax Regimes: A Summary of objectives, types and best practices*. Global Mining Partner, Global Energy & Mining Group, PricewaterhouseCoopers.
- Permit. (2005). The People's Law Dictionary. Retrieved November 21, 2010 from <http://legal-dictionary.thefreedictionary.com/permit>
- Prasetyo. (2010). *Teuku Muhammad Hasan „Emergency” Minister of Education* (in Indonesian). Nusantara Centre. Retrieved May 10, 2011, from <http://nusantaracentre.co.id>
- PricewaterhouseCoopers Indonesia. (May, 2010). *Mining in Indonesia, Investment and Taxation Guide*. Retrieved from <http://www.pwc.com/id/en/publications/assets/Mining-Investment-And-Taxation-Guide-2010.pdf>
- Przeworski, Adam. (2003). *States and Markets, A Primer in Political Economy*. New York, Cambridge University Press.
- PT. Bukit Asam. Tbk. (2010). *Company Profile – History*. Retrieved May 10, 2011 from <http://ptba.co.id/en/about/content/id/17/history>
- PT. Smelting. (2005). Retrieved May 10, 2011 from <http://www.smelting.co.id/aboutus.htm>
- Resosudarmo, B.P., Resosudarmo, I.A., Sarosa, and Subiman. (2009). *Socioeconomic Conflicts in Indonesia's Mining Industry*, in Cronin and Pandya (ed). *Exploiting Natural Resources Growth, Instability, and Conflict in the Middle East and Asia*. Washington DC. The Henry L. Stimson Center retrieved from http://people.anu.edu.au/budy.resosudarmo/2006to2010/Mining_Reso.pdf
- Royalties. (n.d.). In Wikipedia. Retrieved December 2, 2010 from <http://en.wikipedia.org/wiki/Royalties>
- Royalty Definition. (n.d.) Retrieved December 2, 2010 from <http://oilgasglossary.com/royalty.html>
- Royalty. BusinessDictionary.com. Retrieved December 2, 2010, from BusinessDictionary.com website: <http://www.businessdictionary.com/definition/royalty.htm>
- Setyowati, R. (March 21, 2011). *The Coal Keep Smoldering* (in Indonesian). Retrieved May 15, 2011, from <http://bataviase.co.id/node/610330>
- Sullivan, Bill. (April, 2011). *Reclamation and Post Mining Activities-Excessive and Unrealistic Regulation*. Jakarta, Indonesia. Christian Teo Purwono & Partners. Issued for Coal Asia Magazine.
- Suryantoro, S and Manaf, M.H. (2002). *The Indonesian Energy and Mineral Resources Development and its Environmental Management to Support Sustainable National Economic*

- Development*. Paris, France. The OECD Conference in Foreign Direct Investment and Environment in Mining Sector.
- Susanto, S.N. (December, 2009). *Local Authority on the Minerals/Mining Resources in the Local Autonomy Perspective* (in Indonesian). National Seminar: *Legal Aspect of the Local Authority on the Minerals Resources*, Faculty of Law, Universitas Diponegoro, Semarang, Indonesia
- Syahrir, R. (2008). *Reflections on 100 Years of National Awakening and the Industry Mining History in Indonesia, a Comparative Historical Approach* (in Indonesian). Indonesian Mining Professional Association, the XII Annual Meeting, Palembang, Indonesia
- Syahrir, R. (2010). *The Impact of Global Financial Crisis to the Indonesian Thermal Coal Export*. Unpublished.
- Taxation. BusinessDictionary.com. Retrieved May 6, 2011, from BusinessDictionary.com website: <http://www.businessdictionary.com/definition/taxation.html>
- U.S. Geological Survey Minerals Yearbook-2009. Retrieved May 10, 2011, from <http://minerals.usgs.gov/minerals/pubs/country/asia.html>
- Vermeend, Willem., van der Ploeg, Rick., and Timmer, Jan Willem. (2008). *Taxes and the Economy, a Survey on the Impact of Taxes on Growth, Employment, Investment, Consumption and the Environment*. Cheltenham, UK. Edward Elgar Publishing Limited.
- Vivoda and O'Callaghan. (2010). *Regimes, Mining Investment and Regulatory Risk in the Asia-Pacific Region: Comparative Evaluation and Policy Implications*. Retrieved May 6, 2011 from <http://regulation.upf.edu/dublin-10-papers/514.pdf>
- Watkins, et.al. (2006). *Indonesian Mining 2006*. This article first appeared in Getting The Deal Through – Mining 2006. Retrieved November 18, 2010 from http://www.ssek.com/lib/article/ARTICLE_49.pdf
- Williamson, Graham. (2009). *SWOT Analysis, Speech Therapy Information and Resources*. Retrieved May 10, 2011, from <http://www.speech-therapy-information-and-resources.com/swot-analysis.html>
- Wiriosudarmo. (2001). *Baseline Study and Gap Analysis on Mining in Indonesia*. Retrieved November 18, 2010 from <http://pubs.iied.org/pdfs/G00613.pdf>
- Yupari, A. (2010). *Economic Liberalisation, Sustainable Development, and Mining Policy, The Peruvian Case*. Saarbrucken, Germany. Lambert Academic Publishing AG & Co. KG.
- Yusgiantoro, P. (2008). *Recent Developments in Indonesia's Mining Industry Situation and Policy* [PowerPoint slides]. Retrieved from http://www.iea.org/work/2008/asean_training_coal/Indonesia.pdf

APPENDIX A

INDONESIA: PRODUCTION OF MINERAL COMMODITIES ¹						
(Metric tons unless otherwise specified)						
Commodity		2005	2006	2007	2008	2009 ^e
METALS						
Aluminum:						
Bauxite, wet basis, gross weight	thousand metric tons	1,442	1,502	1,251	1,152	1,200
Metal, primary		252,300	250,300	242,100	242,500	250,000
Chromite sand, dry basis ^e		1,000	1,000	1,000	1,000	1,000
Cobalt, metal ^e		1,600	1,600	1,600	1,300	1,200
Copper:						
Mine, Cu content		1,064,200	818,000	796,900	632,600	610,000
Metal:						
Smelter, primary		275,000	201,200	277,100	261,300	260,000
Refinery, primary		262,900	217,600	221,400	181,300	180,000
Gold, mine output, Au content ²	kilograms	130,620	93,176	117,851	64,390	65,000
Iron and steel:						
Iron sand, dry basis		32,203	87,970	61,077	65,000	63,000
Metal:						
Ferroalloys:						
Ferronickel		36,690	72,300	92,500	87,800	86,000
Ferromanganese ^e		12,000	12,000	12,000	12,000	12,000
Silicomanganese ^e		4,000	5,000	6,000	7,000	7,000
Pig iron, direct-reduced iron	thousand metric tons	1,390	1,290	1,420	1,290	1,300
Steel, crude	do.	3,675	3,759	4,160	3,915	3,500
Steel, semimanufactured	do.	4,859	5,150	5,400	5,200	5,000
Nickel:						
Mine output, Ni content ³		135,000	157,200	229,200	192,600	202,800
Matte, Ni content		77,471	72,782	77,928	73,356	74,000
Ferronickel, Ni content		7,003	7,572	9,498	9,003	9,000
Silver, mine output, Ag content	kilograms	320,590	261,398	268,967	226,051	215,000
Tin:						
Mine output, Sn content		78,404	80,933	66,137	53,228	55,000
Metal ⁴		65,300	65,357	64,127	53,471	54,000
Zirconium concentrates, gross weight		2,600	65,000	111,000	65,000	63,000

Source: U.S. Geological Survey Minerals Yearbook—2009

^eEstimated; estimated data are rounded to no more than three significant digits; may not add to totals shown. ⁴Revised. do. Ditto.

¹Table includes data available through September 13, 2010.

²Includes Au content of copper ore and output by Government-controlled foreign contractor operations. Gold output by operators of so-called

people's mines and illegal small-scale mines is not available but may be as much as 20 metric tons per year (t/yr).

³Includes a small amount of cobalt that was not recovered separately.

⁴Output by Central Government-controlled foreign contractor operations. Tin output from small tin smelters is not available but may be as much as 40,000 t/yr.

⁵Reported figure.



APPENDIX B

COMPARISON OF THE LAW NR. 11 OF 1967 AND LAW NR. 4 OF 2009	
	<p>Law Nr. 11 of 1967</p> <p>Provisions of General Mining</p> <p>Mining Right is administered by Government (Central Government)</p>
	<p>Law Nr. 4 of 2009</p> <p>Mineral and Coal Mining</p> <p>Mineral and Coal Right Administered by the central and local government.</p> <p>Mining enterprises for National interest is determined by the President;</p> <p>Data and information belong to central government;</p> <p>Management is implemented by the central and local government.</p>
Management Authority	<p>National Policy and Management</p> <p>Central Government (National Policy & management)</p> <p>Regency (Regional Policy & management)</p> <p>City (local policy & management)</p>
Classification	<p>Mineral Classification</p> <p>a. Strategic Minerals</p> <p>b. Vital minerals</p> <p>c. Those minerals not included in category a or b</p> <p>Mining Enterprise Classification</p> <p>Radioactive minerals</p> <p>Metal Minerals and coal</p> <p>Non metal minerals and rocks</p>
Mining Engagement	<p>Authorization and Contract</p> <p>Assignments:</p> <p>Mining Authorization (MA);</p> <p>Authorization for Local Mining (ALM);</p> <p>Artisanal mining;</p> <p>Contract of Work (CoW) or coal contract of work (CCoW)</p> <p>Licensing</p> <p>Assignments:</p> <p>Mining License (ML);</p> <p>Artisanal Mining License (AML);</p> <p>Special Mining License (SML)</p>

APPENDIX B...Cont

Engagement Process	Application	Bidding (potential data is available) Application for Reserve Area : – Metal minerals & Coal (potential data is not available and limited area) – Non metal minerals & Rocks Government Agency (radioactive) Legal Entity (Foreign, domestic company, cooperative)
Business Actor	Domestic Investor (MA, ALM, CCoW) Foreign Investor (CoW, CCoW)	Individual MP for Exploration (8 years) : Reconnaissance & general survey (1 year); General Exploration & Detailed exploration (5 years); Feasibility Study (2 years); MP for operation and production (23 years) : Construction period (3 years); Mining activities, processing and refining, transportation and sales (20 years). Local Government duties Mining Company Obligation (MP Holder)
Term	MA/CoW/CCoW General Survey (1+1 year) MA/CoW/CCoW Exploration (3 years + 2 x 1 year) CoW/CCoW Feasibility Studies (1 + 1 year) CoW/CCoW Construction (3 years) MA/CoW/CCoW production operation/Exploitation including processing and refining (30 years+ 2 x 10 years)	
Community Development	Not governed	

APPENDIX B...Cont

Business Actor Obligation	MA, pursuant to the prevailing Laws; CoW/CCoW, pursuant to law applied at the time when the contract is signed	Finance: Pursuant to the prevailing Laws: Tax & non Tax. Environment : Permit Requirement Reclamation/ mine closure Partnership Value Added Report Partnership and profit sharing Limited land use for mining; At Production stage, the area is declared as mining area.
Land Utilization for Mining	Limited land use for mining	
Guidance and Supervision	Central authority (specially MA, CoW and CCoW)	MA (Minister, Governor, regent/major (pursuant to the respected authority) APM (regent/major authority). Police Investigator Civil Servant Investigator
Investigation	not governed	Governed; Strict sentence; Additional criminal penalty for legal entity.
Penalty Provision	Governed; Lenient sentence.	



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UNDANG-UNDANG REPUBLIK INDONESIA
 NOMOR 4 TAHUN 2009
 TENTANG
 PERTAMBANGAN MINERAL DAN BATUBARA
 DENGAN RAHMAT TUHAN YANG MAHA ESA

PRESIDEN REPUBLIK INDONESIA,

Menimbang:

- a. bahwa mineral dan batubara yang terkandung dalam wilayah hukum pertambangan Indonesia merupakan kekayaan alam tak terbarukan sebagai karunia Tuhan Yang Maha Esa yang mempunyai peranan penting dalam memenuhi hajat hidup orang banyak, karena itu pengelolaannya harus dikuasai oleh Negara untuk memberi nilai tambah secara nyata bagi perekonomian nasional dalam usaha mencapai kemakmuran dan kesejahteraan rakyat secara berkeadilan;
- b. bahwa kegiatan usaha pertambangan mineral dan batubara yang merupakan kegiatan usaha pertambangan di luar panas bumi, minyak dan gas bumi serta air tanah mempunyai peranan penting dalam memberikan nilai tambah secara nyata kepada pertumbuhan ekonomi nasional dan pembangunan daerah secara berkelanjutan;
- c. bahwa dengan mempertimbangkan perkembangan nasional maupun internasional, Undang-Undang Nomor 11 Tahun 1967 tentang Ketentuan-Ketentuan Pokok Pertambangan sudah tidak sesuai lagi sehingga dibutuhkan perubahan peraturan perundang-undangan di bidang pertambangan mineral dan batubara yang dapat mengelola dan mengusahakan potensi mineral dan batubara secara mandiri, andal, transparan, berdaya saing, efisien, dan berwawasan lingkungan, guna menjamin pembangunan nasional secara berkelanjutan;

LAW OF THE REPUBLIC OF INDONESIA
 NUMBER 4 OF 2009
 CONCERNING
 MINERAL AND COAL MINING

WITH THE BLESSING OF GOD ALMIGHTY

THE PRESIDENT OF THE REPUBLIC OF
 INDONESIA,

Considering:

- a. that minerals and coal contained within mining jurisdiction of Indonesia are nonrenewable natural riches God Almighty has granted, and have important roles in meeting the life of many people; therefore, the management thereof is subject to control by the State to bring real added value to the national economy in efforts to arrive at public welfare and prosperity in a just manner;
- b. that mineral and coal mining business activities that constitute mining business activities other than geothermal, petroleum and natural gas, and ground water have important roles in bringing continuously real added value to the national economic growth and development in regions;
- c. that in consideration of national and international developments, Law Number 11 of 1967 concerning Basic Provisions of Mining is no longer current so that revision of laws and regulations in the field of mineral and coal mining is required in order to manage and seek potential minerals and coal in independent, reliable, transparent, competitive, efficient and environmentally-sound manners to sustainably assure national development;

d. bahwa berdasarkan pertimbangan sebagaimana dimaksud dalam huruf a, huruf b, dan huruf c, perlu membentuk Undang-Undang tentang Pertambangan Mineral dan Batubara;

PENJELASAN UMUM

Undang-Undang Dasar 1945 Pasal 33 ayat (3) menegaskan bahwa bumi, air, dan kekayaan alam yang terkandung di dalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besar kemakmuran rakyat. Mengingat mineral dan batubara sebagai kekayaan alam yang terkandung di dalam bumi merupakan sumber daya alam yang tak terbarukan, pengelolaannya perlu dilakukan seoptimal mungkin, efisien, transparan, berkelanjutan dan berwawasan lingkungan, serta berkeadilan agar memperoleh manfaat sebesar-besar bagi kemakmuran rakyat secara berkelanjutan.

Guna memenuhi ketentuan Pasal 33 ayat (3) Undang-Undang Dasar 1945 tersebut, telah diterbitkan Undang-Undang Nomor 11 Tahun 1967 tentang Ketentuan-ketentuan Pokok Pertambangan. Undang-Undang tersebut selama lebih kurang empat dasawarsa sejak diberlakukannya telah dapat memberikan sumbangan yang penting bagi pembangunan nasional.

Dalam perkembangan lebih lanjut, undang-undang tersebut yang materi muatannya bersifat sentralistik sudah tidak sesuai dengan perkembangan situasi sekarang dan tantangan di masa depan. Di samping itu, pembangunan pertambangan harus menyesuaikan diri dengan perubahan lingkungan strategis, baik bersifat nasional maupun internasional. Tantangan utama yang dihadapi oleh pertambangan mineral dan batubara adalah pengaruh globalisasi yang mendorong demokratisasi, otonomi daerah, hak asasi manusia, lingkungan hidup, perkembangan teknologi dan informasi, hak atas kekayaan intelektual serta tuntutan peningkatan peran swasta dan masyarakat.

Untuk menghadapi tantangan lingkungan strategis dan menjawab sejumlah permasalahan tersebut, perlu disusun peraturan perundang-undangan baru di bidang pertambangan mineral dan batubara yang dapat memberikan landasan hukum bagi langkah-langkah pembaruan dan penataan kembali kegiatan pengelolaan dan perusahaan pertambangan mineral dan batubara.

Undang-Undang ini mengandung pokok-pokok pikiran sebagai berikut:

1. *Mineral dan batubara sebagai sumber daya yang tak terbarukan dikuasai oleh negara dan pengembangannya serta pelayanannya*

d. that on the grounds as intended by point (a), point (b), and point (c), it is necessary to make a Law concerning Mineral and Coal Mining;

GENERAL ELUCIDATION

Article 33 section (3) of the 1945 Constitution asserts that the land, the waters, and the natural riches contained therein shall be controlled by the state and exploited in the greatest prosperity of the people. Given minerals and coal as natural riches contained in the land are nonrenewable natural resources, the management thereof needs to be optimally conducted in efficient, transparent, sustainable, environmentally-sound, and just manners in order to reap the continuous benefits in the greatest prosperity of the people.

To implement the provisions of Article 33 section (3) of the 1945 Constitution, Law Number 11 of 1967 concerning Basic Provisions on Mining is thus enacted. The Law has about four decades since its enactment given important contributions to national development.

As time passes, the law with centralized contents no longer keeps pace with the current situations and future challenges. In addition, mines development must adjust itself to both national and international strategic environmental changes. The primary challenge faced by mineral and coal mining is the globalization effects that push democratization, regional autonomy, human rights, the environment, technology and information developments, intellectual property rights and demands for improved private and public participation.

To face the strategic environmental challenges and in response to the number of issues, it is necessary to prepare new laws and regulations in the field of mineral and coal mining to legally base a reform move and reorganization of management and business of mineral and coal mining.

This Law has the following rationale:

1. *Minerals and coal as nonrenewable resources shall be controlled by the State, and their development and efficiency shall be performed by*

dilaksanakan oleh Pemerintah dan pemerintah daerah bersama dengan pelaku usaha.

2. Pemerintah selanjutnya memberikan kesempatan kepada badan usaha yang berbadan hukum Indonesia, koperasi, perseorangan, maupun masyarakat setempat untuk melakukan pengusaha mineral dan batubara berdasarkan izin, yang sejalan dengan otonomi daerah, diberikan oleh Pemerintah dan/atau pemerintah daerah sesuai dengan kewenangannya masing-masing.
3. Dalam rangka penyelenggaraan desentralisasi dan otonomi daerah, pengelolaan pertambangan mineral dan batubara dilaksanakan berdasarkan prinsip eksternalitas, akuntabilitas, dan efisiensi yang melibatkan Pemerintah dan pemerintah daerah.
4. Usaha pertambangan harus memberi manfaat ekonomi dan sosial yang sebesar-besar bagi kesejahteraan rakyat Indonesia.
5. Usaha pertambangan harus dapat mempercepat pengembangan wilayah dan mendorong kegiatan ekonomi masyarakat/pengusaha kecil dan menengah serta mendorong tumbuhnya industri penunjang pertambangan.
6. Dalam rangka terciptanya pembangunan berkelanjutan, kegiatan usaha pertambangan harus dilaksanakan dengan memperhatikan prinsip lingkungan hidup, transparansi, dan partisipasi masyarakat.

Mengingat:

Pasal 5 ayat (1), Pasal 20 dan Pasal 33 ayat (2) dan ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945;

Dengan Persetujuan Bersama
DEWAN PERWAKILAN RAKYAT REPUBLIK
INDONESIA
dan
PRESIDEN REPUBLIK INDONESIA,

MEMUTUSKAN:

Menetapkan: **UNDANG-UNDANG TENTANG
PERTAMBANGAN MINERAL
DAN BATUBARA.**

the Government and regional governments together with business actors.

2. The Government shall further give opportunities to entities of Indonesian legal entity, cooperatives, sole proprietorships or local community to do mineral and coal business by permits; and within the scope of regional autonomy, the permits shall be granted by the Government and/or regional governments within their respective authority.
3. Within the scope of decentralization and regional autonomy, management of mineral and coal mining shall be conducted on the principles of externality, accountability, and efficiency by involving the Government and regional governments.
4. Mining business should give economic and social benefits in the greatest prosperity of the Indonesian people.
5. Mining business should speed up regional development and push economic activities of community/small and medium entrepreneurs as well as encourage growth of mining support industry.
6. To create sustainable development, mining business activities must be performed with due regard to the principles of the environment, transparency, and public participation.

Bearing in Mind:

Article 5 section (1), Article 20 and Article 33 section (2) and section (3) of the 1945 Constitution of the State of the Republic of Indonesia;

With the Joint Consent of
THE HOUSE OF REPRESENTATIVES OF THE
REPUBLIC OF INDONESIA
and
THE PRESIDENT OF THE REPUBLIC OF
INDONESIA,

HAS DECIDED:

To enact: **LAW CONCERNING MINERAL
AND COAL MINING.**

BAB I
KETENTUAN UMUM
Pasal 1

Dalam Undang-Undang ini yang dimaksud dengan:

1. **“Pertambangan”** adalah sebagian atau seluruh tahapan kegiatan dalam rangka penelitian, pengelolaan dan pengusahaan mineral atau batubara yang meliputi penyelidikan umum, eksplorasi, studi kelayakan, konstruksi, penambangan, pengolahan dan pemurnian, pengangkutan dan penjualan, serta kegiatan pascatambang.
2. **“Mineral”** adalah senyawa anorganik yang terbentuk di alam, yang memiliki sifat fisik dan kimia tertentu serta susunan kristal teratur atau gabungannya yang membentuk batuan, baik dalam bentuk lepas atau padu.
3. **“Batubara”** adalah endapan senyawa organik karbonan yang terbentuk secara alamiah dari sisa tumbuh-tumbuhan.
4. **“Pertambangan Mineral”** adalah pertambangan kumpulan mineral yang berupa bijih atau batuan, di luar panas bumi, minyak dan gas bumi, serta air tanah.
5. **“Pertambangan Batubara”** adalah pertambangan endapan karbon yang terdapat di dalam bumi, termasuk bitumen padat, gambut, dan batuan aspal.
6. **“Usaha Pertambangan”** adalah kegiatan dalam rangka pengusahaan mineral atau batubara yang meliputi tahapan kegiatan penyelidikan umum, eksplorasi, studi kelayakan, konstruksi, penambangan, pengolahan dan pemurnian, pengangkutan dan penjualan, serta pascatambang.
7. **“Izin Usaha Pertambangan,”** yang selanjutnya disebut IUP, adalah izin untuk melaksanakan usaha pertambangan.
8. **“IUP Eksplorasi”** adalah izin usaha yang diberikan untuk melakukan tahapan kegiatan penyelidikan umum, eksplorasi, dan studi kelayakan.

CHAPTER I
GENERAL PROVISIONS
Article 1

In this Law:

1. **“Mining”** means a part or all of the stages of research, management and business of minerals and coal, which include general surveys, explorations, feasibility studies, construction, mines, processing and refining/smelting, hauling and sale as well as postmining activities.
2. **“Mineral”** means any naturally occurring inorganic compound that has a definite chemical composition and specific physical properties as well as an ordered crystal structure, or a combination thereof that forms rock [ore], either separated or embedded.
3. **“Coal”** means any sedimentary organic carbon compound that is formed naturally from the remains of plants.
4. **“Mineral Mining”** means any mining of mineral assemblages in the form of ores or rocks other than geothermal, petroleum and natural gas as well as ground water.
5. **“Coal Mining”** means any mining of carbon sediments found in the earth, including solid bitumen, peat, and asphalt rocks.
6. **“Mining Business”** means any mineral or coal business activity that includes the stages of general surveys, explorations, feasibility studies, construction, mines, processing and refining/smelting, hauling and sale as well as postmining.
7. **“Mining Permit,”** hereinafter called an “IUP,” means a permit under which mining business is conducted.
8. **“Exploration Mining Permit”** means a business permit that is granted to undertake the stages of general surveys, explorations and feasibility studies.

- | | |
|---|--|
| <p>9. “IUP Operasi Produksi” adalah izin usaha yang diberikan setelah selesai pelaksanaan IUP Eksplorasi untuk melakukan tahapan kegiatan operasi produksi.</p> | <p>9. “Production Operation Mining Permit” means a business permit that is granted upon completion of an Exploration Mining Permit stage to undertake a production operation stage.</p> |
| <p>10. “Izin Pertambangan Rakyat,” yang selanjutnya disebut IPR, adalah izin untuk melaksanakan usaha pertambangan dalam wilayah pertambangan rakyat dengan luas wilayah dan investasi terbatas.</p> | <p>10. “Small-Scale Mining Permit,” hereinafter called an “IPR,” means a permit under which mining business is conducted within a small-scale mining area that is limited in size and investments.</p> |
| <p>11. “Izin Usaha Pertambangan Khusus,” yang selanjutnya disebut dengan IUPK, adalah Izin untuk melaksanakan usaha pertambangan di wilayah izin usaha pertambangan khusus.</p> | <p>11. “Special Mining Permit,” hereinafter called an “IUPK,” means a permit under which mining business in a special mining permit area is conducted.</p> |
| <p>12. “IUPK Eksplorasi” adalah izin usaha yang diberikan untuk melakukan tahapan kegiatan penyelidikan umum, eksplorasi, dan studi kelayakan di wilayah izin usaha pertambangan khusus.</p> | <p>12. “Exploration Special Mining Permit” means a business permit that is granted to undertake the stages of general surveys, explorations, and feasibility studies in a special mining permit area.</p> |
| <p>13. “IUPK Operasi Produksi” adalah izin usaha yang diberikan setelah selesai pelaksanaan IUPK Eksplorasi untuk melakukan tahapan kegiatan operasi produksi di wilayah izin usaha pertambangan khusus.</p> | <p>13. “Production Operation Special Mining Permit” means a business permit that is granted upon completion of an Exploration Mining Permit stage to undertake a production operation stage in a special mining permit area.</p> |
| <p>14. “Penyelidikan Umum” adalah tahapan kegiatan pertambangan untuk mengetahui kondisi geologi regional dan indikasi adanya mineralisasi.</p> | <p>14. General Survey” means a stage in mining activities through which to know regional geological condition and indications of mineralization.</p> |
| <p>15. “Eksplorasi” adalah tahapan kegiatan usaha pertambangan untuk memperoleh informasi secara terperinci dan teliti tentang lokasi, bentuk, dimensi, sebaran, kualitas dan sumber daya terukur dari bahan galian, serta informasi mengenai lingkungan sosial dan lingkungan hidup.</p> | <p>15. “Exploration” means a stage in mining business activities through which to find specific and accurate information about locations, shapes, dimensions, distribution, quality and quantified resources of excavated materials as well as information on social environment and the environment.</p> |
| <p>16. “Studi Kelayakan” adalah tahapan kegiatan usaha pertambangan untuk memperoleh informasi secara rinci seluruh aspek yang berkaitan untuk menentukan kelayakan ekonomis dan teknis usaha pertambangan, termasuk analisis mengenai dampak lingkungan serta perencanaan pascatambang.</p> | <p>16. “Feasibility Study” means a stage in mining business activities through which to find specific information about all of the relevant aspects to determine economic and technical feasibility of mining business, including environmental impact assessment as well as postmining plans.</p> |
| <p>17. “Operasi Produksi” adalah tahapan kegiatan usaha pertambangan yang meliputi</p> | <p>17. “Production Operation” means a stage in mining business that includes construction,</p> |

konstruksi, penambangan, pengolahan, pemurnian, termasuk pengangkutan dan penjualan, serta sarana pengendalian dampak lingkungan sesuai dengan hasil studi kelayakan.

mines, processing, refining/smelting, including hauling and sale as well as facilities to control environmental impacts upon the findings of feasibility studies.

18. **“Konstruksi”** adalah kegiatan usaha pertambangan untuk melakukan pembangunan seluruh fasilitas operasi produksi, termasuk pengendalian dampak lingkungan.
 19. **“Penambangan”** adalah bagian kegiatan usaha pertambangan untuk memproduksi mineral dan/atau batubara dan mineral ikutannya.
 20. **“Pengolahan dan Pemurnian”** adalah kegiatan usaha pertambangan untuk meningkatkan mutu mineral dan/atau batubara serta untuk memanfaatkan dan memperoleh mineral ikutan.
 21. **“Pengangkutan”** adalah kegiatan usaha pertambangan untuk memindahkan mineral dan/atau batubara dari daerah tambang dan/atau tempat pengolahan dan pemurnian sampai tempat penyerahan.
 22. **“Penjualan”** adalah kegiatan usaha pertambangan untuk menjual hasil pertambangan mineral atau batubara.
 23. **“Badan Usaha”** adalah setiap badan hukum yang bergerak di bidang pertambangan yang didirikan berdasarkan hukum Indonesia dan berkedudukan dalam wilayah Negara Kesatuan Republik Indonesia.
 24. **“Jasa Pertambangan”** adalah jasa penunjang yang berkaitan dengan kegiatan usaha pertambangan.
 25. **“Analisis Mengenai Dampak Lingkungan,”** yang selanjutnya disebut *amdal*, adalah kajian mengenai dampak besar dan penting suatu usaha dan/atau kegiatan yang direncanakan pada lingkungan hidup yang diperlukan bagi proses pengambilan keputusan tentang penyelenggaraan usaha dan/atau kegiatan.
 26. **“Reklamasi”** adalah kegiatan yang dilakukan sepanjang tahapan usaha pertambangan untuk menata, memulihkan, dan memperbaiki
18. **“Construction”** means a mining business activity through which to build all of the production operation facilities, including control of environmental impacts.
 19. **“Mine”** means a part of mining business activities through which to produce minerals and/or coal and their associated minerals.
 20. **“Processing and Refining/Smelting”** means a mining business activity through which to improve the quality of minerals and/or coal and to utilize and find associated minerals.
 21. **“Hauling”** means a mining business activity through which to transport minerals and/or coal from a mine and/or processing and refining/smelting sites to points of delivery.
 22. **“Sale”** means a mining business activity to sell products of mineral or coal mining.
 23. **“Entity”** means any legal entity that engages in the field of mining, established under the laws of Indonesia and domiciled in the territory of the State of the Republic of Indonesia.
 24. **“Mining Service”** means any mining support service that engages in mining business activities.
 25. **“Environmental Impact Assessment,”** hereinafter called *amdal*, means a planned study of major and significant environmental impacts on business and/or activities required for decision-making process with respect to the conduct of business and activities.
 26. **“Reclamation”** means an activity that is performed throughout the stages in mining business to organize, restore and repair the

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kualitas lingkungan dan ekosistem agar dapat berfungsi kembali sesuai peruntukannya.

27. **“Kegiatan Pascatambang,”** yang selanjutnya disebut “pascatambang” adalah kegiatan terencana, sistematis, dan berlanjut setelah akhir sebagian atau seluruh kegiatan usaha pertambangan untuk memulihkan fungsi lingkungan alam dan fungsi sosial menurut kondisi lokal di seluruh wilayah penambangan.
28. **“Pemberdayaan Masyarakat”** adalah usaha untuk meningkatkan kemampuan masyarakat, baik secara individual maupun kolektif, agar menjadi lebih baik tingkat kehidupannya.
29. **“Wilayah Pertambangan,”** yang selanjutnya disebut “WP,” adalah wilayah yang memiliki potensi mineral dan/atau batubara dan tidak terikat dengan batasan administrasi pemerintahan yang merupakan bagian dari tata ruang nasional.
30. **“Wilayah Usaha Pertambangan,”** yang selanjutnya disebut “WUP,” adalah bagian dari WP yang telah memiliki ketersediaan data, potensi dan/atau informasi geologi.
31. **“Wilayah Izin Usaha Pertambangan,”** yang selanjutnya disebut “WIUP,” adalah wilayah yang diberikan kepada pemegang IUP.
32. **“Wilayah Pertambangan Rakyat,”** yang selanjutnya disebut “WPR,” adalah bagian dari WP tempat dilakukan kegiatan usaha pertambangan rakyat.
33. **“Wilayah Pencadangan Negara,”** yang selanjutnya disebut “WPN,” adalah bagian dari WP yang dicadangkan untuk kepentingan strategis nasional.
34. **“Wilayah Usaha Pertambangan Khusus,”** yang selanjutnya disebut “WUPK,” adalah bagian dari WPN yang dapat diusahakan.
35. **“Wilayah Izin Usaha Pertambangan Khusus dalam WUPK,”** yang selanjutnya disebut “WIUPK,” adalah wilayah yang diberikan kepada pemegang IUPK.

quality of the environment and ecosystem to enable them return to their original functions of zoning.

27. **“Postmining Activity,”** hereinafter called “postmining,” means a planned, systematic and sustainable activity after partial or total completion of mining business activities to restore the natural environmental functions and social functions to conform to the local condition throughout the mining zones.
28. **“Community Empowerment”** means an effort whereby to improve the capability of community, either individually or collectively, to raise their standard of living.
29. **“Mining Zone,”** hereinafter called a “WP,” means a zone with potential minerals and/or coal and not bound by governmental administrative boundaries as part of the national spatial planning.
30. **“Mining Area,”** hereinafter called a “WUP,” means a part of a Mining Zone already completed with data, potential, and/or information about geology.
31. **“Mining Permit Area,”** hereinafter called a “WIUP,” means an area that is authorized to an IUP holder.
32. **“Small-Scale Mining Area,”** hereinafter called a “WPR,” means a part of a Mining Zone where small-scale mining activities are performed.
33. **“State Reserve Area,”** hereinafter called a “WPN” means a part of Mining Zone that is reserved in the interest of national strategy.
34. **“Special Mining Area,”** hereinafter called a “WUPK,” means a part of a State Reserve Area that may be commercialized.
35. **“Special Mining Permit Area in Special Mining Area,”** hereinafter called “WIUPK,” means an area that is authorized to a Special Mining Permit holder.

36. “Pemerintah Pusat,” yang selanjutnya disebut “Pemerintah,” adalah Presiden Republik Indonesia yang memegang kekuasaan Pemerintahan Negara Republik Indonesia sebagaimana dimaksud dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

37. “Pemerintah Daerah” adalah gubernur, bupati atau walikota, dan perangkat daerah sebagai unsur penyelenggaraan pemerintahan daerah.

38. “Menteri” adalah menteri yang menyelenggarakan urusan pemerintahan di bidang pertambangan mineral dan batubara.

Penjelasan Pasal 1: Cukup jelas

BAB II ASAS DAN TUJUAN

Pasal 2

Pertambangan mineral dan/atau batubara dikelola berasaskan:

a. manfaat, keadilan dan keseimbangan;

Penjelasan Pasal 2 a: Cukup jelas

b. keberpihakan kepada kepentingan bangsa;

Penjelasan Pasal 2 b: Cukup jelas

c. partisipatif, transparansi, dan akuntabilitas;

Penjelasan Pasal 2 c: Cukup jelas

d. berkelanjutan dan berwawasan lingkungan;

Penjelasan Pasal 2 d:

Yang dimaksud dengan asas berkelanjutan dan berwawasan lingkungan adalah asas yang secara terencana mengintegrasikan dimensi ekonomi, lingkungan, dan sosial budaya dalam keseluruhan usaha pertambangan mineral dan batubara untuk mewujudkan kesejahteraan masa kini dan masa mendatang.

Pasal 3

Dalam rangka mendukung pembangunan nasional yang berkesinambungan, tujuan pengelolaan mineral

36. “Central Government,” hereinafter called “the Government,” means the President of the Republic of Indonesia with the power of the Government of the State of the Republic of Indonesia vested in him as intended by the 1945 Constitution of the Republic of Indonesia.

37. “Regional Government” means the governors, the regents or the mayors and regional instrumentalities that form components by which the regional governments are administered.

38. “Minister” means the minister by whom governmental affairs in the field of mineral and coal mining are administered.

Elucidation of Article 1: Sufficiently clear

CHAPTER II PRINCIPLES AND OBJECTIVES

Article 2

Mineral and/or coal mining shall be managed under the principles of:

a. benefit, justice and balance;

Elucidation of Article 2 a: Sufficiently clear

b. being in favor of the nation’s interests;

Elucidation of Article 2 b: Sufficiently clear

c. participation, transparency, and accountability;

Elucidation of Article 2 c: Sufficiently clear

d. sustainability and environmental soundness;

Elucidation of Article 2 d:

“Sustainability and environmentally-sound principles” means the principles that in a planned manner integrate economic, environmental, and socio-cultural dimensions throughout mineral and coal mining business to realize the present and future welfare.

Article 3

In support of sustainable national development, management of mineral and coal shall aim the

dan batubara adalah:

- a. menjamin efektifitas pelaksanaan dan pengendalian kegiatan usaha pertambangan secara berdaya guna, berhasil guna, dan berdaya saing;
- b. menjamin manfaat pertambangan mineral dan batubara secara berkelanjutan dan berwawasan lingkungan hidup;
- c. menjamin tersedianya mineral dan batubara sebagai bahan baku dan/atau sebagai sumber energi untuk kebutuhan dalam negeri;
- d. mendukung dan menumbuhkembangkan kemampuan nasional agar lebih mampu bersaing di tingkat nasional, regional, dan internasional;
- e. meningkatkan pendapatan masyarakat lokal, daerah, dan negara, serta menciptakan lapangan kerja untuk sebesar-besarnya kesejahteraan rakyat; dan
- f. menjamin kepastian hukum dalam penyelenggaraan kegiatan usaha pertambangan mineral dan batubara.

Penjelasan Pasal 3: Cukup jelas

BAB III

PENGUASAAN MINERAL DAN BATUBARA

Pasal 4

- (1) Mineral dan batubara sebagai sumber daya alam yang tak terbarukan merupakan kekayaan nasional yang dikuasai oleh negara untuk sebesar-besarnya kesejahteraan rakyat.
- (2) Penguasaan mineral dan batubara oleh negara sebagaimana dimaksud pada ayat (1) diselenggarakan oleh Pemerintah dan/atau pemerintah daerah.

Penjelasan Pasal 4: Cukup jelas

Pasal 5

- (1) Untuk kepentingan nasional, Pemerintah setelah berkonsultasi dengan Dewan Perwakilan Rakyat Republik Indonesia dapat menetapkan kebijakan pengutamaan mineral

following:

- a. to ensure effectiveness of the conduct and control of efficient, effective and competitive mining business activities;
- b. to ensure the benefit of sustainable and environmentally-sound mineral and coal mining;
- c. to ensure the supply of mineral and coal as raw materials and/or as energy sources for domestic needs;
- d. to support and develop the national capability in order to better compete in national, regional, and international levels;
- e. to improve the income of the local community, regions, and state as well as to create job opportunities in the greatest prosperity of the people;
- f. to assure legal certainty in the conduct of mineral and coal business activities.

Elucidation of Article 3: Sufficiently clear

CHAPTER III

CONTROL OF MINERALS AND COAL

Article 4

- (1) Minerals and coal as nonrenewable natural resources shall constitute national property that is controlled by the state in the greatest prosperity of the people.
- (2) Control of minerals and coal by the state as intended by section (1) shall be conducted by the Government and/or the regional governments.

Elucidation of Article 4: Sufficiently clear

Article 5

- (1) In the national interests, the Government upon consultation with the House of Representatives of the Republic of Indonesia may adopt a policy on preference for

dan/atau batubara untuk kepentingan dalam negeri.

- (2) Kepentingan nasional sebagaimana di maksud pada ayat (1) dapat dilakukan dengan pengendalian produksi dan ekspor.
- (3) Dalam melaksanakan pengendalian sebagaimana dimaksud pada ayat (2), Pemerintah mempunyai kewenangan untuk menetapkan jumlah produksi tiap-tiap komoditas per tahun setiap provinsi.
- (4) Pemerintah daerah wajib mematuhi ketentuan jumlah yang ditetapkan oleh Pemerintah sebagaimana dimaksud pada ayat (3).
- (5) Ketentuan lebih lanjut mengenai pengutamaan mineral dan/atau batubara untuk kepentingan dalam negeri sebagaimana dimaksud pada ayat (1) dan pengendalian produksi dan ekspor sebagaimana dimaksud pada ayat (2) dan ayat (3) diatur dengan peraturan pemerintah.

Penjelasan Pasal 5: Cukup Jelas

BAB IV

KEWENANGAN PENGELOLAAN
PERTAMBANGAN MINERAL DAN BATUBARA

Pasal 6

- (1) Kewenangan Pemerintah dalam pengelolaan pertambangan mineral dan batubara, antara lain, adalah:

a. penetapan kebijakan nasional;

Penjelasan Pasal 6 (1) a: Cukup jelas

b. pembuatan peraturan perundang-undangan;

Penjelasan Pasal 6 (1) b: Cukup jelas

c. penetapan standar nasional, pedoman, dan kriteria;

Penjelasan Pasal 6 (1) c: Cukup jelas

Standar nasional di bidang pertambangan mineral dan batubara adalah spesifikasi teknis atau sesuatu yang dibakukan.

d. penetapan sistem perizinan pertambangan mineral dan batubara

domestic mineral and/or coal needs.

- (2) National interests as intended by section (1) may be realized by exercising supervision for production and export.
- (3) In the exercise of supervision as intended by section (2), the Government shall have the authority to set the annual production quantity of any commodity for any province.
- (4) The regional governments shall comply with the quantity terms that are set by the Government as intended by section (3).
- (5) Ancillary provisions on preference for domestic mineral and/or coal needs as intended by section (1) and supervision of production and export as intended by section (2) and section (3) shall be governed by regulation of the government.

Elucidation of Article 5: Sufficiently clear

CHAPTER IV

AUTHORITY IN THE MANAGEMENT OF
MINERALS AND COAL

Article 6

- (1) Authority of the Government in the management of mineral and coal mines shall be, inter alia:

a. to adopt national policies;

Elucidation of Article 6 (1) a: Sufficiently clear

b. to make laws and regulations;

Elucidation of Article 6 (1) b: Sufficiently clear

c. to adopt national standards, guidelines, and criteria;

Elucidation of Article 6 (1) c: Sufficiently clear

National standards in the field of mineral and coal mines shall be technical specifications or otherwise anything to be standardized.

d. to adopt national licensing system of

nasional;

Penjelasan Pasal 6 (1) d: Cukup jelas

- e. penetapan WP yang dilakukan setelah berkoordinasi dengan pemerintah daerah dan berkonsultasi dengan Dewan Perwakilan Rakyat Republik Indonesia.

Penjelasan Pasal 6 (1) e: Cukup jelas

- f. pemberian IUP, pembinaan, penyelesaian konflik masyarakat, dan pengawasan usaha pertambangan yang berada pada lintas wilayah provinsi dan/atau wilayah laut lebih dari 12 (dua belas) mil dari garis pantai;

Penjelasan Pasal 6 (1) f: Cukup jelas

- g. Pemberian IUP, pembinaan, penyelesaian konflik masyarakat, dan pengawasan usaha pertambangan yang lokasi penambangannya berada pada lintas wilayah provinsi dan/atau wilayah laut lebih dari 12 (dua belas) mil dari garis pantai;

Penjelasan Pasal 6 (1) g: Cukup jelas

- h. pemberian IUP, pembinaan, penyelesaian konflik masyarakat, dan pengawasan usaha pertambangan operasi produksi yang berdampak lingkungan langsung lintas provinsi dan/atau dalam wilayah laut lebih dari 12 (dua belas) mil dari garis pantai;

Penjelasan Pasal 6 (1) h: Cukup jelas

- i. pemberian IUPK Eksplorasi dan IUPK Operasi Produksi;

Penjelasan Pasal 6 (1) i: Cukup jelas

- j. pengevaluasian IUP Operasi Produksi, yang dikeluarkan oleh pemerintah daerah, yang telah menimbulkan kerusakan lingkungan serta yang tidak menerapkan kaidah pertambangan yang baik;

mineral and coal mining;

Elucidation of Article 6 (1) d: Sufficiently clear

- e. to determine Mining Zones upon coordination with the regional governments and consultation with the House of Representatives of the Republic of Indonesia.

Elucidation of Article 6 (1) e: Sufficiently clear

- f. to grant Mining Permits, direct, settle communal conflicts, and supervise mining business, of which the location overlaps the boundaries of provinces and/or in the territorial sea exceeding 12 (twelve) miles from the baselines.

Elucidation of Article 6 (1) f: Sufficiently clear

- g. to grant Mining Permits, direct, settle communal conflicts, and supervise mining business, of which the mine location overlaps the boundaries of provinces and/or in the territorial sea exceeding 12 (twelve) miles from the baselines.

Elucidation of Article 6 (1) g: Sufficiently clear

- h. to grant Mining Permits, direct, settle communal conflicts, and supervise production operation mining business with direct environmental impacts overlapping the provinces and/or in the territorial sea exceeding 12 (twelve) miles from the baselines.

Elucidation of Article 6 (1) h: Sufficiently clear

- i. to grant Exploration Special Mining Permits and Production Operation Special Mining Permits;

Elucidation of Article 6 (1) i: Sufficiently clear

- j. to evaluate Production Operation Mining Permits that are issued by the regional governments, which the production operations have resulted in environmental damage and failed to apply good mining practice principles;

Penjelasan Pasal 6 (1) j: Cukup jelas

- k. penetapan kebijakan produksi, pemasaran, pemanfaatan, dan konservasi;

Penjelasan Pasal 6 (1) k: Cukup jelas

- l. penetapan kebijakan kerja sama, kemitraan, dan pemberdayaan masyarakat;

Penjelasan Pasal 6 (1) l: Cukup jelas

- m. perumusan dan penetapan penerimaan negara bukan pajak dari hasil usaha pertambangan mineral dan batubara;

Penjelasan Pasal 6 (1) m: Cukup jelas

- n. pembinaan dan pengawasan penyelenggaraan pengelolaan pertambangan mineral dan batubara yang dilaksanakan oleh pemerintah daerah;

Penjelasan Pasal 6 (1) n: Cukup jelas

- o. pembinaan dan pengawasan penyusunan peraturan daerah di bidang pertambangan;

Penjelasan Pasal 6 (1) o: Cukup jelas

- p. penginventarisasian, penyelidikan, dan penelitian serta eksplorasi dalam rangka memperoleh data dan informasi mineral dan batubara sebagai bahan penyusunan WUP dan WPN;

Penjelasan Pasal 6 (1) p: Cukup jelas

- q. pengelolaan informasi geologi, informasi potensi sumber daya mineral dan batubara, serta informasi pertambangan pada tingkat nasional;

Penjelasan Pasal 6 (1) q: Cukup jelas

- r. pembinaan dan pengawasan terhadap reklamasi lahan pascatambang;

Penjelasan Pasal 6 (1) r: Cukup jelas

- s. penyusunan neraca sumber daya mineral dan batubara tingkat nasional;

Elucidation of Article 6 (1) j: Sufficiently clear

- k. to adopt policies on production, marketing, utilization, and conservation;

Elucidation of Article 6 (1) k: Sufficiently clear

- l. to adopt policies on cooperation, partnership, and community empowerment;

Elucidation of Article 6 (1) l: Sufficiently clear

- m. to plan and establish nontax state revenues from mineral and/or coal mining business products;

Elucidation of Article 6 (1) m: Sufficiently clear

- n. to direct and supervise the management of mineral and coal mining that are conducted by the regional governments;

Elucidation of Article 6 (1) n: Sufficiently clear

- o. to direct and supervise preparation of regional regulations in the field of mining;

Elucidation of Article 6 (1) o: Sufficiently clear

- p. to conduct inventory, surveys, and research as well as explorations to find data and information about minerals and coal to be materials for planning Mining Areas and State Reserve Areas;

Elucidation of Article 6 (1) p: Sufficiently clear

- q. to manage information on geology, information on potential mineral and coal resources, and information on national-level mines;

Elucidation of Article 6 (1) q: Sufficiently clear

- r. to direct and supervise reclamations of postmining lands;

Elucidation of Article 6 (1) r: Sufficiently clear

- s. to prepare balance sheet of national-level mineral and coal resources;

Penjelasan Pasal 6 (1) s:

Yang dimaksud dengan "neraca sumber daya mineral dan batubara tingkat nasional" adalah neraca yang menggambarkan jumlah sumber daya, cadangan, dan produksi mineral dan batubara secara nasional.

- t. pengembangan dan peningkatan nilai tambah kegiatan usaha pertambangan; dan

Penjelasan Pasal 6 (1) t: Cukup jelas

- u. peningkatan kemampuan aparatur Pemerintah, pemerintah provinsi, dan pemerintah kabupaten/kota dalam penyelenggaraan pengelolaan usaha pertambangan.

Penjelasan Pasal 6 (1) u: Cukup jelas

- (2) Kewenangan Pemerintah sebagaimana dimaksud pada ayat (1) dilaksanakan sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 6 (2): Cukup jelas

Pasal 7

- (1) Kewenangan pemerintah provinsi dalam pengelolaan pertambangan mineral dan batubara, antara lain, adalah:

- a. pembuatan peraturan perundang-undangan daerah;
- b. pemberian IUP, pembinaan, penyelesaian konflik masyarakat dan pengawasan usaha pertambangan pada lintas wilayah kabupaten/kota dan/atau wilayah laut 4 (empat) mil sampai dengan 12 (dua belas) mil;
- c. pemberian IUP, pembinaan, penyelesaian konflik masyarakat dan pengawasan usaha pertambangan operasi produksi yang kegiatannya berada pada lintas wilayah kabupaten/kota dan/atau wilayah laut 4 (empat) mil sampai dengan 12 (dua belas) mil;
- d. pemberian IUP, pembinaan,

Elucidation of Article 6 (1) s:

"Balance sheet of national-level mineral and coal resources" means balance sheet that reflects the national quantity of mineral and coal resources, reserves, and production.

- t. to develop and increase added value to mining business activities; and

Elucidation of Article 6 (1) t: Sufficiently clear

- u. to improve the competency of the apparatus of the Government, the provincial governments, and the district/city governments in the conduct of management of mining business.

Elucidation of Article 6 (1) u: Sufficiently clear

- (2) Authority of the Government as intended by section (1) shall be exercised under provisions of laws and regulations.

Elucidation of Article 6 (2): Sufficiently clear

Article 7

- (1) Authority of the provincial governments in the management of mineral and coal mines shall be, inter alia:

- a. to make provincial laws and regulations;
- b. to grant Mining Permits, direct, settle communal conflicts, and supervise mining business overlapping the boundaries of districts/cities and/or in the territorial sea from 4 (four) miles to 12 (twelve) miles;
- c. to grant Mining Permits, direct, settle communal conflicts, and supervise production operation mining business, of which the activities overlap the boundaries of districts/cities and/or in the territorial sea from 4 (four) miles to 12 (twelve) miles;
- d. to grant Mining Permits, direct, settle

- penyelesaian konflik masyarakat dan pengawasan usaha pertambangan yang berdampak lingkungan langsung lintas kabupaten/kota dan/atau wilayah laut 4 (empat) mil sampai dengan 12 (dua belas) mil;
- e. penginventarisasian, penyelidikan dan penelitian serta eksplorasi dalam rangka memperoleh data dan informasi mineral dan batubara sesuai dengan kewenangannya;
- f. pengelolaan informasi geologi, informasi potensi sumber daya mineral dan batubara, serta informasi pertambangan pada daerah/wilayah provinsi;
- g. penyusunan neraca sumber daya mineral dan batubara pada daerah/wilayah provinsi;
- h. pengembangan dan peningkatan nilai tambah kegiatan usaha pertambangan di provinsi;
- i. pengembangan dan peningkatan peran serta masyarakat dalam usaha pertambangan dengan memperhatikan kelestarian lingkungan;
- j. pengoordinasian perizinan dan pengawasan penggunaan bahan peledak di wilayah tambang sesuai dengan kewenangannya;
- k. penyampaian informasi hasil inventarisasi, penyelidikan umum, dan penelitian serta eksplorasi kepada Menteri dan bupati/walikota;
- l. penyampaian informasi hasil produksi, penjualan dalam negeri, serta ekspor kepada Menteri dan bupati/walikota;
- m. pembinaan dan pengawasan terhadap reklamasi lahan pascatambang; dan
- n. peningkatan kemampuan aparatur pemerintah provinsi dan pemerintah kabupaten/kota dalam penyelenggaraan pengelolaan usaha pertambangan.
- communal conflicts, and supervise mining business with direct environmental impacts overlapping the districts/cities and/or in the territorial sea from 4 (four) miles to 12 (twelve) miles;
- e. to conduct inventory, surveys and research as well as explorations to find data and information about minerals and coal within their authority;
- f. to manage information on geology, information on potential mineral and coal resources, as well as information on mining in provincial areas/territories;
- g. to prepare balance sheet of mineral and coal resources in provincial areas/territories;
- h. to develop and increase added value to mining business activities in provinces;
- i. to foster and improve public participation in mining business with due regard to the environmental sustainability;
- j. to coordinate permission and supervision of explosive use in mining zones within their authority;
- k. to deliver information on the results of inventory, general surveys, and research as well as explorations to the Minister and the regents/mayors;
- l. to deliver information on the results of production, domestic sales, and export to the Minister and the regents/mayors;
- m. to direct and supervise reclamations of postmining lands; and
- n. to improve the capability of apparatus of the provincial governments and the district/city governments in the conduct of management of mining business.

- (2) Kewenangan pemerintah provinsi sebagaimana dimaksud pada ayat (1) dilaksanakan sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 7: Cukup jelas

Pasal 8

- (1) Kewenangan pemerintah kabupaten/kota dalam pengelolaan pertambangan mineral dan batubara, antara lain, adalah:

- a. pembuatan peraturan perundang-undangan daerah;
- b. pemberian IUP dan IPR, pembinaan, penyelesaian konflik masyarakat, dan pengawasan usaha pertambangan di wilayah kabupaten/kota dan/atau wilayah laut sampai dengan 4 (empat) mil;
- c. pemberian IUP dan IPR, pembinaan, penyelesaian konflik masyarakat dan pengawasan usaha pertambangan operasi produksi yang kegiatannya berada di wilayah kabupaten/kota dan/atau wilayah laut sampai dengan 4 (empat) mil;
- d. penginventarisasian, penyelidikan dan penelitian, serta eksplorasi dalam rangka memperoleh data dan informasi mineral dan batubara;
- e. pengelolaan informasi geologi, informasi potensi mineral dan batubara, serta informasi pertambangan pada wilayah kabupaten/kota;
- f. penyusunan neraca sumber daya mineral dan batubara pada wilayah kabupaten/kota;
- g. pengembangan dan pemberdayaan masyarakat setempat dalam usaha pertambangan dengan memperhatikan kelestarian lingkungan;
- h. pengembangan dan peningkatan nilai tambah dan manfaat kegiatan usaha pertambangan secara optimal;

- (2) Authority of the provincial governments as intended by section (1) shall be exercised under provisions of laws and regulations.

Elucidation of Article 7: Sufficiently clear

Article 8

- (1) Authority of the district/city governments in the management of mineral and coal mines shall be, inter alia:

- a. to make regional laws and regulations;
- b. to grant Mining Permits and Small-Scale Mining Permits, direct, settle communal conflicts, and supervise mining business in districts/cities and/or the territorial sea up to 4 (four) miles;
- c. to grant Mining Permits and Small-Scale Mining Permits, direct, settle communal conflicts, and supervise production operation mining business, of which the activities are located in districts/cities and/or the territorial sea up to 4 (four) miles;
- d. to conduct inventory, surveys and research as well as explorations to find data and information about minerals and coal;
- e. to manage information on geology, information on potential minerals and coal, as well as information on mining in districts/cities;
- f. to prepare balance sheet of mineral and coal resources in districts/cities;
- g. to foster and empower local community in mining business with due regard to the environmental sustainability;
- h. to optimally develop and increase added value and benefit to mining business activities;

- i. penyampaian informasi hasil inventarisasi, penyelidikan umum, dan penelitian, serta eksplorasi dan eksploitasi kepada Menteri dan gubernur;
 - j. penyampaian informasi hasil produksi, penjualan dalam negeri, serta ekspor kepada Menteri dan gubernur;
 - k. pembinaan dan pengawasan terhadap reklamasi lahan pascatambang; dan
 - l. peningkatan kemampuan aparatur pemerintah kabupaten/kota dalam penyelenggaraan pengelolaan usaha pertambangan.
- (2) Kewenangan pemerintah kabupaten/kota sebagaimana dimaksud pada ayat (1) dilaksanakan sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 8: Cukup jelas

BAB V
WILAYAH PERTAMBANGAN
Bagian Kesatu
Umum
Pasal 9

- (1) WP sebagai bagian dari tata ruang nasional merupakan landasan bagi penetapan kegiatan pertambangan.
- (2) WP sebagaimana dimaksud pada ayat (1) ditetapkan oleh Pemerintah setelah berkoordinasi dengan pemerintah daerah dan berkonsultasi dengan Dewan Perwakilan Rakyat Republik Indonesia.

Penjelasan Pasal 9: Cukup jelas

Pasal 10

Penetapan WP sebagaimana dimaksud dalam Pasal 9 ayat (2) dilaksanakan:

- a. secara transparan, partisipatif, dan bertanggung jawab;

- i. to deliver information on the results of inventory, general surveys, and research, as well as explorations and exploitations to the Minister and the governors;
 - j. to deliver information on the results of production, domestic sales, and export to the Minister and the governors;
 - k. to direct and supervise reclamations of postmining lands; and
 - l. to improve the capability of apparatus of district/city governments in the conduct of management of mining business.
- (2) Authority of the district/city governments as intended by section (1) shall be exercised under provisions of laws and regulations.

Elucidation of Article 8: Sufficiently clear

CHAPTER V
MINING ZONES
Part One
General
Article 9

- (1) Mining Zones as part of the national spatial planning shall be a foundation on which mining activities are determined.
- (2) Mining Zones as intended by section (1) shall be determined by the Government upon coordination with the regional governments and consultation with the House of Representatives of the Republic of Indonesia.

Elucidation of Article 9: Sufficiently clear

Article 10

Mining Zones as intended by Article 9 section (2) shall be determined:

- a. in transparent, participatory, and responsible manners;

- b. secara terpadu dengan memperhatikan pendapat dari instansi pemerintah terkait, masyarakat, dan dengan mempertimbangkan aspek ekologi, ekonomi, dan sosial budaya, serta berwawasan lingkungan; dan
- c. dengan memperhatikan aspirasi daerah.

Penjelasan Pasal 10: Cukup jelas

Pasal 11

Pemerintah dan pemerintah daerah wajib melakukan penyelidikan dan penelitian pertambangan dalam rangka penyiapan WP.

Penjelasan Pasal 11: Cukup jelas

Pasal 12

Ketentuan lebih lanjut mengenai batas, luas, dan mekanisme penetapan WP sebagaimana dimaksud dalam Pasal 9, Pasal 10, dan Pasal 11 diatur dengan peraturan pemerintah.

Penjelasan Pasal 12: Cukup jelas

Pasal 13

WP terdiri atas:

- a. WUP;
- b. WPR; dan
- c. WPN.

Penjelasan Pasal 13: Cukup jelas

Bagian Kedua

Wilayah Usaha Pertambangan

Pasal 14

- (1) Penetapan WUP dilakukan oleh Pemerintah setelah berkoordinasi dengan pemerintah daerah dan disampaikan secara tertulis kepada Dewan Perwakilan Rakyat Republik Indonesia.
- (2) Koordinasi sebagaimana dimaksud pada ayat (1) dilakukan dengan pemerintah daerah yang bersangkutan berdasarkan data dan

- b. integratedly with due regard to the opinions of the relevant government agencies, the public, and in consideration of ecological, economic, and socio-cultural aspects as well as environmental-soundness; and
- c. with due regard to regional aspirations.

Elucidation of Article 10: Sufficiently clear

Article 11

The Government and regional governments must conduct mining surveys and research in preparation for Mining Zones.

Elucidation of Article 11: Sufficiently clear

Article 12

Ancillary provisions on boundaries, size, and mechanisms of determination of Mining Zones as intended by Article 9, Article 10, and Article 11 shall be governed by regulation of the government.

Elucidation of Article 12: Sufficiently clear

Article 13

Mining Zones shall include:

- a. Mining Areas ;
- b. Small-Scale Mining Areas; and
- c. State Reserve Areas.

Elucidation of Article 13: Sufficiently clear

Part Two

Mining Areas

Article 14

- (1) Mining Areas shall be determined by the Government upon coordination with the regional governments, and shall be delivered in writing to the House of Representatives of the Republic of Indonesia.
- (2) Coordination as intended by section (1) shall be made with the regional governments concerned under data and information

informasi yang dimiliki Pemerintah dan pemerintah daerah.

Penjelasan Pasal 14: Cukup jelas

Pasal 15

Pemerintah dapat melimpahkan sebagian kewenangannya dalam penetapan WUP sebagaimana dimaksud dalam Pasal 14 ayat (1) kepada pemerintah provinsi sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 15:

Kewenangan yang dilimpahkan adalah kewenangan dalam menetapkan WUP untuk mineral bukan logam dan batuan dalam satu kabupaten/kota atau lintas kabupaten/kota.

Pasal 16

Satu WUP terdiri atas 1 (satu) atau beberapa WIUP yang berada pada lintas wilayah provinsi, lintas wilayah kabupaten/kota, dan/atau dalam 1 (satu) wilayah kabupaten/kota.

Penjelasan Pasal 16: Cukup jelas

Pasal 17

Luas dan batas WIUP mineral logam dan batubara ditetapkan oleh Pemerintah berkoordinasi dengan pemerintah daerah berdasarkan kriteria yang dimiliki oleh Pemerintah.

Penjelasan Pasal 17:

Yang dimaksud dengan luas adalah luas maksimum dan luas minimum.

Penentuan batas dilakukan berdasarkan keahlian yang diterima oleh semua pihak.

Pasal 18

Kriteria untuk menetapkan 1 (satu) atau beberapa WIUP dalam 1 (satu) WUP adalah sebagai berikut:

- a. letak geografis;

possessed by the Government and regional governments.

Elucidation of Article 14: Sufficiently clear

Article 15

The Government may delegate its partial authority in the determination of Mining Areas as intended by Article 14 section (1) to the provincial governments under provisions of laws and regulations.

Elucidation of Article 15:

Authority that is delegated shall be authority to determine nonmetal mineral and rock Mining Areas within one district/city or overlapping the districts/cities.

Article 16

One Mining Area shall consist of 1 (one) or several Mining Permit Areas, of which the locations overlap the boundaries of provinces, overlap the boundaries of districts/cities, and/or within 1 (one) a district/city.

Elucidation of Article 16: Sufficiently clear

Article 17

Size and boundaries of metal mineral and coal Mining Permit Areas shall be determined by the Government in coordination with the regional governments under the criteria adopted by the Government.

Elucidation of Article 17:

"Size" means maximum size and minimum size.

Boundaries shall be determined on an expertise basis that is accepted by all parties.

Article 18

The criteria under which 1 (one) or several Mining Permit Areas within 1 (one) Mining Area are determined shall be as follows:

- a. geographical locations;

- b. kaidah konservasi;
- c. daya dukung lingkungan lingkungan;
- d. optimalisasi sumber daya mineral dan/atau batubara; dan
- e. tingkat kepadatan penduduk.

Penjelasan Pasal 18: Cukup jelas

Pasal 19

Ketentuan lebih lanjut mengenai tata cara penetapan batas dan luas WIUP sebagaimana dimaksud dalam Pasal 17 diatur dengan peraturan pemerintah.

Penjelasan Pasal 19: Cukup jelas

Bagian Ketiga

Wilayah Pertambangan Rakyat

Pasal 20

Kegiatan pertambangan rakyat dilaksanakan dalam suatu WPR.

Penjelasan Pasal 20: Cukup jelas

Pasal 21

WPR, sebagaimana dimaksud dalam Pasal 20 ditetapkan oleh bupati/walikota setelah berkonsultasi dengan Dewan Perwakilan Rakyat Daerah kabupaten/kota.

Penjelasan Pasal 21:

Penetapan WPR didasarkan pada perencanaan dengan melakukan sinkronisasi data dan informasi melalui sistem informasi WP.

Pasal 22

Kriteria untuk menetapkan WPR adalah sebagai berikut:

- a. mempunyai cadangan mineral sekunder yang terdapat di sungai dan/atau di antara tepi dan tepi sungai;

Penjelasan Pasal 22 a:

- b. conservation principles;
- c. carrying capacity of environmental conservation;
- d. optimization of mineral and/or coal resources; and
- e. rate of population density.

Elucidation of Article 18: Sufficiently clear

Article 19

Ancillary provisions on procedures for determination of boundaries and size of Mining Permit Areas as intended by Article 17 shall be governed by regulation of the government.

Elucidation of Article 19: Sufficiently clear

Part Three

Small-Scale Mining Areas

Article 20

Small-scale mining activities shall be performed within a Small-Scale Mining Area.

Elucidation of Article 20: Sufficiently clear

Article 21

Small-Scale Mining Areas as intended by Article 20 shall be determined by the regents/mayors upon consultation with the Regional House of Representatives of district/cities.

Elucidation of Article 21:

Determination of Small-Scale Mining Areas shall be on a planning basis by synchronizing data and information through the Mining Zone information system.

Article 22

The criteria under which Small-Scale Mining Areas are determined shall be as follows:

- a. secondary mineral deposits found in the rivers and/or between two banks of the river;

Elucidation of Article 22 a:

Yang dimaksud dengan tepi dan tepi sungai adalah daerah akumulasi pengayaan mineral sekunder (pay streak) dalam suatu meander sungai.

- b. mempunyai cadangan primer logam atau batubara dengan kedalaman maksimal 25 (dua puluh lima) meter;

Penjelasan Pasal 22 b: Cukup jelas

- c. endapan teras, dataran banjir, dan endapan sungai purba;

Penjelasan Pasal 22 c: Cukup jelas

- d. luas maksimal wilayah pertambangan rakyat adalah 25 (dua puluh lima) hektare;

Penjelasan Pasal 22 d: Cukup jelas

- e. menyebutkan jenis komoditas yang akan ditambang; dan/atau

Penjelasan Pasal 22 e: Cukup jelas

- f. merupakan wilayah atau tempat kegiatan tambang rakyat yang sudah dikerjakan sekurang-kurangnya 15 (lima belas) tahun.

Penjelasan Pasal 22 f: Cukup jelas

Pasal 23

Dalam menetapkan WPR sebagaimana dimaksud dalam Pasal 21, bupati/walikota berkewajiban melakukan pengumuman mengenai rencana WPR kepada masyarakat secara terbuka.

Penjelasan Pasal 23:

Pengumuman rencana WPR dilakukan di kantor desa/kelurahan dan kantor/instansi terkait; dilengkapi dengan peta situasi yang menggambarkan lokasi, luas, dan batas serta daftar koordinat; dan dilengkapi daftar pemegang hak atas tanah yang berada dalam WPR.

Pasal 24

Wilayah atau tempat kegiatan tambang rakyat yang sudah dikerjakan tetapi belum ditetapkan sebagai WPR diprioritaskan untuk ditetapkan sebagai WPR.

Penjelasan Pasal 24: Cukup jelas

"Between two banks of the river" shall include accumulation areas of secondary mineral enrichment (pay streak) in the meanders of a river.

- b. primary metal or coal deposits of a maximum of 25 (twenty-five) meters in depth;

Elucidation of Article 22 b: Sufficiently clear

- c. terrace deposits, floodplains, and paleochannel deposits;

Elucidation of Article 22 c: Sufficiently clear

- d. a small-scale mining area shall be a maximum of 25 (twenty-five) hectares in size;

Elucidation of Article 22 d: Sufficiently clear

- e. reference to the types of commodities to be mined; and/or

Elucidation of Article 22 e: Sufficiently clear

- f. small-scale mining areas or sites that have been worked on for 15 (fifteen) years as a minimum.

Elucidation of Article 22 f: Sufficiently clear

Article 23

In determination of Small-Scale Mining Areas as intended by Article 21, the regents/mayors are required to announce Small-Scale Mining Area planning to the public transparently.

Elucidation of Article 23:

Announcements of Small-Scale Mining Area planning shall be made at the office of rural administrative division/urban administrative division and relevant offices/agencies; accompanied by situation maps that show locations, size, and boundaries as well as list of coordinates; and accompanied by lists of titleholders of land in the Small-Scale Mining Areas.

Article 24

Small-scale mining areas or sites that have been worked on but not yet determined as Small-Scale Mining Areas shall be prioritized to be determined as Small-Scale Mining Areas.

Elucidation of Article 24: Sufficiently clear

Pasal 25

Ketentuan lebih lanjut mengenai pedoman, prosedur, dan penetapan WPR sebagaimana dimaksud dalam Pasal 21 dan Pasal 23 diatur dengan peraturan pemerintah.

Penjelasan Pasal 25: Cukup jelas

Pasal 26

Ketentuan lebih lanjut mengenai kriteria dan mekanisme penetapan WPR, sebagaimana dimaksud dalam Pasal 22 dan Pasal 23 diatur dengan peraturan daerah kabupaten/kota.

Penjelasan Pasal 26: Cukup jelas

Bagian Keempat

Wilayah Pencadangan Negara

Pasal 27

- (1) Untuk kepentingan strategis nasional, Pemerintah dengan persetujuan Dewan Perwakilan Rakyat Republik Indonesia dan dengan memperhatikan aspirasi daerah menetapkan WPN sebagai daerah yang dicadangkan untuk komoditas tertentu dan daerah konservasi dalam rangka menjaga keseimbangan ekosistem dan lingkungan.

Penjelasan Pasal 27 (1):

Penetapan WPN untuk kepentingan nasional dimaksudkan untuk mendorong pertumbuhan ekonomi nasional, ketahanan energi dan industri strategis nasional, serta meningkatkan daya saing nasional dalam menghadapi tantangan global.

Yang dimaksud dengan komoditas tertentu antara lain tembaga, timah, emas, besi, nikel, dan bauksit serta batubara.

Konservasi yang dimaksud juga mencakup upaya pengelolaan mineral dan/atau batubara yang keberadaannya terbatas.

- (2) WPN yang ditetapkan untuk komoditas tertentu sebagaimana dimaksud pada ayat (1) dapat diusahakan sebagian luas wilayahnya dengan persetujuan Dewan Perwakilan Rakyat Republik Indonesia.

Article 25

Ancillary provisions on guidelines, procedures, and determination of Small-Scale Mining Areas as intended by Article 21 and Article 23 shall be governed by regulation of the government.

Elucidation of Article 25: Sufficiently clear

Article 26

Ancillary provisions on the criteria and mechanisms of determination of Small-Scale Mining Areas as intended by Article 22 and Article 23 shall be governed by regulation of district/city.

Elucidation of Article 26: Sufficiently clear

Part Four

State Reserve Areas

Article 27

- (1) In the interest of national strategy, the Government upon the consent of the House of Representatives of the Republic of Indonesia, and with due regard to regional aspirations, shall determine State Reserve Areas as areas that are reserved for certain commodities and conservation areas to keep a balance between ecosystem and the environment.

Elucidation of Article 27 (1):

Determination of State Reserve Areas in the national interest is intended to push national economic growth, national strategic energy and industrial resilience as well as to improve national competitiveness in facing global challenges.

"Certain commodities" shall include, inter alia, copper, lead, gold, iron, nickel, and bauxite as well as coal.

"Conservation" shall include efforts to manage minerals and/or coal that are of limited availability.

- (2) State Reserve Areas determined for certain commodities as intended by section (1) are allowed their partial areas to be commercialized upon the consent of the House of Representatives of the Republic of

Penjelasan Pasal 27 (2):

Yang dimaksud dengan sebagian luas wilayahnya adalah untuk menentukan persentase besaran luas wilayah yang akan diusahakan.

- (3) WPN yang ditetapkan untuk konservasi sebagaimana dimaksud pada ayat (1) ditentukan batasan waktu dengan persetujuan Dewan Perwakilan Rakyat Republik Indonesia.

Penjelasan Pasal 27 (3):

Yang dimaksud dengan batasan waktu adalah WPN yang ditetapkan untuk konservasi dapat diusahakan setelah melewati jangka waktu tertentu.

- (4) Wilayah yang akan diusahakan sebagaimana dimaksud pada ayat (2) dan ayat (3) berubah statusnya menjadi WUPK.

Penjelasan Pasal 27 (4): Cukup jelas

Pasal 28

Perubahan status WPN sebagaimana dimaksud dalam Pasal 27 ayat (2), ayat (3), dan ayat (4) menjadi WUPK dapat dilakukan dengan mempertimbangkan:

- a. pemenuhan bahan baku industri dan energi dalam negeri;
- b. sumber devisa negara;
- c. kondisi wilayah didasarkan pada keterbatasan sarana dan prasarana;
- d. berpotensi untuk dikembangkan sebagai pusat pertumbuhan ekonomi;
- e. daya dukung lingkungan; dan/atau
- f. penggunaan teknologi tinggi dan modal investasi yang besar.

Penjelasan Pasal 28: Cukup jelas

Pasal 29

- (1) WUPK sebagaimana dimaksud dalam Pasal 27 ayat (4) yang akan diusahakan ditetapkan oleh Pemerintah setelah berkoordinasi dengan pemerintah daerah.

Indonesia.

Elucidation of Article 27 (2):

"Their partial areas" means to set the percentage of the area size to be commercialized.

- (3) State Reserve Areas determined for conservation as intended by section (1) shall be given time limit upon the consent of the House of Representatives of the Republic of Indonesia.

Elucidation of Article 27 (3):

"Time limit" means State Reserve Areas determined for conservation may be commercialized after a specified period passes.

- (4) Areas to be commercialized as intended by section (2) and section (3) shall change their status into Special Mining Area.

Elucidation of Article 27 (4): Sufficiently clear

Article 28

Change in status of State Reserve Area as intended by Article 27 section (2), section (3), and section (4) into Special Mining Area may be made in consideration of:

- a. domestic requirements for industrial raw materials and energy;
- b. country's foreign exchange earnings;
- c. condition of area with respect to constraints of infrastructure and facilities;
- d. potential for development as central economic growth;
- e. carrying capacity of the environment; and/or
- f. use of high technology and large capital investments.

Elucidation of Article 28: Sufficiently clear

Article 29

- (1) Special Mining Areas to be commercialized as intended by Article 27 section (4) shall be determined by the Government upon coordination with the regional governments.

Penjelasan Pasal 29 (1):

Yang dimaksud dengan koordinasi adalah mengakomodasi semua kepentingan daerah yang terkait dengan WUPK sesuai dengan ketentuan peraturan perundang-undangan.

- (2) Pelaksanaan kegiatan usaha pertambangan di WUPK sebagaimana dimaksud pada ayat (1) dilakukan dalam bentuk IUPK.

Penjelasan Pasal 29 (2): Cukup jelas

Pasal 30

Satu WUPK terdiri atas 1 (satu) atau beberapa WIUPK yang berada pada lintas wilayah provinsi, lintas wilayah kabupaten/kota, dan/atau dalam 1 (satu) wilayah kabupaten/kota.

Penjelasan Pasal 30: Cukup jelas

Pasal 31

Luas dan batas WIUPK mineral logam dan batubara ditetapkan oleh Pemerintah berkoordinasi dengan pemerintah daerah berdasarkan kriteria dan informasi yang dimiliki oleh Pemerintah.

Penjelasan Pasal 31:

Yang dimaksud dengan luas adalah luas maksimum dan luas minimum.

Penentuan batas dilakukan berdasarkan keahlian yang diterima oleh semua pihak.

Pasal 32

Kriteria untuk menetapkan 1 (satu) atau beberapa WIUPK dalam 1 (satu) WUPK adalah sebagai berikut:

- a. letak geografis;
- b. kaidah konservasi;
- c. daya dukung lingkungan lingkungan;

Elucidation of Article 29 (1):

“Coordination” means to accommodate the requirement of regions in connection with Special Mining Areas under provisions of laws and regulations.

- (2) Mining business activities in Special Mining Areas as intended by section (1) shall be performed in the form of Special Mining Permits.

Elucidation of Article 29 (2): Sufficiently clear

Article 30

One Special Mining Area shall consist of 1 (one) or several Special Mining Permit Areas in Special Mining Areas, of which the locations overlap the boundaries of provinces, overlap the boundaries of districts/cities, and/or within 1 (one) district/city.

Elucidation of Article 30: Sufficiently clear

Article 31

Size and boundaries of metal mineral and coal Special Mining Permit Areas in Special Mining Areas shall be determined by the Government in coordination with the regional governments under the criteria and information possessed by the Government.

Elucidation of Article 31:

“Size” means maximum size and minimum size.

Boundaries shall be determined on an expertise basis that all parties accept.

Article 32

The criteria under which 1 (one) or several Special Mining Permit Areas in Special Mining Areas within 1 (one) Special Mining Area are determined shall be as follows:

- a. geographical locations;
- b. conservation principles;
- c. carrying capacity of environmental conservation;

- d. optimalisasi sumber daya mineral dan/atau batubara; dan
- e. tingkat kepadatan penduduk.

Penjelasan Pasal 32: Cukup jelas

Pasal 33

Ketentuan lebih lanjut mengenai tata cara penetapan luas dan batas WIUPK sebagaimana dimaksud dalam Pasal 31 dan Pasal 32 diatur dengan peraturan pemerintah.

Penjelasan Pasal 33: Cukup jelas

BAB VI

USAHA PERTAMBANGAN

Pasal 34

- (1) Usaha pertambangan dikelompokkan atas:
 - a. pertambangan mineral; dan
 - b. pertambangan batubara.
- (2) Pertambangan mineral sebagaimana dimaksud pada ayat (1) huruf a digolongkan atas:
 - a. pertambangan mineral radioaktif;

Penjelasan Pasal 34 (1) a: Cukup jelas

Penjelasan Pasal 34 (1) b: Cukup jelas

Penjelasan Pasal 34 (2) a:

Yang dimaksud dengan "pertambangan mineral radioaktif" adalah pertambangan sebagaimana diatur dalam peraturan perundang-undangan di bidang ketenagakucliran.

- b. pertambangan mineral logam;

Penjelasan Pasal 34 (2) b:

Pertambangan mineral logam dalam ketentuan ini termasuk mineral ikutannya.

- c. pertambangan mineral bukan logam; dan

Penjelasan Pasal 34 (2) c: Cukup jelas

- d. pertambangan batuan.

- d. optimization of mineral and/or coal resources; and
- e. rate of population density.

Elucidation of Article 32: Sufficiently clear

Article 33

Ancillary provisions on procedures for determination of size and boundaries of Special Mining Permit Areas in Special Mining Areas as intended by Article 31 and Article 32 shall be governed by regulation of the government.

Elucidation of Article 33: Sufficiently clear

CHAPTER VI

MINING BUSINESS

Article 34

- (1) Mining business shall be grouped into:
 - a. mineral mining; and
 - b. coal mining.
- (2) Mineral mining as intended by section (1) point (a) shall be classified into:
 - a. radioactive mineral mining;

Elucidation of Article 34 (1) a: Sufficiently clear

Elucidation of Article 34 (1) b: Sufficiently clear

Elucidation of Article 34 (2) a:

"Radioactive mineral mining" means mining as governed by laws and regulations in the field of nuclear energy.

- b. metal mineral mining;

Elucidation of Article 34 (2) b:

Metal mineral mining in this provision shall include associated minerals.

- c. nonmetal mineral mining; and

Elucidation of Article 34 (2) c: Sufficiently clear

- d. rock mining.

Penjelasan Pasal 34 (2) d: Cukup jelas

- (3) Ketentuan lebih lanjut mengenai penetapan suatu komoditas tambang ke dalam suatu golongan pertambangan mineral sebagaimana dimaksud pada ayat (2) diatur dengan peraturan pemerintah.

Penjelasan Pasal 34 (3): Cukup jelas

Pasal 35

Usaha pertambangan sebagaimana dimaksud dalam Pasal 34 dilaksanakan dalam bentuk:

- a. IUP;
- b. IPR; dan
- c. IUPK.

Penjelasan Pasal 35: Cukup jelas

BAB VII

IZIN USAHA PERTAMBANGAN

Bagian Kesatu

Umum

Pasal 36

- (1) IUP terdiri atas dua tahap:
- a. IUP Eksplorasi meliputi kegiatan penyelidikan umum, eksplorasi, dan studi kelayakan;
 - b. IUP Operasi Produksi meliputi kegiatan konstruksi, penambangan, pengolahan dan pemurnian, serta pengangkutan dan penjualan.
- (2) Pemegang IUP Eksplorasi dan pemegang IUP Operasi Produksi dapat melakukan sebagian atau seluruh kegiatan sebagaimana dimaksud pada ayat (1).

Penjelasan Pasal 36: Cukup jelas

Elucidation of Article 34 (2) d: Sufficiently clear

- (3) Ancillary provisions on classification of a mining commodity into a mineral mining class as intended by section (2) shall be governed by regulation of the government.

Elucidation of Article 34 (3): Sufficiently clear

Article 35

Mining business as intended by Article 34 shall be conducted in the form of:

- a. Mining Permits;
- b. Small-Scale Mining Permits; and
- c. Special Mining Permits.

Elucidation of Article 35: Sufficiently clear

CHAPTER VII

MINING PERMITS

Part One

General

Article 36

- (1) A Mining Permit (IUP) shall include two stages:
- a. an Exploration Mining Permit shall include the activities of general surveys, explorations, and feasibility studies;
 - b. a Production Operation Mining Permit shall include the activities of construction, mines, processing and refining/smelting as well as hauling and sale.
- (2) Exploration Mining Permit holders and Production Operation Mining holders may perform part or all of the activities as intended by section (1).

Elucidation of Article 36: Sufficiently clear

Pasal 37

IUP diberikan oleh:

- a. bupati/walikota apabila WIUP berada di dalam satu wilayah kabupaten/kota;
- b. gubernur apabila WIUP berada pada lintas wilayah kabupaten/kota dalam 1 (satu) provinsi setelah mendapatkan rekomendasi dan bupati/walikota setempat sesuai dengan ketentuan peraturan perundang-undangan; dan
- c. Menteri apabila WIUP berada pada lintas wilayah provinsi setelah mendapatkan rekomendasi dari gubernur dan bupati/walikota setempat sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 37: Cukup jelas

Pasal 38

IUP diberikan kepada:

- a. badan usaha;

Penjelasan Pasal 38 a:

Badan usaha dalam ketentuan ini meliputi badan usaha milik negara dan badan usaha milik daerah.

- b. koperasi; dan

Penjelasan Pasal 38 b: Cukup jelas

- c. perseorangan.

Penjelasan Pasal 38 c: Cukup jelas

Pasal 39

- (1) IUP Eksplorasi sebagaimana dimaksud dalam Pasal 36 ayat (1) huruf a wajib memuat ketentuan sekurang-kurangnya:

- a. nama perusahaan;

Penjelasan Pasal 39 (1) a: Cukup jelas

- b. lokasi dan luas wilayah;

Penjelasan Pasal 39 (1) b: Cukup jelas

- c. rencana umum tata ruang;

Article 37

Mining Permits shall be granted by:

- a. the regents/mayors, where the Mining Permit Area is in one district/city;
- b. the governors, where the Mining Permit Area overlaps the boundaries of districts/cities in one province upon recommendation of the local regent/mayor under provisions of laws and regulations; and
- c. the Minister, where the Mining Permit Area overlaps the boundaries of provinces upon recommendation of the governors and the local regents/mayors under provisions of laws and regulations.

Elucidation of Article 37: Sufficiently clear

Article 38

Mining Permits shall be granted to:

- a. entities;

Elucidation of Article 38 a:

Entities in this provision shall include state-owned entities and region-owned entities.

- b. cooperatives; and

Elucidation of Article 38 b: Sufficiently clear

- c. sole proprietorships.

Elucidation of Article 38 c: Sufficiently clear

Article 39

- (1). An Exploration Mining Permit as intended by Article 36 section (1) point (a) must state the following terms as a minimum:

- a. name of company;

Elucidation of Article 39 (1) a: Sufficiently clear

- b. location and size of area;

Elucidation of Article 39 (1) b: Sufficiently clear

- c. general spatial planning;

Penjelasan Pasal 39 (1) c: Cukup jelas

- d. jaminan kesungguhan;

Penjelasan Pasal 39 (1) d:

Jaminan kesungguhan dalam ketentuan ini termasuk biaya pengelolaan lingkungan akibat kegiatan eksplorasi.

- e. modal investasi;

Penjelasan Pasal 39 (1) e: Cukup jelas

- f. perpanjangan waktu tahap kegiatan;

Penjelasan Pasal 39 (1) f: Cukup jelas

- g. hak dan kewajiban pemegang IUP;

Penjelasan Pasal 39 (1) g: Cukup jelas

- h. jangka waktu berlakunya tahap kegiatan;

Penjelasan Pasal 39 (1) h: Cukup jelas

- i. jenis usaha yang diberikan;

Penjelasan Pasal 39 (1) i: Cukup jelas

- j. rencana pengembangan dan pemberdayaan masyarakat di sekitar wilayah pertambangan;

Penjelasan Pasal 39 (1) j: Cukup jelas

- k. perpajakan;

Penjelasan Pasal 39 (1) k: Cukup jelas

- l. penyelesaian perselisihan;

Penjelasan Pasal 39 (1) l: Cukup jelas

- m. iuran tetap dan iuran eksplorasi; dan

Penjelasan Pasal 39 (1) m: Cukup jelas

- n. amdal.

Penjelasan Pasal 39 (1) n: Cukup jelas

- (2) IUP Operasi Produksi sebagaimana dimaksud dalam Pasal 36 ayat (1) huruf b wajib memuat ketentuan sekurang-kurangnya:

Elucidation of Article 39 (1) c: Sufficiently clear

- d. commitment deposits;

Elucidation of Article 39 (1) d:

Commitment deposits in this provision shall include environmental management fees with respect to exploration activities.

- e. investment capital;

Elucidation of Article 39 (1) e: Sufficiently clear

- f. extended period of stage of activity;

Elucidation of Article 39 (1) f: Sufficiently clear

- g. rights and obligations of Mining Permit holders

Elucidation of Article 39 (1) g: Sufficiently clear

- h. validity period of stage of activity;

Elucidation of Article 39 (1) h: Sufficiently clear

- i. line of business authorized;

Elucidation of Article 39 (1) i: Sufficiently clear

- j. development and empowerment plans for community of mining areas;

Elucidation of Article 39 (1) j: Sufficiently clear

- k. taxation;

Elucidation of Article 39 (1) k: Sufficiently clear

- l. settlement of disputes;

Elucidation of Article 39 (1) l: Sufficiently clear

- m. dead rents and exploration royalties; and

Elucidation of Article 39 (1) m: Sufficiently clear

- n. environmental impact assessment (amdal).

Elucidation of Article 39 (1) n: Sufficiently clear

- (2) A Production Operation Mining Permit as intended by Article 36 section (1) point (b) must state the following terms as a minimum:

a.	nama perusahaan;	a.	name of company;
b.	luas wilayah;	b.	size of area;
c.	lokasi penambangan;	c.	mine locations;
d.	lokasi pengolahan dan pemurnian;	d.	processing and refining/smelting locations;
e.	pengangkutan dan penjualan;	e.	hauling and sale;
f.	modal investasi;	f.	investment capital;
g.	jangka waktu berlakunya IUP;	g.	validity period of Mining Permits;
h.	jangka waktu tahap kegiatan;	h.	period of stage of activity;
i.	penyelesaian masalah pertanahan;	i.	solutions to land problems;
j.	lingkungan hidup termasuk reklamasi dan pascatambang;	j.	the environment, including reclamations and postmining;
k.	dana jaminan reklamasi dan pascatambang;	k.	reclamation and postmining deposit funds;
l.	perpanjangan IUP;	l.	extension of Mining Permits;
m.	hak dan kewajiban pemegang IUP;	m.	rights and obligations of Mining Permit holders
n.	rencana pengembangan dan pemberdayaan masyarakat di sekitar wilayah pertambangan;	n.	development and empowerment plans for community of mining areas;
o.	perpajakan;	o.	taxation;
p.	penerimaan negara bukan pajak yang terdiri atas iuran tetap dan iuran produksi;	p.	nontax state revenues that include dead rents and production royalties;
q.	penyelesaian perselisihan;	q.	settlement of disputes;
r.	keselamatan dan kesehatan kerja;	r.	occupational safety and health;
s.	konservasi mineral atau batubara;	s.	mineral or coal conservation;
t.	pemanfaatan barang, jasa, dan teknologi dalam negeri;	t.	use of domestic goods, services and technology;
u.	penerapan kaidah keekonomian dan keteknikan pertambangan yang baik;	u.	application of good mining economic and technical principles;
v.	pengembangan tenaga kerja Indonesia;	v.	fostering of Indonesian workers;
w.	pengelolaan data mineral atau batubara; dan	w.	management of data on minerals or coal; and
x.	penguasaan, pengembangan, dan	x.	mastery, development, and

penerapan teknologi pertambangan mineral atau batubara.

application of mineral or coal mining technology.

Penjelasan Pasal 39 (2): Cukup jelas

Elucidation of Article 39 (2): Sufficiently clear

Pasal 40

Article 40

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| <p>(1) IUP sebagaimana dimaksud dalam Pasal 36 ayat (1) diberikan untuk 1 (satu) jenis mineral atau batubara.</p> <p>(2) Pemegang IUP sebagaimana dimaksud pada ayat (1) yang menemukan mineral lain di dalam WIUP yang dikelola diberikan prioritas untuk mengusahakannya.</p> <p>(3) Pemegang IUP yang bermaksud mengusahakan mineral lain sebagaimana dimaksud pada ayat (2), wajib mengajukan permohonan IUP baru kepada Menteri, gubernur, dan bupati/walikota sesuai dengan kewenangannya.</p> <p>(4) Pemegang IUP sebagaimana dimaksud pada ayat (2) dapat menyatakan tidak berminat untuk mengusahakan mineral lain yang ditemukan tersebut.</p> <p>(5) Pemegang IUP yang tidak berminat untuk mengusahakan mineral lain yang ditemukan sebagaimana dimaksud pada ayat (4), wajib menjaga mineral lain tersebut agar tidak dimanfaatkan pihak lain.</p> <p>(6) IUP untuk mineral lain sebagaimana dimaksud pada ayat (4) dan ayat (5) dapat diberikan kepada pihak lain oleh Menteri, gubernur, dan bupati/walikota sesuai dengan kewenangannya.</p> | <p>(1) A Mining Permit as intended by Article 36 section (1) shall be granted for 1 (one) type of mineral and coal.</p> <p>(2) A Mining Permit holder as intended by section (1) by whom other minerals are found within a Mining Permit Area he/she manages shall be given priority to commercialize them.</p> <p>(3) A Mining Permit holder that wishes to commercialize other minerals as intended by section (2) must file an application for a new Mining Permit with the Minister, the governors, and the regents/mayors within their authority.</p> <p>(4) A Mining Permit holder as intended by section (2) may express disinterest to commercialize other minerals found.</p> <p>(5) A Mining Permit holder that is disinterested in commercializing other minerals found as intended by section (4) must prevent other parties from taking advantage of such other minerals.</p> <p>(6) A Mining Permit for other minerals as intended by section (4) and section (5) may be granted to other party by the Minister, the governors, and the regents/mayors within their authority.</p> |
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Penjelasan Pasal 40: Cukup jelas

Elucidation of Article 40: Sufficiently clear

Pasal 41

Article 41

IUP tidak dapat digunakan selain yang dimaksud dalam pemberian IUP.

A Mining Permit shall not be used other than as intended in the granting of a Mining Permit.

Penjelasan Pasal 41: Cukup jelas

Elucidation of Article 41: Sufficiently clear

Bagian Kedua
IUP Eksplorasi
Pasal 42

- (1) IUP Eksplorasi untuk pertambangan mineral logam dapat diberikan dalam jangka waktu paling lama 8 (delapan) tahun,

Penjelasan Pasal 42 (1):

Jangka waktu 8 (delapan) tahun meliputi penyelidikan umum 1 (satu) tahun; eksplorasi 3 (tiga) tahun dan dapat diperpanjang 2 (dua) kali masing-masing 1 (satu) tahun; serta studi kelayakan 1 (satu) tahun dan dapat diperpanjang 1 (satu) kali 1 (satu) tahun.

- (2) IUP Eksplorasi untuk pertambangan mineral bukan logam dapat diberikan paling lama dalam jangka waktu 3 (tiga) tahun dan mineral bukan logam jenis tertentu dapat diberikan dalam jangka waktu paling lama 7 (tujuh) tahun.

Penjelasan Pasal 42 (2):

Jangka waktu 3 (tiga) tahun meliputi penyelidikan umum 1 (satu) tahun, eksplorasi 1 (satu) tahun, dan studi kelayakan 1 (satu) tahun.

Yang dimaksud dengan mineral bukan logam jenis tertentu adalah antara lain batu gamping untuk industri semen, intan, dan batu mulia.

Jangka waktu 7 (tujuh) tahun meliputi penyelidikan umum 1 (satu) tahun; eksplorasi 3 (tiga) tahun dan dapat diperpanjang 1 (satu) kali 1 (satu) tahun; serta studi kelayakan 1 (satu) tahun dan dapat diperpanjang 1 (satu) kali 1 (satu) tahun.

- (3) IUP Eksplorasi untuk pertambangan batuan dapat diberikan dalam jangka waktu paling lama 3 (tiga) tahun.

Penjelasan Pasal 42 (3):

Jangka waktu 3 (tiga) tahun meliputi penyelidikan umum 1 (satu) tahun, eksplorasi 1 (satu) tahun, dan studi kelayakan 1 (satu) tahun.

- (4) IUP Eksplorasi untuk pertambangan batubara dapat diberikan dalam jangka waktu paling lama 7 (tujuh) tahun.

Penjelasan Pasal 42 (4):

Jangka waktu 7 (tujuh) tahun meliputi penyelidikan umum 1 (satu) tahun; eksplorasi 2 (dua) tahun dan dapat diperpanjang 2 (dua) kali masing-masing 1 (satu) tahun;

Par Two
Exploration Mining Permits
Article 42

- (1) A metal mineral Exploration Mining Permit may be granted for a period of at most 8 (eight) years.

Elucidation of Article 42 (1):

An 8 (eight)-year period shall include 1 (one) year of general surveys, 3 (three) years of explorations, extendable to 1 (one) year 2 (two) times respectively, as well as 1 (one) year of feasibility studies, extendable to 1 (one) year 1 (one) time.

- (2) A nonmetal mineral Exploration Mining Permit may be granted for a period of at most 3 (three) years, and for certain-typed nonmetal minerals may be granted for a period of at most 7 (seven) years.

Elucidation of Article 42 (2):

A 3 (three)-year period shall include 1 (one) year of general surveys, 1 (one) year of explorations, and 1 (one) year of feasibility studies.

Certain-typed nonmetal minerals shall include, inter alia, limestones for cement industry, diamonds, and precious stones.

A 7 (seven)-year period shall include 1 (one) year of general surveys, 3 (three) years of explorations, extendable to 1 (one) year 1 (one) time, as well as 1 (one) year of feasibility studies, extendable to 1 (one) year 1 (one) time.

- (3) A rock Exploration Mining Permit may be granted for a period of at most 3 (three) years.

Elucidation of Article 42 (3):

A 3 (three)-year period shall include 1 (one) year of general surveys, 1 (one) year of explorations, and 1 (one) year of feasibility studies.

- (4) A coal Exploration Mining Permit may be granted for a period of at most 7 (seven) years.

Elucidation of Article 42 (4):

A 7 (seven)-year period shall include 1 (one) year of general surveys, 2 (two) years of explorations, extendable to 1 (one) year 2 (two) times respectively, as well as 2

serta studi kelayakan 2 (dua) tahun.

(two) years of feasibility studies.

Pasal 43

Article 43

- (1) Dalam hal kegiatan eksplorasi dan kegiatan studi kelayakan, pemegang IUP Eksplorasi yang mendapatkan mineral atau batubara yang tergali wajib melaporkan kepada pemberi IUP.
- (2) Pemegang IUP Eksplorasi yang ingin menjual mineral atau batubara sebagaimana dimaksud pada ayat (1) wajib mengajukan izin sementara untuk melakukan pengangkutan dan penjualan.

- (1) In the case of exploration activities and feasibility study activities, Exploration Mining Permit holders by whom excavated minerals or coal are found must report it to the Mining Permit issuer.
- (2) Exploration Mining Permit holders that wish to sell minerals or coal as intended by section (1) must apply for a temporary permit for hauling and sale.

Penjelasan Pasal 43: Cukup jelas

Elucidation of Article 43: Sufficiently clear

Pasal 44

Article 44

Izin sementara sebagaimana dimaksud dalam Pasal 43 ayat (2) diberikan oleh Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya.

A temporary permit as intended by Article 43 section (2) shall be granted by the Minister, the governors, or the regents/mayors within their authority.

Penjelasan Pasal 44: Cukup jelas

Elucidation of Article 44: Sufficiently clear

Pasal 45

Article 45

Mineral atau batubara yang tergali sebagaimana dimaksud dalam Pasal 43 dikenai iuran produksi.

Excavated minerals or coal as intended by Article 43 shall be subject to production royalties.

Penjelasan Pasal 45: Cukup jelas

Elucidation of Article 45: Sufficiently clear

Bagian Ketiga IUP Operasi Produksi

Part Three Production Operation Mining Permits

Pasal 46

Article 46

- (1) Setiap pemegang IUP Eksplorasi dijamin untuk memperoleh IUP Operasi Produksi sebagai kelanjutan kegiatan usaha pertambangannya.

- (1) Any Exploration Mining Permit holder shall be assured of obtaining a Production Operation Mining Permit in furtherance of his/her mining business.

Penjelasan Pasal 46 (1): Cukup jelas

Elucidation of Article 46 (1): Sufficiently clear

- (2) IUP Operasi Produksi dapat diberikan kepada badan usaha, koperasi, atau perseorangan atas hasil pelelangan WIUP mineral logam atau batubara yang telah mempunyai data hasil kajian studi kelayakan.

- (2) A Production Operation Mining Permit may be granted to entities, cooperatives, or sole proprietorships already holding data on feasibility study findings, upon bid results of metal mineral or coal Mining Permit Areas.

Penjelasan Pasal 46 (2):

Elucidation of Article 46 (2):

Yang dimaksud dengan data hasil kajian studi kelayakan merupakan sinkronisasi data milik Pemerintah dan pemerintah daerah.

Pasal 47

- (1) IUP Operasi Produksi untuk pertambangan mineral logam dapat diberikan dalam jangka waktu paling lama 20 (dua puluh) tahun dan dapat diperpanjang 2 (dua) kali masing-masing 10 (sepuluh) tahun.

Penjelasan Pasal 47 (1):

Jangka waktu 20 (dua puluh) tahun dalam ketentuan ini termasuk jangka waktu untuk konstruksi selama 2 (dua) tahun.

- (2) IUP Operasi Produksi untuk pertambangan mineral bukan logam dapat diberikan dalam jangka waktu paling lama 10 (sepuluh) tahun dan dapat diperpanjang 2 (dua) kali masing-masing 5 (lima) tahun.

Penjelasan Pasal 47 (2): Cukup jelas

- (3) IUP Operasi Produksi untuk pertambangan mineral bukan logam jenis tertentu dapat diberikan dalam jangka waktu paling lama 20 (dua puluh) tahun dan dapat diperpanjang 2 (dua) kali masing-masing 10 (sepuluh) tahun.

Penjelasan Pasal 47 (3):

Yang dimaksud dengan mineral bukan logam jenis tertentu adalah antara lain batu gamping untuk industri semen, intan dan batu mulia.

Jangka waktu 20 (dua puluh) tahun dalam ketentuan ini termasuk jangka waktu untuk konstruksi selama 2 (dua) tahun.

- (4) IUP Operasi Produksi untuk pertambangan batuan dapat diberikan dalam jangka waktu paling lama 5 (lima) tahun dan dapat diperpanjang 2 (dua) kali masing-masing 5 (lima) tahun.

Penjelasan Pasal 47 (4): Cukup jelas

- (5) IUP Operasi Produksi untuk Pertambangan batubara dapat diberikan dalam jangka waktu paling lama 20 (dua puluh) tahun dan dapat diperpanjang 2 (dua) kali masing-masing 10 (sepuluh) tahun.

Penjelasan Pasal 47 (5):

Data on feasibility study findings shall be synchronization of data of the Government with data of the regional governments.

Article 47

- (1) A metal mineral Production Operation Mining Permit may be granted for a period of at most 20 (twenty) years, extendable to 10 (ten) years 2 (two) times respectively.

Elucidation of Article 47 (1):

A 20 (twenty)-year period in this provision shall include 2 (two) years of construction.

- (2) A nonmetal mineral Production Operation Mining Permit may be granted for a period of at most 10 (ten) years, extendable to 5 (five) years 2 (two) times respectively.

Elucidation of Article 47 (2): Sufficiently clear

- (3) A certain-typed nonmetal mineral Production Operation Mining Permit may be granted for a period of at most 20 (twenty) years, extendable to 10 (ten) years 2 (two) times respectively.

Elucidation of Article 47 (3):

Certain-typed nonmetal minerals shall include, inter alia, limestones for cement industry, diamonds, and precious stones.

A 20 (twenty)-year period in this provision shall include 2 (two) years of construction.

- (4) A rock Production Operation Mining Permit may be granted for a period of at most 5 (five) years, extendable to 5 (five) years 2 (two) times respectively.

Elucidation of Article 47 (4): Sufficiently clear

- (5) A coal Production Operation Mining Permit may be granted for a period of at most 20 (twenty) years, extendable to 10 (ten) years 2 (two) times respectively.

Elucidation of Article 47 (5):

Jangka waktu 20 (dua puluh) tahun dalam ketentuan ini termasuk jangka waktu untuk konstruksi selama 2 (dua) tahun.

Pasal 48

IUP Operasi Produksi diberikan oleh:

- a. bupati/walikota apabila lokasi penambangan, lokasi pengolahan dan pemurnian, serta pelabuhan berada di dalam satu wilayah kabupaten/kota;
- b. gubernur apabila lokasi penambangan, lokasi pengolahan dan pemurnian, serta pelabuhan berada di dalam wilayah kabupaten/kota yang berbeda setelah mendapatkan rekomendasi dari bupati/walikota setempat sesuai dengan ketentuan peraturan perundang-undangan; dan
- c. Menteri apabila lokasi penambangan, lokasi pengolahan dan pemurnian, serta pelabuhan berada di dalam wilayah provinsi yang berbeda setelah mendapatkan rekomendasi dari gubernur dan bupati/walikota setempat sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 48: Cukup jelas

Pasal 49

Ketentuan lebih lanjut mengenai tata cara pemberian IUP Eksplorasi sebagaimana dimaksud dalam Pasal 42 dan IUP Operasi Produksi sebagaimana dimaksud dalam Pasal 46 diatur dengan peraturan pemerintah.

Penjelasan Pasal 49: Cukup jelas

Bagian Keempat Pertambangan Mineral

Paragraf 1

Pertambangan Mineral Radioaktif

Pasal 50

WUP mineral radioaktif ditetapkan oleh Pemerintah dan pengusahannya dilaksanakan sesuai dengan ketentuan peraturan perundang-undangan.

A 20 (twenty)-year period in this provision shall include 2 (two) years of construction.

Article 48

Production Operation Mining Permits shall be granted by:

- a. the regents/mayors, where the mine locations, processing and refining/smelting locations as well as ports are in one district/city;
- b. the governors, where the mine locations, processing and refining/smelting locations as well as ports are in a different district/city upon recommendation of the local regent/mayor under provisions of laws and regulations; and
- c. the Minister, where the mine locations, processing and refining/smelting locations as well as ports are in a different province upon recommendation of the governors and the local regents/mayors under provisions of laws and regulations.

Elucidation of Article 48: Sufficiently clear

Article 49

Ancillary provisions on procedures for granting Exploration Mining Permits as intended by Article 42 and Production Operation Mining Permits as intended by Article 46 shall be governed by regulation of the government.

Elucidation of Article 49: Sufficiently clear

Part Four Mineral Mining

Paragraph 1

Radioactive Mineral Mining

Article 50

Radioactive mineral Mining Areas shall be determined by the Government, and the commercialization thereof shall be performed under

Penjelasan Pasal 50: Cukup jelas

Paragraf 2
Pertambangan Mineral Logam
Pasal 51

WUP mineral logam diberikan kepada badan usaha, koperasi, dan perseorangan dengan cara lelang.

Penjelasan Pasal 51:

Pertambangan mineral logam dalam ketentuan ini termasuk mineral ikutannya.

Pasal 52

- (1) Pemegang IUP Eksplorasi mineral logam diberi WIUP dengan luas paling sedikit 5.000 (lima ribu) hektare dan paling banyak 100.000 (seratus ribu) hektare.

Penjelasan Pasal 52 (1): Cukup jelas

- (2) Pada wilayah yang telah diberikan IUP Eksplorasi mineral logam dapat diberikan IUP kepada pihak lain untuk mengusahakan mineral lain yang keterdapatannya berbeda.

Penjelasan Pasal 52 (2):

Apabila dalam WIUP terdapat mineral lain yang berbeda keterdapatannya secara vertikal maupun horizontal, pihak lain dapat mengusahakan mineral tersebut.

- (3) Pemberian IUP sebagaimana dimaksud pada ayat (2) dilakukan setelah mempertimbangkan pendapat dari pemegang IUP pertama.

Penjelasan Pasal 52 (3): Cukup jelas

Pasal 53

Pemegang IUP Operasi Produksi mineral logam diberi WIUP dengan luas paling banyak 25.000 (dua puluh lima ribu) hektare.

Penjelasan Pasal 53: Cukup jelas

provisions of laws and regulations.

Elucidation of Article 50: Sufficiently clear

Paragraph 2
Metal Mineral Mining
Article 51

Metal mineral Mining Areas shall be authorized to entities, cooperatives, and sole proprietorships through bids.

Elucidation of Article 51:

Metal mineral mining in this provision shall include associated minerals.

Article 52

- (1) Metal mineral Exploration Mining Permit holders shall be authorized a Mining Permit Area of at least 5,000 (five thousand) hectares and at most 100,000 (one hundred thousand) hectares in size.

Elucidation of Article 52 (1): Sufficiently clear

- (2) An area to which a metal mineral Exploration Mining Permit has been authorized shall allow a Mining Permit to be granted to other party to commercialize different minerals found.

Elucidation of Article 52 (2):

Where different minerals are found in a Mining Permit Area either vertically or horizontally, other parties may commercialize those minerals.

- (3) A Mining Permit as intended by section (2) shall be granted upon consideration of opinions of the first Mining Permit holder.

Elucidation of Article 52 (3): Sufficiently clear

Article 53

Metal mineral Production Operation Mining Permit holders shall be authorized a Mining Permit Area of at most 25,000 (twenty-five thousand) hectares in size.

Elucidation of Article 53: Sufficiently clear

Paragraf 3

Pertambangan Mineral Bukan Logam

Pasal 54

WIUP mineral bukan logam diberikan kepada badan usaha, koperasi, dan perseorangan dengan cara permohonan wilayah kepada pemberi izin sebagaimana dimaksud dalam Pasal 37.

Penjelasan Pasal 54: Cukup jelas

Pasal 55

- (1) Pemegang IUP Eksplorasi mineral bukan logam diberi WIUP dengan luas paling sedikit 500 (lima ratus) hektare dan paling banyak 25.000 (dua puluh lima ribu) hektare.

Penjelasan Pasal 55 (1): Cukup jelas

- (2) Pada wilayah yang telah diberikan IUP Eksplorasi mineral bukan logam dapat diberikan IUP kepada pihak lain untuk mengusahakan mineral lain yang keterdapatannya berbeda.

Penjelasan Pasal 55 (2):

Apabila dalam WIUP terdapat mineral lain yang berbeda keterdapatannya secara vertikal maupun horizontal, pihak lain dapat mengusahakan mineral tersebut.

- (3) Pemberian IUP sebagaimana dimaksud pada ayat (2) dilakukan setelah mempertimbangkan pendapat dari pemegang IUP pertama.

Penjelasan Pasal 55 (3): Cukup jelas

Pasal 56

Pemegang IUP Operasi Produksi mineral bukan logam diberi WIUP dengan luas paling banyak 5.000 (lima ribu) hektare.

Penjelasan Pasal 56: Cukup jelas

Paragraph 3

Nonmetal Mineral Mining

Article 54

Nonmetal mineral Mining Permit Areas shall be authorized to entities, cooperatives, and sole proprietorships by filing an application for area with the permit issuer as intended by Article 37.

Elucidation of Article 54: Sufficiently clear

Article 55

- (1) Nonmetal mineral Exploration Mining Permit holders shall be authorized a Mining Permit Area of at least 500 (five hundred) hectares and at most 25,000 (twenty-five thousand) hectares in size.

Elucidation of Article 55 (1): Sufficiently clear

- (2) An area to which a nonmetal mineral Exploration Mining Permit has been granted shall allow a Mining Permit to be granted to other party to commercialize different minerals found.

Elucidation of Article 55 (2):

Where different minerals are found in a Mining Permit Area either vertically or horizontally, other parties may commercialize those minerals.

- (3) A Mining Permit as intended by section (2) shall be granted upon consideration of opinions of the first Mining Permit holder.

Elucidation of Article 55 (3): Sufficiently clear

Article 56

Nonmetal mineral Production Operation Mining Permit holders shall be authorized a Mining Permit Area of at most 5,000 (five thousand) hectares in size.

Elucidation of Article 56: Sufficiently clear

Paragraf 4
Pertambangan Batuan
Pasal 57

WIUP batuan diberikan kepada badan usaha, koperasi, dan perseorangan dengan cara permohonan wilayah kepada pemberi izin sebagaimana dimaksud dalam Pasal 37.

Penjelasan Pasal 57: Cukup jelas

Pasal 58

- (1) Pemegang IUP Eksplorasi batuan diberi WIUP dengan luas paling sedikit 5 (lima) hektare dan paling banyak 5.000 (lima ribu) hektare.

Penjelasan Pasal 58 (1): Cukup jelas

- (2) Pada wilayah yang telah diberikan IUP Eksplorasi batuan dapat diberikan IUP kepada pihak lain untuk mengusahakan mineral lain yang keterdapatannya berbeda.

Penjelasan Pasal 58 (2):

Apabila dalam WIUP terdapat mineral lain yang berbeda keterdapatannya secara vertikal maupun horizontal, pihak lain dapat mengusahakan mineral tersebut.

- (3) Pemberian IUP sebagaimana dimaksud pada ayat (2) dilakukan setelah mempertimbangkan pendapat dari pemegang IUP pertama.

Penjelasan Pasal 58: Cukup jelas

Pasal 59

Pemegang IUP Operasi Produksi batuan diberi WIUP dengan luas paling banyak 1.000 (seribu) hektare.

Penjelasan Pasal 59: Cukup jelas

Bagian Kelima
Pertambangan Batubara
Pasal 60

WIUP batubara diberikan kepada badan usaha, koperasi, dan perseorangan dengan cara lelang.

Paragraph 4
Rock Mining
Article 57

Rock Mining Permit Areas shall be authorized to entities, cooperatives, and sole proprietorships by filing an application for area with the permit issuer as intended by Article 37.

Elucidation of Article 57: Sufficiently clear

Article 58

- (1) Rock Exploration Mining Permit holders shall be authorized a Mining Permit Area of at least 5 (five) hectares and at most 5,000 (five thousand) hectares in size.

Elucidation of Article 58 (1): Sufficiently clear

- (2) An area to which a rock Exploration Mining Permit has been authorized shall allow a Mining Permit to be granted to other party to commercialize different minerals found.

Elucidation of Article 58 (2):

Where different minerals are found in a Mining Permit Area either vertically or horizontally, other parties may commercialize those minerals.

- (3) A Mining Permit as intended by section (2) shall be granted upon consideration of opinions of the first Mining Permit holder.

Elucidation of Article 58: Sufficiently clear

Article 59

Rock Production Operation Mining Permit holders shall be authorized a Mining Permit Area of at most 1,000 (one thousand) hectares in size.

Elucidation of Article 59: Sufficiently clear

Part Five
Coal Mining
Article 60

Coal Mining Permit Areas shall be authorized to entities, cooperatives, and sole proprietorships

Penjelasan Pasal 60: Cukup jelas

Pasal 61

- (1) Pemegang IUP Eksplorasi batubara diberi WIUP dengan luas paling sedikit 5.000 (lima ribu) hektare dan paling banyak 50.000 (lima puluh ribu) hektare.

Penjelasan Pasal 61 (1): Cukup jelas

- (2) Pada wilayah yang telah diberikan IUP Eksplorasi batubara dapat diberikan IUP kepada pihak lain untuk mengusahakan mineral lain yang keterdapatannya berbeda.

Penjelasan Pasal 61 (2):

Apabila dalam WIUP terdapat mineral lain yang berbeda keterdapatannya secara vertikal maupun horizontal, pihak lain dapat mengusahakan mineral tersebut.

- (3) Pemberian IUP sebagaimana dimaksud pada ayat (2) dilakukan setelah mempertimbangkan pendapat dari pemegang IUP pertama.

Penjelasan Pasal 58: Cukup jelas

Pasal 62

Pemegang IUP Operasi Produksi batubara diberi WIUP dengan luas paling banyak 15.000 (lima belas ribu) hektare.

Penjelasan Pasal 62: Cukup jelas

Pasal 63

Ketentuan lebih lanjut mengenai tata cara memperoleh WIUP sebagaimana dimaksud dalam Pasal 51, Pasal 54, Pasal 57, dan Pasal 60 diatur dengan peraturan pemerintah.

Penjelasan Pasal 63: Cukup jelas

through bids.

Elucidation of Article 60: Sufficiently clear

Article 61

- (1) Coal Exploration Mining Permit holders shall be authorized a Mining Permit Area of at least 5,000 (five thousand) hectares and at most 50,000 (fifty thousand) hectares in size.

Elucidation of Article 61 (1): Sufficiently clear

- (2) An area to which a coal Exploration Mining Permit has been authorized shall allow a Mining Permit to be granted to other party to commercialize different minerals found.

Elucidation of Article 61 (2):

Where different minerals are found in a Mining Permit Area either vertically or horizontally, other parties may commercialize those minerals.

- (3) A Mining Permit as intended by section (2) shall be granted upon consideration of opinions of the first Mining Permit holder.

Elucidation of Article 58: Sufficiently clear

Article 62

Coal-Production Operation Mining Permit holders shall be authorized a Mining Permit Area of at most 15,000 (fifteen thousand) hectares in size.

Elucidation of Article 62: Sufficiently clear

Article 63

Ancillary provisions on procedures for having access to a Mining Permit Area as intended by Article 51, Article 54, Article 57, and Article 60 shall be governed by regulation of the government.

Elucidation of Article 63: Sufficiently clear

BAB VIII
PERSYARATAN PERIZINAN
USAHA PERTAMBANGAN

Pasal 64

Pemerintah dan pemerintah daerah sesuai dengan kewenangannya berkewajiban mengumumkan rencana kegiatan usaha pertambangan di WIUP sebagaimana dimaksud dalam Pasal 16 serta memberikan IUP Eksplorasi dan IUP Operasi Produksi sebagaimana dimaksud dalam Pasal 36 kepada masyarakat secara terbuka.

Penjelasan Pasal 64: Cukup jelas

Pasal 65

- (1) Badan usaha, koperasi, dan perseorangan sebagaimana dimaksud dalam Pasal 51, Pasal 54, Pasal 57, dan Pasal 60 yang melakukan usaha pertambangan wajib memenuhi persyaratan administratif, persyaratan teknis, persyaratan lingkungan, dan persyaratan finansial.
- (2) Ketentuan lebih lanjut mengenai persyaratan administratif, persyaratan teknis, persyaratan lingkungan, dan persyaratan finansial sebagaimana dimaksud pada ayat (1) diatur dengan peraturan pemerintah.

Penjelasan Pasal 65: Cukup jelas

BAB IX
IZIN PERTAMBANGAN RAKYAT

Pasal 66

Kegiatan pertambangan rakyat sebagaimana dimaksud dalam Pasal 20 dikelompokkan sebagai berikut:

- a. pertambangan mineral logam;
- b. pertambangan mineral bukan logam;
- c. pertambangan batuan; dan/atau
- d. pertambangan batubara.

Penjelasan Pasal 66: Cukup jelas

CHAPTER VIII
REQUIREMENTS FOR
MINING PERMITS

Article 64

The Government and regional governments shall within their authority announce mining business activity plans in Mining Permit Areas as intended by Article 16, and shall grant Exploration Mining Permits and Production Operation Mining Permits as intended by Article 36 to the public transparently.

Elucidation of Article 64: Sufficiently clear

Article 65

- (1) Entities, cooperatives, and sole proprietorships as intended by Article 51, Article 54, Article 57, and Article 60 that conduct mining business must meet administrative requirements, technical requirements, environmental requirements, and financial requirements.
- (2) Ancillary provisions on administrative requirements, technical requirements, environmental requirements, and financial requirements as intended by section (1) shall be governed by regulation of the government.

Elucidation of Article 65: Sufficiently clear

CHAPTER IX
SMALL-SCALE MINING PERMITS

Article 66

Small-scale mining activities as intended by Article 20 shall classified into as follows:

- a. metal mineral mining;
- b. nonmetal mineral mining;
- c. rock mining; and/or
- d. coal mining.

Elucidation of Article 66: Sufficiently clear

Pasal 67

- (1) Bupati/walikota memberikan IPR terutama kepada penduduk setempat, baik perseorangan maupun kelompok masyarakat dan/atau koperasi.

Penjelasan Pasal 67 (1): Cukup jelas

- (2) Bupati/walikota dapat melimpahkan kewenangan pelaksanaan pemberian IPR sebagaimana dimaksud pada ayat (1) kepada camat sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 67 (2): Cukup jelas

- (3) Untuk memperoleh IPR sebagaimana dimaksud pada ayat (1), pemohon wajib menyampaikan surat permohonan kepada bupati/walikota.

Penjelasan Pasal 67 (3):

Surat permohonan sebagaimana dimaksud dalam ketentuan ini disertai dengan meterai cukup dan dilampiri rekomendasi dari kepala desa/lurah/kepala adat mengenai kebenaran riwayat pemohon untuk memperoleh prioritas dalam mendapatkan IPR.

Pasal 68

- (1) Luas wilayah untuk 1 (satu) IPR yang dapat diberikan kepada:
- perseorangan paling banyak 1 (satu) hektare;
 - kelompok masyarakat paling banyak 5 (lima) hektare; dan/atau
 - koperasi paling banyak 10 (sepuluh) hektare.
- (2) IPR diberikan untuk jangka waktu paling lama 5 (lima) tahun dan dapat diperpanjang.

Penjelasan Pasal 68: Cukup jelas

Article 67

- (1) The regents/mayors shall grant Small-Scale Mining Permits to particularly local residents, either individuals or community groups and/or cooperatives.

Elucidation of Article 67 (1): Sufficiently clear

- (2) The regents/mayors may delegate authority to grant Small-Scale Mining Permits as intended by section (1) to the heads of subdistricts under provisions of laws and regulations.

Elucidation of Article 67 (2): Sufficiently clear

- (3) To obtain Small-Scale Mining Permits as intended by section (1), applicants must file an application letter with the regents/mayors.

Elucidation of Article 67 (3):

An application letter as intended by this provision shall be stamped with a sufficient duty and accompanied by an attachment of a recommendation of the head of rural administrative division/urban administrative division/customary leader with respect to the truth of the applicant's history to be prioritized to obtain a Small-Scale Mining Permit.

Article 68

- (1) Size of area for 1 (one) Small-Scale Mining Permit that may be authorized to:
- individuals, shall be at most 1 (one) hectare;
 - community groups, shall be at most 5 (five) hectares; and/or
 - cooperatives, shall be at most 10 (ten) hectares.
- (2) Small-Scale Mining Permits shall be granted for a period of at most 5 (five) years and are extendable.

Elucidation of Article 68: Sufficiently clear

Pasal 69

Pemegang IPR berhak:

- a. mendapat pembinaan dan pengawasan di bidang keselamatan dan kesehatan kerja, lingkungan, teknis pertambangan, dan manajemen dari Pemerintah dan/atau pemerintah daerah; dan
- b. mendapat bantuan modal sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 69: Cukup jelas

Pasal 70

Pemegang IPR wajib:

- a. melakukan kegiatan penambangan paling lambat 3 (tiga) bulan setelah IPR diterbitkan;

Penjelasan Pasal 70 a: Cukup jelas

- b. mematuhi peraturan perundang-undangan di bidang keselamatan dan kesehatan kerja pertambangan, pengelolaan lingkungan, dan memenuhi standar yang berlaku;

Penjelasan Pasal 70 b: Cukup jelas

- c. mengelola lingkungan hidup bersama pemerintah daerah;

Penjelasan Pasal 70 c:

Kegiatan pengelolaan lingkungan hidup meliputi pencegahan dan penanggulangan pencemaran serta pemulihan fungsi lingkungan hidup, termasuk reklamasi lahan bekas tambang.

- d. membayar iuran tetap dan iuran produksi; dan

Penjelasan Pasal 70 d: Cukup jelas

- e. menyampaikan laporan pelaksanaan kegiatan usaha pertambangan rakyat secara berkala kepada pemberi IPR.

Penjelasan Pasal 70 e:

Laporan disampaikan setiap 4 (empat) bulan.

Article 69

Small-Scale Mining Permit holder shall have the right to:

- a. access directions and supervision in the field of occupational safety and health, the environment, mining techniques, and management provided by the Government and/or regional governments; and
- b. obtain capital support under provisions of laws and regulations.

Elucidation of Article 69: Sufficiently clear

Article 70

Small-Scale Mining Permit holders must:

- a. perform mine activities at the latest 3 (three) months of issue of Small-Scale Mining Permits;

Elucidation of Article 70 a: Sufficiently clear

- b. comply with laws and regulations in the field of mining occupational safety and health, management of the environment, and meet applicable standards;

Elucidation of Article 70 b: Sufficiently clear

- c. manage the environment together with the regional governments;

Elucidation of Article 70 c:

Activities of management of the environment shall include prevention and mitigation of pollution as well as restoration of environmental functions, including reclamations of mined lands.

- d. pay dead rents and production royalties; and

Elucidation of Article 70 d: Sufficiently clear

- e. submit a report on the conduct of small-scale mining activities periodically to the Small-Scale Mining Permit issuers.

Elucidation of Article 70 e:

A report shall be submitted every 4 (four) months.

Pasal 71

- (1) Selain kewajiban sebagaimana dimaksud dalam Pasal 70, pemegang IPR dalam melakukan kegiatan pertambangan rakyat sebagaimana dimaksud dalam Pasal 66 wajib menaati ketentuan persyaratan teknis pertambangan.
- (2) Ketentuan lebih lanjut mengenai persyaratan teknis pertambangan sebagaimana dimaksud pada ayat (1) diatur dengan peraturan pemerintah.

Penjelasan Pasal 71: Cukup jelas

Pasal 72

Ketentuan lebih lanjut mengenai tata cara pemberian IPR diatur dengan peraturan daerah kabupaten/kota.

Penjelasan Pasal 72: Cukup jelas

Pasal 73

- (1) Pemerintah kabupaten/kota melaksanakan pembinaan di bidang pengusaha, teknologi pertambangan, serta permodalan dan pemasaran dalam usaha meningkatkan kemampuan usaha pertambangan rakyat.
- (2) Pemerintah kabupaten/kota bertanggung jawab terhadap pengamanan teknis pada usaha pertambangan rakyat yang meliputi:
 - a. keselamatan dan kesehatan kerja;
 - b. pengelolaan lingkungan hidup; dan
 - c. pascatambang.
- (3) Untuk melaksanakan pengamanan teknis sebagaimana dimaksud pada ayat (2), pemerintah kabupaten/kota wajib mengangkat pejabat fungsional inspektur tambang sesuai dengan ketentuan peraturan perundang-undangan.
- (4) Pemerintah kabupaten/kota wajib mencatat hasil produksi dari seluruh kegiatan usaha pertambangan rakyat yang berada dalam wilayahnya dan melaporkannya secara berkala kepada Menteri dan gubernur

Article 71

- (1) In addition to obligations as intended by Article 70, Small-Scale Mining Permit holders in the performance of small-scale mining activities as intended by Article 66 must observe the terms of mining technical requirements.
- (2) Ancillary provisions on mining technical requirements as intended by section (1) shall be governed by regulation of the government.

Elucidation of Article 71: Sufficiently clear

Article 72

Ancillary provisions on procedures for granting Small-Scale Mining Permits shall be governed by regulation of district/city.

Elucidation of Article 72: Sufficiently clear

Article 73

- (1) The governments of districts/cities shall set directions in the field of business, mining technology as well as capitalization and marketing in an effort to increase the capability of small-scale mining business.
- (2) The governments of districts/cities shall be responsible for technical safeguards for small-scale mining business that includes:
 - a. occupational safety and health;
 - b. management of the environment; and
 - c. postmining.
- (3) To conduct technical safeguards as intended by section (2), the governments of districts/cities must appoint mine inspector functional officials under provisions of laws and regulations.
- (4) The governments of districts/cities shall record proceeds of production of all small-scale mining business activities within their regions and so report periodically to the Minister and the local governors.

setempat.

Penjelasan Pasal 73: Cukup jelas

BAB X
IZIN USAHA PERTAMBANGAN KHUSUS

Pasal 74

- (1) IUPK diberikan oleh Menteri dengan memperhatikan kepentingan daerah.

Penjelasan Pasal 74 (1):

Yang dimaksud dengan memperhatikan kepentingan daerah adalah dalam rangka pemberdayaan daerah.

- (2) IUPK sebagaimana dimaksud pada ayat (1) diberikan untuk 1 (satu) jenis mineral logam atau batubara dalam 1 (satu) WIUPK.

Penjelasan Pasal 74 (2):

Pertambangan mineral logam dalam ketentuan ini termasuk mineral ikutannya.

- (3) Pemegang IUPK sebagaimana dimaksud pada ayat (1) yang menemukan mineral lain di dalam WIUPK yang dikelola diberikan prioritas untuk mengusahakannya.

Penjelasan Pasal 74 (3): Cukup jelas

- (4) Pemegang IUPK yang bermaksud mengusahakan mineral lain sebagaimana dimaksud pada ayat (2), wajib mengajukan permohonan IUPK baru kepada Menteri.

Penjelasan Pasal 74 (4): Cukup jelas

- (5) Pemegang IUPK sebagaimana dimaksud pada ayat (2) dapat menyatakan tidak berminat untuk mengusahakan mineral lain yang ditemukan tersebut.

Penjelasan Pasal 74 (5): Cukup jelas

- (6) Pemegang IUPK yang tidak berminat untuk mengusahakan mineral lain yang ditemukan sebagaimana dimaksud pada ayat (4), wajib menjaga mineral lain tersebut agar tidak

Elucidation of Article 73: Sufficiently clear

CHAPTER X
SPECIAL MINING PERMITS
Article 74

- (1), Special Mining Permits shall be granted by the Minister with due regard to the regions' interests.

Elucidation of Article 74 (1):

"With due regard to the regions' interests" means to empower regions.

- (2) Special Mining Permit as intended by section (1) shall be granted for 1 (one) type of metal mineral or coal within 1 (one) Special Mining Permit Area in a Special Mining Area.

Elucidation of Article 74 (2):

Metal mineral mining in this provision shall include associated minerals.

- (3) A Special Mining Permit holder as intended by section (1) by whom other minerals are found within a Special Mining Permit Area in a Special Mining Area he/she manages shall be given priority to commercialize them.

Elucidation of Article 74 (3): Sufficiently clear

- (4) A Special Mining Permit holder that wishes to commercialize other minerals as intended by section (2) must file an application for a new Special Mining Permit with the Minister.

Elucidation of Article 74 (4): Sufficiently clear

- (5) A Special Mining Permit holder as intended by section (2) may express disinterest to commercialize other minerals found.

Elucidation of Article 74 (5): Sufficiently clear

- (6) A Special Mining Permit holder that is disinterested in commercializing other minerals found as intended by section (4) must prevent other parties from taking

dimanfaatkan pihak lain.

Penjelasan Pasal 74 (6): Cukup jelas

- (7) IUPK untuk mineral lain sebagaimana dimaksud pada ayat (4) dan ayat (5) dapat diberikan kepada pihak lain oleh Menteri.

Penjelasan Pasal 74 (7): Cukup jelas

Pasal 75

- (1) Pemberian IUPK sebagaimana dimaksud dalam Pasal 74 ayat (1) dilakukan berdasarkan pertimbangan sebagaimana dimaksud dalam Pasal 28.
- (2) IUPK sebagaimana dimaksud pada ayat (1) dapat diberikan kepada badan usaha yang berbadan hukum Indonesia, baik berupa badan usaha milik negara, badan usaha milik daerah, maupun badan usaha swasta.
- (3) Badan usaha milik negara dan badan usaha milik daerah sebagaimana dimaksud pada ayat (2) mendapat prioritas dalam mendapatkan IUPK.
- (4) Badan usaha swasta sebagaimana dimaksud pada ayat (2) untuk mendapatkan IUPK dilaksanakan dengan cara lelang WIUPK.

Penjelasan Pasal 75: Cukup jelas

Pasal 76

- (1) IUPK terdiri atas dua tahap:
- a. IUPK Eksplorasi meliputi kegiatan penyelidikan umum, eksplorasi, dan studi kelayakan;
- b. IUPK Operasi Produksi meliputi kegiatan konstruksi, penambangan, pengolahan dan pemurnian, serta pengangkutan dan penjualan.
- (2) Pemegang IUPK Eksplorasi dan pemegang IUPK Operasi Produksi dapat melakukan

advantage of such other minerals.

Elucidation of Article 74 (6): Sufficiently clear

- (7) A Special Mining Permit for other minerals as intended by section (4) and section (5) may be granted to other party by the Minister.

Elucidation of Article 74 (7): Sufficiently clear

Article 75

- (1) Special Mining Permits as intended by Article 74 section (1) shall be granted upon consideration as intended by Article 28.
- (2) Special Mining Permits as intended by section (1) may be granted to entities of Indonesian legal entity, either in the form of state-owned entities, region-owned entities, or private entities.
- (3) State-owned entities and region-owned entities as intended by section (2) shall have priority in obtaining Special Mining Permits.
- (4) To obtain Special Mining Permits as intended by section (2), private entities shall bid for Special Mining Permit Areas in Special Mining Areas.

Elucidation of Article 75: Sufficiently clear

Article 76

- (1) A Special Mining Permit shall include two stages:
- a. an Exploration Special Mining Permit shall include the activities of general surveys, explorations, and feasibility studies;
- b. a Production Operation Special Mining Permit shall include the activities of construction, mines, processing and refining/smelting as well as hauling and sale.
- (2) Exploration Special Mining Permit holders and Production Operation Special Mining

sebagian atau seluruh kegiatan sebagaimana dimaksud pada ayat (1).

- (3) Ketentuan lebih lanjut mengenai tata cara memperoleh IUPK sebagaimana dimaksud pada ayat (1) diatur dengan peraturan pemerintah.

Penjelasan Pasal 76: Cukup jelas

Pasal 77

- (1) Setiap pemegang IUPK Eksplorasi dijamin untuk memperoleh IUPK Operasi Produksi sebagai kelanjutan kegiatan usaha pertambangannya.

Penjelasan Pasal 77 (1): Cukup jelas

- (2) IUPK Operasi Produksi dapat diberikan kepada badan usaha yang berbadan hukum Indonesia sebagaimana dimaksud dalam Pasal 75 ayat (3) dan ayat (4) yang telah mempunyai data hasil kajian studi kelayakan.

Penjelasan Pasal 77 (2):

Yang dimaksud dengan data hasil kajian studi kelayakan merupakan sinkronisasi data milik Pemerintah dan pemerintah daerah.

Pasal 78

IUPK Eksplorasi sebagaimana dimaksud dalam Pasal 76 ayat (1) huruf a sekurang-kurangnya wajib memuat:

- a. nama perusahaan;

Penjelasan Pasal 78 a: Cukup jelas

- b. luas dan lokasi wilayah;

Penjelasan Pasal 78 b: Cukup jelas

- c. rencana umum tata ruang;

Penjelasan Pasal 78 c: Cukup jelas

- d. jaminan kesungguhan;

Penjelasan Pasal 78 d:

Jaminan kesungguhan termasuk di dalamnya biaya pengelolaan lingkungan akibat kegiatan eksplorasi.

- e. modal investasi;

holders may perform part or all of the activities as intended by section (1).

- (3) Ancillary provisions on procedures for obtaining Special Mining Permits as intended by section (1) shall be governed by regulation of the government.

Elucidation of Article 76: Sufficiently clear

Article 77

- (1) Any Exploration Special Mining Permit holder shall be assured of obtaining a Production Operation Special Mining Permit in furtherance of his/her mining business.

Elucidation of Article 77 (1): Sufficiently clear

- (2) A Production Operation Special Mining Permit may be granted to entities of Indonesian legal entity already holding data on feasibility study findings, as intended by Article 75 section (3) and section (4).

Elucidation of Article 77 (2):

Data on feasibility study findings shall be synchronization of data of the Government with data of the regional governments.

Article 78

An Exploration Special Mining Permit as intended by Article 76 section (1) point (a) shall state as a minimum:

- a. name of company;

Elucidation of Article 78 a: Sufficiently clear

- b. size and location of area;

Elucidation of Article 78 b: Sufficiently clear

- c. general spatial planning;

Elucidation of Article 78 c: Sufficiently clear

- d. commitment deposits;

Elucidation of Article 78 d:

Commitment deposits shall include environmental management fees resulting from exploration activities.

- e. investment capital;

Penjelasan Pasal 78 e: Cukup jelas

f. perpanjangan waktu tahap kegiatan;

Penjelasan Pasal 78 f: Cukup jelas

g. hak dan kewajiban pemegang IUPK;

Penjelasan Pasal 78 g: Cukup jelas

h. jangka waktu tahap kegiatan;

Penjelasan Pasal 78 h: Cukup jelas

i. jenis usaha yang diberikan;

Penjelasan Pasal 78 i: Cukup jelas

j. rencana pengembangan dan pemberdayaan masyarakat di sekitar wilayah pertambangan;

Penjelasan Pasal 78 j: Cukup jelas

k. perpajakan;

Penjelasan Pasal 78 k: Cukup jelas

l. penyelesaian perselisihan masalah pertanahan;

Penjelasan Pasal 78 l: Cukup jelas

m. iuran tetap dan iuran eksplorasi; dan

Penjelasan Pasal 78 m: Cukup jelas

n. amdal.

Penjelasan Pasal 78 n: Cukup jelas

Pasal 79

IUPK Operasi Produksi sebagaimana dimaksud dalam Pasal 76 ayat (1) huruf b sekurang-kurangnya wajib memuat:

a. nama perusahaan;

Penjelasan Pasal 79 a: Cukup jelas

b. luas wilayah;

Penjelasan Pasal 79 b: Cukup jelas

c. lokasi penambangan;

Penjelasan Pasal 79 c: Cukup jelas

d. lokasi pengolahan dan pemurnian;

Elucidation of Article 78 e: Sufficiently clear

f. extended period of stage of activity;

Elucidation of Article 78 f: Sufficiently clear

g. rights and obligations of Special Mining Permit holders

Elucidation of Article 78 g: Sufficiently clear

h. period of stage of activity;

Elucidation of Article 78 h: Sufficiently clear

i. line of business authorized;

Elucidation of Article 78 i: Sufficiently clear

j. development and empowerment plans for community of mining areas;

Elucidation of Article 78 j: Sufficiently clear

k. taxation;

Elucidation of Article 78 k: Sufficiently clear

l. settlement of land disputes;

Elucidation of Article 78 l: Sufficiently clear

m. dead rents and exploration royalties; and

Elucidation of Article 78 m: Sufficiently clear

n. environmental impact assessment (amdal).

Elucidation of Article 78 n: Sufficiently clear

Article 79

A Production Operation Mining Permit as intended by Article 76 section (1) point (b) must state as a minimum:

a. name of company;

Elucidation of Article 79 a: Sufficiently clear

b. size of area;

Elucidation of Article 79 b: Sufficiently clear

c. mine locations;

Elucidation of Article 79 c: Sufficiently clear

d. processing and refining/smelting

- Penjelasan Pasal 79 d: Cukup jelas
- e. pengangkutan dan penjualan;
- Penjelasan Pasal 79 e: Cukup jelas
- f. modal investasi;
- Penjelasan Pasal 79 f: Cukup jelas
- g. jangka waktu tahap kegiatan;
- Penjelasan Pasal 79 g: Cukup jelas
- h. penyelesaian masalah pertanahan;
- Penjelasan Pasal 79 h: Cukup jelas
- i. lingkungan hidup, termasuk reklamasi dan pascatambang;
- Penjelasan Pasal 79 i: Cukup jelas
- j. dana jaminan reklamasi dan jaminan pascatambang;
- Penjelasan Pasal 79 j: Cukup jelas
- k. jangka waktu berlakunya IUPK;
- Penjelasan Pasal 79 k: Cukup jelas
- l. perpanjangan IUPK;
- Penjelasan Pasal 79 l: Cukup jelas
- m. hak dan kewajiban;
- Penjelasan Pasal 79 m: Cukup jelas
- n. pengembangan dan pemberdayaan masyarakat di sekitar wilayah pertambangan;
- Penjelasan Pasal 79 n: Cukup jelas
- o. perpajakan;
- Penjelasan Pasal 79 o: Cukup jelas
- p. iuran tetap dan iuran produksi serta bagian pendapatan negara/daerah, yang terdiri atas bagi hasil dari keuntungan bersih sejak berproduksi;
- Penjelasan Pasal 79 p: Cukup jelas
- q. penyelesaian perselisihan;

- locations;
- Elucidation of Article 79 d: Sufficiently clear
- e. hauling and sale;
- Elucidation of Article 79 e: Sufficiently clear
- f. investment capital;
- Elucidation of Article 79 f: Sufficiently clear
- h. period of stage of activity;
- Elucidation of Article 79 g: Sufficiently clear
- i. solutions to land problems;
- Elucidation of Article 79 h: Sufficiently clear
- j. the environment, including reclamations and postmining;
- Elucidation of Article 79 i: Sufficiently clear
- k. reclamation and postmining deposit funds;
- Elucidation of Article 79 j: Sufficiently clear
- k. validity period of Special Mining Permits
- Elucidation of Article 79 k: Sufficiently clear
- l. extension of Special Mining Permits;
- Elucidation of Article 79 l: Sufficiently clear
- m. rights and obligations;
- Elucidation of Article 79 m: Sufficiently clear
- n. development and empowerment of community of mining areas;
- Elucidation of Article 79 n: Sufficiently clear
- o. taxation;
- Elucidation of Article 79 o: Sufficiently clear
- p. dead rents and production royalties as well as state/regional income that include net profit sharing since making production;
- Elucidation of Article 79 p: Sufficiently clear
- q. settlement of disputes;

Penjelasan Pasal 79 q: Cukup jelas

- r. keselamatan dan kesehatan kerja;

Penjelasan Pasal 79 r: Cukup jelas

- s. konservasi mineral atau batubara;

Penjelasan Pasal 79 s: Cukup jelas

- t. pemanfaatan barang, jasa, teknologi serta kemampuan rekayasa dan rancang bangun dalam negeri;

Penjelasan Pasal 79 t: Cukup jelas

- u. penerapan kaidah keekonomian dan keteknikan pertambangan yang baik;

Penjelasan Pasal 79 u: Cukup jelas

- v. pengembangan tenaga kerja Indonesia;

Penjelasan Pasal 79 v: Cukup jelas

- w. pengelolaan data mineral atau batubara;

Penjelasan Pasal 79 w: Cukup jelas

- x. penguasaan, pengembangan, dan penerapan teknologi pertambangan mineral atau batubara; dan

Penjelasan Pasal 79 x: Cukup jelas

- y. divestasi saham.

Penjelasan Pasal 79 y:

Pencantuman divestasi saham hanya berlaku apabila sahamnya dimiliki oleh asing sesuai dengan ketentuan peraturan perundang-undangan.

Pasal 80

IUPK tidak dapat digunakan selain yang dimaksud dalam pemberian IUPK.

Penjelasan Pasal 80: Cukup jelas

Pasal 81

- (1) Dalam hal kegiatan eksplorasi dan kegiatan studi kelayakan, pemegang IUPK Eksplorasi yang mendapatkan mineral logam atau

Elucidation of Article 79 q: Sufficiently clear

- r. occupational safety and health;

Elucidation of Article 79 r: Sufficiently clear

- s. mineral or coal conservation;

Elucidation of Article 79 s: Sufficiently clear

- t. utilization of domestic goods, services, technology and capability of engineering and design and build;

Elucidation of Article 79 t: Sufficiently clear

- u. application of good mining economic and technical principles;

Elucidation of Article 79 u: Sufficiently clear

- v. fostering of Indonesian workers;

Elucidation of Article 79 v: Sufficiently clear

- w. management of data on minerals or coal;

Elucidation of Article 79 w: Sufficiently clear

- x. mastery, development, and application of mineral or coal mining technology; and

Elucidation of Article 79 x: Sufficiently clear

- y. share divestment.

Elucidation of Article 79 y:

Inclusion of share divestment shall be applicable only if the shares are owned by foreign parties under provisions of laws and regulations.

Article 80

A Special Mining Permit shall not be used other than as intended in the granting of a Special Mining Permit.

Elucidation of Article 80: Sufficiently clear

Article 81

- (1) In the case of exploration activities and feasibility study activities, Exploration Special Mining Permit holders by whom

batubara yang tergali wajib melaporkan kepada Menteri.

- (2) Pemegang IUPK Eksplorasi yang ingin menjual mineral logam atau batubara sebagaimana dimaksud pada ayat (1) wajib mengajukan izin sementara untuk melakukan pengangkutan dan penjualan.
- (3) Izin sementara sebagaimana dimaksud pada ayat (2) diberikan oleh Menteri.

Penjelasan Pasal 81: Cukup jelas

Pasal 82

Mineral atau batubara yang tergali sebagaimana dimaksud dalam Pasal 81 dikenai iuran produksi.

Penjelasan Pasal 82: Cukup jelas

Pasal 83

Persyaratan luas wilayah dan jangka waktu sesuai dengan kelompok usaha pertambangan yang berlaku bagi pemegang IUPK meliputi:

- a. luas 1 (satu) WIUPK untuk tahap kegiatan eksplorasi pertambangan mineral logam diberikan dengan luas paling banyak 100.000 (seratus ribu) hektare.

Penjelasan Pasal 83 a: Cukup jelas

- b. luas 1 (satu) WIUPK untuk tahap kegiatan operasi produksi pertambangan mineral logam diberikan dengan luas paling banyak 25.000 (dua puluh lima ribu) hektare.

Penjelasan Pasal 83 b: Cukup jelas

- c. luas 1 (satu) WIUPK untuk tahap kegiatan eksplorasi pertambangan batubara diberikan dengan luas paling banyak 50.000 (lima puluh ribu) hektare.

Penjelasan Pasal 83 c: Cukup jelas

- d. luas 1 (satu) WIUPK untuk tahap kegiatan operasi produksi pertambangan batubara diberikan dengan luas paling banyak 15.000 (lima belas ribu) hektare.

excavated metal minerals or coal are found must report it to the Minister.

- (2) Exploration Special Mining Permit holders that wish to sell metal minerals or coal as intended by section (1) must apply for a temporary permit for hauling and sale.
- (3) A temporary permit as intended by section (2) shall be granted by the Minister.

Elucidation of Article 81: Sufficiently clear

Article 82

Excavated minerals and coal as intended by Article 81 shall be subject to production royalties.

Elucidation of Article 82: Sufficiently clear

Article 83

Requirements for the size of areas and periods shall be made under mining business groups that are applicable to Special Mining Permit holders, as follows:

- a. 1 (one) Special Mining Permit Area in a Special Mining Area for a metal mineral exploration stage shall be authorized at most 100,000 (one hundred thousand) hectares in size.

Elucidation of Article 83 a: Sufficiently clear

- b. 1 (one) Special Mining Permit Area in a Special Mining Area for a metal mineral production operation stage shall be authorized at most 25,000 (twenty-five thousand) hectares in size.

Elucidation of Article 83 b: Sufficiently clear

- c. 1 (one) Special Mining Permit Area in a Special Mining Area for a coal exploration stage shall be authorized at most 50,000 (fifty thousand) hectares in size.

Elucidation of Article 83 c: Sufficiently clear

- d. 1 (one) Special Mining Permit Area in a Special Mining Area for a coal production operation stage shall be authorized at most 15,000 (fifteen thousand) hectares in size.

Penjelasan Pasal 83 d: Cukup jelas

- e. jangka waktu IUPK Eksplorasi pertambangan mineral logam dapat diberikan paling lama 8 (delapan) tahun.

Penjelasan Pasal 83 e:

Jangka waktu 8 (delapan) tahun meliputi penyelidikan umum 1 (satu) tahun; eksplorasi 3 (tiga) tahun dan dapat diperpanjang 2 (dua) kali masing-masing 1 (satu) tahun; serta studi kelayakan 1 (satu) tahun dan dapat diperpanjang 1 (satu) kali 1 (satu) tahun.

- f. jangka waktu IUPK Eksplorasi pertambangan batubara dapat diberikan paling lama 7 (tujuh) tahun.

Penjelasan Pasal 83 f:

Jangka waktu 7 (tujuh) tahun meliputi penyelidikan umum 1 (satu) tahun; eksplorasi 2 (dua) tahun dan dapat diperpanjang 2 (dua) kali masing-masing 1 (satu) tahun; serta studi kelayakan 2 (dua) tahun.

- g. jangka waktu IUPK Operasi Produksi mineral logam atau batubara dapat diberikan paling lama 20 (dua puluh) tahun dan dapat diperpanjang 2 (dua) kali masing-masing 10 (sepuluh) tahun.

Penjelasan Pasal 83 g:

Jangka waktu 20 (dua puluh) tahun dalam ketentuan ini termasuk jangka waktu untuk konstruksi selama 2 (dua) tahun.

Pasal 84

Ketentuan lebih lanjut mengenai tata cara memperoleh WIUPK sebagaimana dimaksud dalam Pasal 74 ayat (2) dan ayat (3), dan Pasal 75 ayat (3) diatur dengan peraturan pemerintah.

Penjelasan Pasal 84: Cukup jelas

BAB XI

**PERSYARATAN PERIZINAN USAHA
PERTAMBANGAN KHUSUS**

Pasal 85

Pemerintah berkewajiban mengumumkan rencana kegiatan usaha pertambangan di WIUPK sebagaimana dimaksud dalam Pasal 30 serta memberikan IUPK Eksplorasi dan IUPK Operasi

Elucidation of Article 83 d: Sufficiently clear

- e. a period of metal mineral exploration Special Mining Permit may be granted for at most 8 (eight) years.

Elucidation of Article 83 e:

An 8 (eight)-year period shall include 1 (one) year of general surveys, 3 (three) years of exploration, extendable to 1 (one) year 2 (two) times respectively, as well as 1 (one) year of feasibility studies, extendable to 1 (one) year 1 (one) time.

- f. a period of a coal exploration Special Mining Permit may be granted for at most 7 (seven) years.

Elucidation of Article 83 f:

A 7 (seven)-year period shall include 1 (one) year of general surveys, 2 (two) years of exploration, extendable to 1 (one) year 2 (two) times respectively, as well as 2 (two) years of feasibility studies.

- g. a period of a metal mineral or coal Production Operation Special Mining Permit may be granted for at most 20 (twenty) years, extendable to 10 (ten) years 2 (two) times respectively.

Elucidation of Article 83 g:

A 20 (twenty)-year period in this provision shall include 2 (two) years of construction.

Article 84

Ancillary provisions on procedures for obtaining Special Mining Permit Areas in Special Mining Areas as intended by Article 74 section (2) and section (3), and Article 75 section (3) shall be governed by regulation of the government.

Elucidation of Article 84: Sufficiently clear

CHAPTER X

**REQUIREMENTS FOR SPECIAL MINING
PERMITS**

Article 85

The Government must announce mining business activity plans in Special Mining Permit Areas in Special Mining Areas as intended by Article 30, and shall grant Exploration Special Mining Permits and

Produksi sebagaimana dimaksud dalam Pasal 76 kepada masyarakat secara terbuka.

Penjelasan Pasal 85: Cukup jelas

Pasal 86

- (1) Badan usaha sebagaimana dimaksud dalam Pasal 75 ayat (2) yang melakukan kegiatan dalam WIUPK wajib memenuhi persyaratan administratif, persyaratan teknis, persyaratan lingkungan dan persyaratan finansial.
- (2) Ketentuan lebih lanjut mengenai persyaratan administratif, persyaratan teknis, persyaratan lingkungan, dan persyaratan finansial sebagaimana dimaksud pada ayat (1) diatur dengan peraturan pemerintah.

Penjelasan Pasal 86: Cukup jelas

BAB XII
DATA PERTAMBANGAN

Pasal 87

Untuk menunjang penyiapan WP dan pengembangan ilmu pengetahuan dan teknologi pertambangan, Menteri atau gubernur sesuai dengan kewenangannya dapat menugasi lembaga riset negara dan/atau daerah untuk melakukan penyelidikan dan penelitian tentang pertambangan.

Penjelasan Pasal 87: Cukup jelas

Pasal 88

- (1) Data yang diperoleh dari kegiatan usaha pertambangan merupakan data milik Pemerintah dan/atau pemerintah daerah sesuai dengan kewenangannya.
- (2) Data usaha pertambangan yang dimiliki pemerintah daerah wajib disampaikan kepada Pemerintah untuk pengelolaan data pertambangan tingkat nasional.
- (3) Pengelolaan data sebagaimana dimaksud pada ayat (1) diselenggarakan oleh Pemerintah dan/atau pemerintah daerah sesuai dengan kewenangannya.

Production Operation Special Mining Permits as intended by Article 76 to the public transparently.

Elucidation of Article 85: Sufficiently clear

Article 86

- (1) Entities as intended by Article 75 section (2) that perform activities in Special Mining Permit Areas in Special Mining Areas (WIUPK) must meet administrative requirements, technical requirements, environmental requirements, and financial requirements.
- (2) Ancillary provisions on administrative requirements, technical requirements, environmental requirements, and financial requirements as intended by section (1) shall be governed by regulation of the government.

Elucidation of Article 86: Sufficiently clear

CHAPTER XII
DATA ON MINING

Article 87

In support of preparation of Mining Zones and development of mine science and technology, the Minister or the governors may within their authority assign state's and/or region's research institutions to conduct surveys and research into mines.

Elucidation of Article 87: Sufficiently clear

Article 88

- (1) Data obtained from mining business activities shall be data possessed by the Government and/or regional governments within their authority.
- (2) Data on mining business possessed by the regional governments must be forwarded to the Government for national-level management of data on mining.
- (3) Management of data as intended by section (1) shall be conducted by the Government and/or regional governments within their authority.

Penjelasan Pasal 88: Cukup jelas

Pasal 89

Ketentuan lebih lanjut mengenai tata cara penugasan penyelidikan dan penelitian sebagaimana dimaksud dalam Pasal 87 dan pengelolaan data sebagaimana dimaksud dalam Pasal 88 diatur dengan peraturan pemerintah.

Penjelasan Pasal 89: Cukup jelas

BAB XIII

HAK DAN KEWAJIBAN

Bagian Kesatu

Hak

Pasal 90

Pemegang IUP dan IUPK dapat melakukan sebagian atau seluruh tahapan usaha pertambangan, baik kegiatan eksplorasi maupun kegiatan operasi produksi.

Penjelasan Pasal 90: Cukup jelas

Pasal 91

Pemegang IUP dan IUPK dapat memanfaatkan prasarana dan sarana umum untuk keperluan pertambangan setelah memenuhi ketentuan peraturan perundang-undangan.

Penjelasan Pasal 91: Cukup jelas

Pasal 92

Pemegang IUP dan IUPK berhak memiliki mineral, termasuk mineral ikutannya, atau batubara yang telah diproduksi apabila telah memenuhi iuran eksplorasi atau iuran produksi, kecuali mineral iuran radioaktif.

Penjelasan Pasal 92: Cukup jelas

Pasal 93

(1) Pemegang IUP and IUPK tidak boleh memindahkan IUP dan IUPK-nya kepada

Elucidation of Article 88: Sufficiently clear

Article 89

Ancillary provisions on procedures for assignment of surveys and research as intended by Article 87, and management of data as intended by Article 88 shall be governed by regulation of the government.

Elucidation of Article 89: Sufficiently clear

CHAPTER XIII

RIGHTS AND OBLIGATIONS

Part One

Rights

Article 90

Mining Permit holders and Special Mining Permit holders may undertake part or all of the mining stages of either exploration activities or production operation activities.

Elucidation of Article 90: Sufficiently clear

Article 91

Mining Permit holders and Special Mining Permit holders may use the benefit of public infrastructure and facilities for mining needs upon meeting provisions of laws and regulations.

Elucidation of Article 91: Sufficiently clear

Article 92

Mining Permit holders and Special Mining Permit holders shall have the right to own minerals, including associated minerals, or coal they have produced if already paying exploration royalties or production royalties, except for radioactive associated minerals.

Elucidation of Article 92: Sufficiently clear

Article 93

(1) Mining Permit and Special Mining Permit holders may not assign their Mining Permits

pihak lain.

Penjelasan Pasal 93 (1): Cukup jelas

- (2) Untuk pengalihan kepemilikan dan/atau saham di bursa saham Indonesia hanya dapat dilakukan setelah melakukan kegiatan eksplorasi tahapan tertentu.

Penjelasan Pasal 93 (2):

Yang dimaksud eksplorasi tahapan tertentu dalam ketentuan ini yaitu telah ditemukan 2 (dua) wilayah prospek dalam kegiatan eksplorasi.

- (3) Pengalihan kepemilikan dan/atau saham sebagaimana dimaksud pada ayat (2) hanya dapat dilakukan dengan syarat:
- harus memberitahu kepada Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya; dan
 - sepanjang tidak bertentangan dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 93 (3): Cukup jelas

Pasal 94

Pemegang IUP dan IUPK dijamin haknya untuk melakukan usaha pertambangan sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 94: Cukup jelas

Bagian Kedua

Kewajiban

Pasal 95

Pemegang IUP dan IUPK wajib:

- menerapkan kaidah teknik pertambangan yang baik;
- mengelola keuangan sesuai dengan sistem akuntansi Indonesia;
- meningkatkan nilai tambah sumber daya mineral dan/atau batubara;

and Special Mining Permits to other party.

Elucidation of Article 93 (1): Sufficiently clear

- (2) Transfer of ownership and/or shares in the stock exchange in Indonesia may only be effected upon performance of exploration activities of certain stages.

Elucidation of Article 93 (2):

"Exploration of certain stages" in this provision means 2 (two) prospect areas have been found in the exploration activities.

- (3). Transfer of ownership and/or shares as intended by section (2) may only be conducted on condition that:
- the transfer must be brought to the attention of the Minister, the governors, or the regents/mayors within their authority; and
 - the transfer is not against provisions of laws and regulations.

Elucidation of Article 93 (3): Sufficiently clear

Article 94

Mining Permit holders and Special Mining Permit holders shall be guaranteed their rights in the conduct of mining business under provisions of laws and regulations.

Elucidation of Article 94: Sufficiently clear

Part Two

Obligations

Article 95

Mining Permit holders and Special Mining Permit holders must:

- apply good mining technique principles;
- maintain finance under Indonesian accounting system;
- increase added value to mineral and/or coal resources;

- d. melaksanakan pengembangan dan pemberdayaan masyarakat setempat; dan
- e. mematuhi batas toleransi daya dukung lingkungan.

Penjelasan Pasal 95: Cukup jelas

Pasal 96

Dalam penerapan kaidah teknik pertambangan yang baik, pemegang IUP dan IUPK wajib melaksanakan:

- a. ketentuan keselamatan dan kesehatan kerja pertambangan;

Penjelasan Pasal 96 a: Cukup jelas

- b. keselamatan operasi pertambangan;

Penjelasan Pasal 96 b: Cukup jelas

- c. pengelolaan dan pemantauan lingkungan pertambangan, termasuk kegiatan reklamasi dan pascatambang;

Penjelasan Pasal 96 c: Cukup jelas

- d. upaya konservasi sumber daya mineral dan batubara;

Penjelasan Pasal 96 d: Cukup jelas

- e. pengelolaan sisa tambang dari suatu kegiatan usaha pertambangan dalam bentuk padat, cair, atau gas sampai memenuhi standar baku mutu lingkungan sebelum dilepas ke media lingkungan.

Penjelasan Pasal 96 e:

Yang dimaksud dengan sisa tambang meliputi antara lain tailing dan limbah batubara.

Pasal 97

Pemegang IUP dan IUPK wajib menjamin penerapan standar dan baku mutu lingkungan sesuai dengan karakteristik suatu daerah.

Penjelasan Pasal 97: Cukup jelas

- d. foster and empower local community; and

- e. comply with the tolerance limit of the carrying capacity of the environment.

Elucidation of Article 95: Sufficiently clear

Article 96

In the application of good mining technique principles, Mining Permit holders and Special Mining Permit holders must:

- a. implement the requirements of mining occupational safety and health;

Elucidation of Article 96 a: Sufficiently clear

- b. foster mining operating safety;

Elucidation of Article 96 b: Sufficiently clear

- c. conduct management and monitoring of the mining environment, including reclamation and postmining activities;

Elucidation of Article 96 c: Sufficiently clear

- d. work for conservation of mineral and coal resources;

Elucidation of Article 96 d: Sufficiently clear

- e. conduct management of mining waste in solid, liquid, or gas form to meet the standard quality of the environment prior to disposal to an environmental medium.

Elucidation of Article 96 e:

"Mining waste" shall include, inter alia, coal tailings and waste.

Article 97

Mining Permit holders and Special Mining Permit holders must ensure the application of standards and standard quality of the environment to regional characteristics.

Elucidation of Article 97: Sufficiently clear

Pasal 98

Pemegang IUP dan IUPK wajib menjaga kelestarian fungsi dan daya dukung sumber daya air yang bersangkutan sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 98:

Ketentuan ini dimaksudkan mengingat usaha pertambangan pada sumber air dapat mengakibatkan perubahan morfologi sumber air, baik pada kawasan hulu maupun hilir.

Pasal 99

- (1) Setiap pemegang IUP dan IUPK wajib menyerahkan rencana reklamasi dan rencana pascatambang pada saat mengajukan permohonan IUP Operasi Produksi atau IUPK Operasi Produksi.
- (2) Pelaksanaan reklamasi dan kegiatan pascatambang dilakukan sesuai dengan peruntukan lahan pascatambang.
- (3) Peruntukan lahan pascatambang sebagaimana dimaksud pada ayat (2) dicantumkan dalam perjanjian penggunaan tanah antara pemegang IUP atau IUPK dan pemegang hak atas tanah.

Penjelasan Pasal 99: Cukup jelas

Pasal 100

- (1) Pemegang IUP dan IUPK wajib menyediakan dana jaminan reklamasi dan dana jaminan pascatambang.
- (2) Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya dapat menetapkan pihak ketiga untuk melakukan reklamasi dan pascatambang dengan dana jaminan sebagaimana dimaksud pada ayat (1).
- (3) Ketentuan sebagaimana dimaksud pada ayat (2) diberlakukan apabila pemegang IUP atau IUPK tidak melaksanakan reklamasi dan pascatambang sesuai dengan rencana yang telah disetujui.

Article 98

Mining Permit holders and Special Mining Permit holders must maintain the sustainable functions and carrying capacity of water resources under provisions of laws and regulations.

Elucidation of Article 98:

This provision is intended to prevent mining business on water sources from resulting in change in the morphology of water sources, either in upstream or downstream areas.

Article 99

- (1) Any Mining Permit holder and Special Mining Permit holder must submit reclamation plans and postmining plans when filing an application for a Production Operation Mining Permit or Production Operation Special Mining Permit.
- (2) Reclamation and postmining activities shall be performed to the functions of postmining lands.
- (3) The functions of postmining lands as intended by section (2) shall be stated in land use agreements between a Mining Permit holder or Special Mining Permit holder and a land titleholder.

Elucidation of Article 99: Sufficiently clear

Article 100

- (1) Mining Permit holders and Special Mining Permit holders must set up reclamation deposit funds and postmining deposit funds.
- (2) The Minister, the governors, or the regents/mayors may within their authority assign a third party to conduct reclamations and postmining by deposit funds as intended by section (1).
- (3) The provision as intended by section (2) shall apply if Mining Permit holders or Special Mining Permit holders fail to conduct reclamations and postmining to the approved plans.

Pasal 101

Ketentuan lebih lanjut mengenai reklamasi dan pascatambang sebagaimana dimaksud dalam Pasal 99 serta dana jaminan reklamasi dan dana jaminan pascatambang sebagaimana dimaksud dalam Pasal 100 diatur dengan peraturan pemerintah.

Penjelasan Pasal 101:

Ketentuan mengenai dana jaminan reklamasi dan dana jaminan pascatambang berisi, antara lain, besaran, tata cara penyetoran dan pencairan, serta pelaporan penggunaan dana jaminan.

Pasal 102

Pemegang IUP dan IUPK wajib meningkatkan nilai tambah sumber daya mineral dan/atau batubara dalam pelaksanaan penambangan, pengolahan dan pemurnian, serta pemanfaatan mineral dan batubara.

Penjelasan Pasal 102:

Nilai tambah dalam ketentuan ini dimaksudkan untuk meningkatkan produk akhir dari usaha pertambangan atau pemanfaatan terhadap mineral ikutan.

Pasal 103

(1) Pemegang IUP dan IUPK Operasi Produksi wajib melakukan pengolahan dan pemurnian hasil penambangan di dalam negeri.

Penjelasan Pasal 103 (1):

Kewajiban untuk melakukan pengolahan dan pemurnian di dalam negeri dimaksudkan, antara lain, untuk meningkatkan dan mengoptimalkan nilai tambah dari produk, tersedianya bahan baku industri, penyerapan tenaga kerja, dan peningkatan penerimaan negara.

(2) Pemegang IUP dan IUPK sebagaimana dimaksud pada ayat (1) dapat mengolah dan memurnikan hasil penambangan dari pemegang IUP dan IUPK lainnya.

Penjelasan Pasal 103 (2): Cukup jelas

(3) Ketentuan lebih lanjut mengenai peningkatan nilai tambah sebagaimana dimaksud dalam

Article 101

Ancillary provisions on reclamations and postmining as intended by Article 99 as well as reclamation deposit funds and postmining deposit funds as intended by Article 100 shall be governed by regulation of the government.

Elucidation of Article 101:

Provisions on reclamation deposit funds and postmining deposit funds shall contain, inter alia, the amount, procedures for payment and withdrawal, as well as reporting on use of deposit funds.

Article 102

Mining Permit holders and Special Mining Permit holders must increase added value to mineral and/or coal resources in undertaking mines, processing and refining/smelting as well as utilizing minerals and coal.

Elucidation of Article 102:

Added value in this provision is intended to increase end products of mining business or utilization of associated minerals.

Article 103

(1) Production Operation Mining Permit holders and Special Mining Permit holders must process and refine/smelt mining products domestically.

Elucidation of Article 103 (1):

Obligations to process and refine/smelt domestically are intended to, inter alia, increase and optimize the mine value of products, supply of industrial raw materials, worker absorption, and state revenues.

(2) Mining Permit holders and Special Mining Permit holders as intended by section (1) may process and refine/smelt mining products of other Mining Permit holders and Special Mining Permit holders.

Elucidation of Article 103 (2): Sufficiently clear

(3) Ancillary provisions on increases in added value as intended by Article 102 as well as

Pasal 102 serta pengolahan dan pemurnian sebagaimana dimaksud pada ayat (2) diatur dengan peraturan pemerintah.

Penjelasan Pasal 103 (3): Cukup jelas

Pasal 104

- (1) Untuk pengolahan dan pemurnian, pemegang IUP Operasi Produksi dan IUPK Operasi Produksi sebagaimana dimaksud dalam Pasal 103 dapat melakukan kerja sama dengan badan usaha, koperasi, atau perseorangan yang telah mendapatkan IUP atau IUPK.
- (2) IUP yang didapat badan usaha sebagaimana dimaksud pada ayat (1) adalah IUP Operasi Produksi Khusus untuk pengolahan dan pemurnian yang dikeluarkan oleh Menteri, gubernur, bupati/walikota sesuai dengan kewenangannya.
- (3) Pemegang IUP dan IUPK sebagaimana dimaksud pada ayat (1) dilarang melakukan pengolahan dan pemurnian dari hasil penambangan yang tidak memiliki IUP, IPR, atau IUPK.

Penjelasan Pasal 104: Cukup jelas

Pasal 105

- (1) Badan usaha yang tidak bergerak pada usaha pertambangan yang bermaksud menjual mineral dan/atau batubara yang tergali wajib terlebih dahulu memiliki IUP Operasi Produksi untuk penjualan.

Penjelasan Pasal 105 (1):

Yang dimaksud dengan terlebih dahulu memiliki IUP Operasi Produksi untuk penjualan dalam ketentuan ini adalah pengurusan izin pengangkutan dan penjualan atas mineral dan/ atau batubara yang tergali.

- (2) IUP sebagaimana dimaksud pada ayat (1) hanya dapat diberikan untuk 1 (satu) kali penjualan oleh Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya.

processing and refining/smelting as intended by section (2) shall be governed by regulation of the government.

Elucidation of Article 103 (3): Sufficiently clear

Article 104

- (1) In the case of processing and refining/smelting, Production Operation Mining Permit holders and Production Operation Special Mining Permit holders as intended by Article 103 may extend cooperation with entities, cooperatives, or sole proprietorships already obtaining a Mining Permit or Special Mining Permit.
- (2) A Mining Permit that entities obtain as intended by section (1) shall be a processing and refining/smelting Production Operation Special Mining Permit issued by the Minister, the governors, the regents/majors within their authority.
- (3) At no time shall any Mining Permit holders and Special Mining Permit holders as intended by section (1) process and refine/smelt mining products without Mining Permits, Small-Scale Mining Permits, or Special Mining Permits.

Elucidation of Article 104: Sufficiently clear

Article 105

- (1) Nonmining entities that wish to sell excavated minerals and/or coal must first hold a Production Operation Mining Permit for sale.

Elucidation of Article 105 (1):

"First, hold a Production Operation Mining Permit for sale" in this provision means to process a permit for hauling and sale of excavated minerals and/or coal.

- (2) A Mining Permit as intended by section (1) may be granted only for 1 (one) time of sale by the Minister, the governors, or the regents/mayors within their authority.

Penjelasan Pasal 105 (2):

Izin diberikan setelah terlebih dahulu dilakukan pemeriksaan dan evaluasi atas mineral dan/atau batubara yang tergali oleh instansi teknis terkait.

- (3) Mineral atau batubara yang tergali dan akan dijual sebagaimana dimaksud pada ayat (1) dikenai iuran produksi.

Penjelasan Pasal 105 (3): Cukup jelas

- (4) Badan usaha sebagaimana dimaksud pada ayat (1) dan ayat (2) wajib menyampaikan laporan hasil penjualan mineral dan/atau batubara yang tergali kepada Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya.

Penjelasan Pasal 105 (4): Cukup jelas

Pasal 106

Pemegang IUP dan IUPK harus mengutamakan pemanfaatan tenaga kerja setempat, barang, dan jasa dalam negeri sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 106:

Pemanfaatan tenaga kerja setempat tetap mempertimbangkan kompetensi tenaga kerja dan keahlian tenaga kerja yang tersedia.

Ketentuan ini dimaksudkan untuk mendukung dan menumbuhkembangkan kemampuan nasional agar lebih mampu bersaing.

Pasal 107

Dalam melakukan kegiatan operasi produksi, badan usaha pemegang IUP dan IUPK wajib mengikutsertakan pengusaha lokal yang ada di daerah tersebut sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 107: Cukup jelas

Pasal 108

- (1) Pemegang IUP dan IUPK wajib menyusun program pengembangan dan pemberdayaan masyarakat.

Penjelasan Pasal 108 (1): Cukup jelas

Elucidation of Article 105 (2):

The permit shall be granted after examination and evaluation of excavated minerals and/or coal have first been made by the relevant technical agency.

- (3) Minerals or coal that are excavated and to be sold as intended by section (1) shall be subject to production royalties.

Elucidation of Article 105 (3): Sufficiently clear

- (4) Entities as intended by section (1) and section (2) must submit a report on the sales of excavated minerals and/or coal to the Minister, the governors, or the regents/mayors within their authority.

Elucidation of Article 105 (4): Sufficiently clear

Article 106

Mining Permit holders and Special Mining Permit holders must give preference for employment of local workforce and use of domestic goods and services under provisions of laws and regulations.

Elucidation of Article 106:

Employment of local workforce shall remain to consider the competency of workers and skills of workers available.

This provision is intended to encourage and develop the national capability in order to better compete.

Article 107

In the performance of production operation activities, entities holding a Mining Permit and a Special Mining Permit must engage local entrepreneurs of the region under provisions of laws and regulations.

Elucidation of Article 107: Sufficiently clear

Article 108

- (1) Mining Permit holders and Special Mining Permit holders must prepare community development and empowerment programs.

Elucidation of Article 108 (1): Sufficiently clear

- (2) Penyusunan program dan rencana sebagaimana dimaksud pada ayat (1) dikonsultasikan kepada Pemerintah, pemerintah daerah, dan masyarakat.

Penjelasan Pasal 108 (2):

Yang dimaksud dengan masyarakat adalah masyarakat yang berdomisili di sekitar operasi pertambangan.

Pasal 109

Ketentuan lebih lanjut mengenai pelaksanaan pengembangan dan pemberdayaan masyarakat sebagaimana dimaksud dalam Pasal 108 diatur dengan peraturan pemerintah.

Penjelasan Pasal 109: Cukup jelas

Pasal 110

Pemegang IUP dan IUPK wajib menyerahkan seluruh data yang diperoleh dari hasil eksplorasi dan operasi produksi kepada Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya.

Penjelasan Pasal 110: Cukup jelas

Pasal 111

- (1) Pemegang IUP dan IUPK wajib memberikan laporan tertulis secara berkala atas rencana kerja dan pelaksanaan kegiatan usaha pertambangan mineral dan batubara kepada Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya.
- (2) Ketentuan lebih lanjut mengenai bentuk, jenis, waktu, dan tata cara penyampaian laporan sebagaimana dimaksud pada ayat (1) diatur dengan peraturan pemerintah.

Penjelasan Pasal 111: Cukup jelas

Pasal 112

- (1) Setelah 5 (lima) tahun berproduksi, badan usaha pemegang IUP dan IUPK yang sahamnya dimiliki oleh asing wajib melakukan divestasi saham pada Pemerintah,

- (2) Preparation of programs and plans as intended by section (1) shall consult the Government, regional governments, and community.

Elucidation of Article 108 (2):

“Community” means community domiciled around the mining operating areas.

Article 109

Ancillary provisions on implementation of community development and empowerment as intended by Article 108 shall be governed by regulation of the government.

Elucidation of Article 109: Sufficiently clear

Article 110

Mining Permit holders and Special Mining Permit holders must turn in all data found from the exploration and production operations to the Minister, the governors, or the regents/mayors within their authority.

Elucidation of Article 110: Sufficiently clear

Article 111

- (1) Mining Permit holders and Special Mining Permit holders must submit reports in writing periodically on working plans and implementation of mineral and coal mining business activities to the Minister, the governors, or the regents/mayors within their authority.
- (2) Ancillary provisions on form, type, time, and procedures for submission of reports as intended by section (1) shall be governed by regulation of the government.

Elucidation of Article 111: Sufficiently clear

Article 112

- (1) After 5 (five) years of production, entities holding a Mining Permit and a Special Mining Permit, of which the shares are owned by foreign parties, must divest their

pemerintah daerah, badan usaha milik negara, badan usaha milik daerah, atau badan usaha swasta nasional.

- (2) Ketentuan lebih lanjut mengenai divestasi saham sebagaimana dimaksud pada ayat (1) diatur dengan peraturan pemerintah.

Penjelasan Pasal 112: Cukup jelas

BAB XIV

PENGHENTIAN SEMENTARA KEGIATAN IZIN USAHA PERTAMBANGAN DAN IZIN USAHA PERTAMBANGAN KHUSUS

Pasal 113

- (1) Penghentian sementara kegiatan usaha pertambangan dapat diberikan kepada pemegang IUP dan IUPK apabila terjadi:

- a. keadaan kahar;

Penjelasan Pasal 113 (1) a:

Yang dimaksud keadaan kahar (force majeure) dalam ayat ini, antara lain, perang, kerusuhan sipil, pemberontakan, epidemi, gempa bumi, banjir, kebakaran, dan bencana alam di luar kemampuan manusia.

- b. keadaan yang menghalangi sehingga menimbulkan penghentian sebagian atau seluruh kegiatan usaha pertambangan;

Penjelasan Pasal 113 (1) b:

Yang dimaksud keadaan yang menghalangi dalam ayat ini, antara lain, blockade, pemogokan, dan perselisihan perburuhan di luar kesalahan pemegang IUP atau IUPK dan peraturan perundang-undangan yang diterbitkan oleh Pemerintah yang menghambat kegiatan usaha pertambangan yang sedang berjalan.

- c. apabila kondisi daya dukung lingkungan wilayah tersebut tidak dapat menanggung beban kegiatan operasi produksi sumber daya mineral dan/atau batubara yang dilakukan di wilayahnya.

Penjelasan Pasal 113 (1) c: Cukup jelas

- (2) Penghentian sementara kegiatan usaha pertambangan sebagaimana dimaksud pada

shares in the Government, regional governments, state-owned entities, region-owned entities or national private entities.

- (2) Ancillary provisions on divestment of shares as intended by section (1) shall be governed by regulation of the government.

Elucidation of Article 112: Sufficiently clear

CHAPTER XIV

SUSPENSION OF MINING PERMIT ACTIVITIES AND SPECIAL MINING PERMIT ACTIVITIES

Article 113

- (1) Suspension of mining business activities may be imposed on Mining Permit holders and Special Mining Permit holders if the following occur:

- a. force majeure;

Elucidation of Article 113 (1) a:

Force majeure in this provision shall include, inter alia, wars, civil commotions, rebellions, epidemics, earthquakes, floods, fire, and acts of God.

- b. preventing circumstances that result in cessation of part or all of the mining business activities;

Elucidation of Article 113 (1) b:

Preventing circumstances in this section shall include, inter alia, blockades, strikes, and labor disputes other than faults of Mining Permit holders or Special Mining Permit holders, and laws and regulations issued by the Government that delay mining business activities in progress.

- c. if the carrying capacity of the environment of the areas cannot support the loads of mineral and/or coal resource production operation activities performed in their areas.

Elucidation of Article 113 (1) c: Sufficiently clear

- (2) Suspension of mining business activities as intended by section (1) shall not reduce the

ayat (1) tidak mengurangi masa berlaku IUP atau IUPK.

Penjelasan Pasal 113 (2): Cukup jelas

- (3) Permohonan penghentian sementara kegiatan usaha pertambangan sebagaimana dimaksud pada ayat (1) huruf a dan huruf b disampaikan kepada Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya.

Penjelasan Pasal 113 (3):

Permohonan menjelaskan kondisi keadaan kahar dan/atau keadaan yang menghalangi sehingga mengakibatkan penghentian sebagian atau seluruh kegiatan usaha pertambangan.

- (4) Penghentian sementara sebagaimana dimaksud pada ayat (1) huruf c dapat dilakukan oleh inspektur tambang atau dilakukan berdasarkan permohonan masyarakat kepada Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya.

Penjelasan Pasal 113 (4):

Permohonan masyarakat memuat penjelasan keadaan kondisi daya dukung lingkungan wilayah yang dikaitkan dengan aktifitas kegiatan penambangan.

- (5) Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya wajib mengeluarkan keputusan tertulis diterima atau ditolak disertai alasannya atas permohonan sebagaimana dimaksud pada ayat (3) paling lama 30 (tiga puluh) hari sejak menerima permohonan tersebut.

Penjelasan Pasal 113 (5): Cukup jelas

Pasal 114

- (1) Jangka waktu penghentian sementara karena keadaan kahar dan/atau keadaan yang menghalangi sebagaimana dimaksud dalam Pasal 113 ayat (1) diberikan paling lama 1 (satu) tahun dan dapat diperpanjang paling banyak 1 (satu) kali untuk 1 (satu) tahun.
- (2) Apabila dalam kurun waktu sebelum habis masa penghentian sementara berakhir pemegang IUP dan IUPK sudah siap melakukan kegiatan operasinya, kegiatan

validity period of Mining Permits and Special Mining Permits.

Elucidation of Article 113 (2): Sufficiently clear

- (3) Requests for suspension of mining business activities as intended by section (1) point (a) and point (b) shall be filed with the Minister, the governors, or the regents/mayors within their authority.

Elucidation of Article 113 (3):

Requests shall describe the events of force majeure and/or preventing circumstances that result in cessation of part or all of the mining business activities.

- (4) Suspension of mining as intended by section (1) point (c) may be executed by mine inspectors or made on public request to the Minister, the governors, or the regents/mayors within their authority.

Elucidation of Article 113 (4):

Public requests shall contain descriptions on the carrying capacity of the environment of areas as connected with mine activities.

- (5) The Minister, the governors, or the regents/mayors must within their authority issue decisions in writing on acceptance or refusal along with the reasons therefor of requests as intended by section (3) at the latest 30 (thirty) days of receipt of the requests.

Elucidation of Article 113 (5): Sufficiently clear

Article 114

- (1) A period of suspension because of force majeure and/or preventing circumstances as intended by Article 113 section (1) shall be granted for at most 1 (one) year, extendable to 1 (one) year at most 1 (one) time.
- (2) If within a period prior to the expiration of the period of suspension Mining Permit holders and Special Mining Permit holders are already prepared for the performance of

dimaksud wajib dilaporkan kepada Menteri, gubernur, atau bupati/ walikota sesuai dengan kewenangannya.

- (3) Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya mencabut keputusan penghentian sementara setelah menerima laporan sebagaimana dimaksud pada ayat (2).

Penjelasan Pasal 114: Cukup jelas

Pasal 115

- (1) Apabila penghentian sementara kegiatan usaha pertambangan diberikan karena keadaan kahar sebagaimana dimaksud dalam Pasal 113 ayat (1) huruf a, kewajiban pemegang IUP dan IUPK terhadap Pemerintah dan pemerintah daerah tidak berlaku.
- (2) Apabila penghentian sementara kegiatan usaha pertambangan diberikan karena keadaan yang menghalangi kegiatan usaha pertambangan sebagaimana dimaksud dalam Pasal 113 ayat (1) huruf b, kewajiban pemegang IUP dan IUPK terhadap Pemerintah dan pemerintah daerah tetap berlaku.
- (3) Apabila penghentian sementara kegiatan usaha pertambangan diberikan karena kondisi daya dukung lingkungan wilayah sebagaimana dimaksud dalam Pasal 113 ayat (1) huruf c, kewajiban pemegang IUP dan IUPK terhadap Pemerintah dan pemerintah daerah tetap berlaku.

Penjelasan Pasal 115: Cukup jelas

Pasal 116

Ketentuan lebih lanjut mengenai penghentian sementara kegiatan usaha pertambangan sebagaimana dimaksud dalam Pasal 113, Pasal 114, dan Pasal 115 diatur dengan peraturan pemerintah.

Penjelasan Pasal 116: Cukup jelas

their operating activities, such activities must be reported to the Minister, the governors or the regents/mayors within their authority.

- (3) The Minister, the governors or the regents/mayors within their authority shall revoke decisions on suspension upon receipt of report as intended by section (2).

Elucidation of Article 114: Sufficiently clear

Article 115

- (1) If suspension of mining business activities is imposed because of force majeure as intended by Article 113 section (1) point (a), obligations of Mining Permit holders and Special Mining Permit holders to the Government and regional governments shall be void.
- (2) If suspension of mining business activities is imposed because of preventing circumstances as intended by Article 113 section (1) point (b), obligations of Mining Permit holders and Special Mining Permit holders to the Government and regional governments shall remain valid.
- (3) If suspension of mining business activities is imposed because of the carrying capacity of the environment of areas as intended by Article 113 section (1) point (c), obligations of Mining Permit holders and Special Mining Permit holders to the Government and regional governments shall remain valid.

Elucidation of Article 115: Sufficiently clear

Article 116

Ancillary provisions on suspension of mining business activities as intended by Article 113, Article 114, and Article 115 shall be governed by regulation of the government.

Elucidation of Article 116: Sufficiently clear

BAB XV
BERAKHIRNYA IZIN USAHA
PERTAMBANGAN DAN IZIN USAHA
PERTAMBANGAN KHUSUS

Pasal 117

IUP dan IUPK berakhir karena:

- a. dikembalikan;
- b. dicabut; atau
- c. habis masa berlakunya.

Penjelasan Pasal 117: Cukup jelas

Pasal 118

- (1) Pemegang IUP atau IUPK dapat menyerahkan kembali IUP atau IUPK-nya dengan pernyataan tertulis kepada Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya dan disertai dengan alasan yang jelas.

Penjelasan Pasal 118 (1):

Yang dimaksud dengan alasan yang jelas dalam ketentuan ini antara lain tidak ditemukannya prospek secara teknis, ekonomis, atau lingkungan.

- (2) Pengembalian IUP atau IUPK sebagaimana dimaksud pada ayat (1) dinyatakan sah setelah disetujui oleh Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya dan setelah memenuhi kewajibannya.

Penjelasan Pasal 118 (2): Cukup jelas

Pasal 119

IUP atau IUPK dapat dicabut oleh Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya apabila:

- a. pemegang IUP atau IUPK tidak memenuhi kewajiban yang ditetapkan dalam IUP atau IUPK serta peraturan perundang-undangan;

BAB XV
TERMINATION OF MINING PERMITS AND
SPECIAL MINING PERMITS

Article 117

A Mining Permit and Special Mining Permit shall terminate because it is:

- a. reverted;
- b. revoked; or
- c. expired.

Elucidation of Article 117: Sufficiently clear

Article 118

- (1) Mining Permit holders or Special Mining Permit holders may revert their Mining Permits or Special Mining Permits with written statement to the Minister, the governors or the regents/mayors within their authority accompanied by clear reasons therefor.

Elucidation of Article 118 (1):

"Clear reasons" in this provision means, inter alia, no technical, economical, or environmental prospect is in sight.

- (2) Reversion of Mining Permits or Special Mining Permits as intended by section (1) shall be declared lawful upon approval of the Minister, the governors or the regents/mayors within their authority and upon meeting their obligations.

Elucidation of Article 118 (2): Sufficiently clear

Article 119

Mining Permits or Special Mining Permits shall be revoked by the Minister, the governors or the regents/mayors within their authority if:

- a. Mining Permit holders or Special Mining Permit holders fail to meet obligations as stated in the Mining Permit or Special Mining Permit as well as laws and regulations;

- b. pemegang IUP atau IUPK melakukan tindak pidana sebagaimana dimaksud dalam Undang-Undang ini; atau
- c. pemegang IUP atau IUPK dinyatakan pailit.

Penjelasan Pasal 119: Cukup jelas

Pasal 120

Dalam hal jangka waktu yang ditentukan dalam IUP dan IUPK telah habis dan tidak diajukan permohonan peningkatan atau perpanjangan tahap kegiatan atau pengajuan permohonan tetapi tidak memenuhi persyaratan, IUP dan IUPK tersebut berakhir.

Penjelasan Pasal 120:

Yang dimaksud dengan “peningkatan” adalah peningkatan dari tahap eksplorasi ke tahap operasi produksi.

Pasal 121

- (1) Pemegang IUP atau IUPK yang IUP-nya atau IUPK-nya berakhir karena alasan sebagaimana dimaksud dalam Pasal 117, Pasal 118, Pasal 119, dan Pasal 120 wajib memenuhi dan menyelesaikan kewajiban sesuai dengan ketentuan peraturan perundang-undangan.
- (2) Kewajiban pemegang IUP atau IUPK sebagaimana dimaksud pada ayat (1) dianggap telah dipenuhi setelah mendapat persetujuan dari Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya.

Penjelasan Pasal 121: Cukup jelas

Pasal 122

- (1) IUP atau IUPK yang telah dikembalikan, dicabut, atau habis masa berlakunya sebagaimana dimaksud dalam Pasal 121 dikembalikan kepada Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya.
- (2) WIUP atau WIUPK yang IUP-nya atau

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- b. Mining Permit holders or Special Mining Permit holders have perpetrated criminal acts as intended by this Law; or
- c. Mining Permit holders or Special Mining Permit holders are declared bankrupt.

Elucidation of Article 119: Sufficiently clear

Article 120

Where the period as stated in the Mining Permit and Special Mining Permit have expired and no application for an upgrade or extension of stage of activity is filed, or an application is filed but ineligible, such a Mining Permit and Special Mining Permit shall terminate.

Elucidation of Article 120:

“Upgrade” means an upgrade from the exploration stage to the production operation stage.

Article 121

- (1) Mining Permit holders or Special Mining Permit holders, of whom the Mining Permits or Special Mining Permits terminate because of reasons as intended by Article 117, Article 118, Article 119, and Article 120 must meet and perform obligations under provisions of laws and regulations.
- (2) Obligations of Mining Permit holders or Special Mining Permit holders as intended by section (1) shall be deemed to have been met upon approval of the Minister, the governors, or the regents/mayors within their authority.

Elucidation of Article 121: Sufficiently clear

Article 122

- (1) Mining Permits or Special Mining Permits that have been reverted, revoked, or expired as intended by Article 121 shall be turned in to the Minister, the governors, or the regents/mayors within their authority.
- (2) Mining Permit Areas or Special Mining

IUPK-nya berakhir sebagaimana dimaksud pada ayat (1) ditawarkan kepada badan usaha, koperasi, atau perseorangan melalui mekanisme sesuai dengan ketentuan dalam Undang-Undang ini.

Penjelasan Pasal 122: Cukup jelas

Pasal 123

Apabila IUP atau IUPK berakhir, pemegang IUP atau IUPK wajib menyerahkan seluruh data yang diperoleh dari hasil eksplorasi dan operasi produksi kepada Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya.

Penjelasan Pasal 123: Cukup jelas

BAB XVI

USAHA JASA PERTAMBANGAN

Pasal 124

- (1) Pemegang IUP atau IUPK wajib menggunakan perusahaan jasa pertambangan lokal dan/atau nasional.

Penjelasan Pasal 124 (1):

Perusahaan nasional dapat mendirikan perusahaan cabang di daerah.

- (2) Dalam hal tidak terdapat perusahaan jasa pertambangan sebagaimana dimaksud pada ayat (1), pemegang IUP atau IUPK dapat menggunakan perusahaan jasa pertambangan lain yang berbadan hukum Indonesia.

Penjelasan Pasal 124 (2): Cukup jelas

- (3) Jenis usaha jasa pertambangan meliputi:
- a. konsultasi, perencanaan, pelaksanaan, dan pengujian peralatan di bidang:
 - 1) penyelidikan umum;
 - 2) eksplorasi;
 - 3) studi kelayakan;

Permit Areas in Special Mining Areas, of which the Mining Permits or Special Mining Permits have terminated as intended by section (1) shall be offered to entities, cooperatives, or sole proprietorships through mechanisms under the provisions of this Law.

Elucidation of Article 122: Sufficiently clear

Article 123

If Mining Permits or Special Mining Permits terminate, the Mining Permit holders or Special Mining Permit holders must turn in all data found from the exploration and production operations to the Minister, the governors, or the regents/mayors within their authority.

Elucidation of Article 123: Sufficiently clear

CHAPTER XVI

MINING SERVICES BUSINESS

Article 124

- (1) Mining Permits holders or Special Mining Permits holders must engage local and/or national mining services companies.

Elucidation of Article 124 (1):

National companies may establish branch companies in regions.

- (2) Where no mining services company as intended by section (1) is available, Mining Permits holders or Special Mining Permits holders may engage other mining services companies of Indonesian legal entity.

Elucidation of Article 124 (2): Sufficiently clear

- (3) Lines of mining services business shall include:
- a. consultation, planning, implementation, and equipment testing in the field of:
 - 1) general survey;
 - 2) exploration;
 - 3) feasibility study;

- 4) konstruksi pertambangan;
- 5) pengangkutan;
- 6) lingkungan pertambangan;
- 7) pascatambang dan reklamasi; dan/atau
- 8) keselamatan dan kesehatan kerja.

b. konsultasi, perencanaan, dan pengujian peralatan di bidang:

- 1) penambangan; atau
- 2) pengolahan dan pemurnian.

Penjelasan Pasal 124 (3): Cukup jelas

Pasal 125

- (1) Dalam hal pemegang IUP atau IUPK menggunakan jasa pertambangan, tanggung jawab kegiatan usaha pertambangan tetap dibebankan kepada pemegang IUP atau IUPK.
- (2) Pelaksana usaha jasa pertambangan dapat berupa badan usaha, koperasi, atau perseorangan sesuai dengan klasifikasi dan kualifikasi yang telah ditetapkan oleh Menteri.
- (3) Pelaku usaha jasa pertambangan wajib mengutamakan kontraktor dan tenaga kerja lokal.

Penjelasan Pasal 125: Cukup jelas

Pasal 126

- (1) Pemegang IUP atau IUPK dilarang melibatkan anak perusahaan dan/atau afiliasinya dalam bidang usaha jasa pertambangan di wilayah usaha pertambangan yang diusahakannya, kecuali dengan izin Menteri.
- (2) Pemberian izin Menteri sebagaimana dimaksud pada ayat (1) dilakukan apabila:

- 4) mining construction;
- 5) hauling;
- 6) mining environment;
- 7) postmining and reclamations; and/or
- 8) occupational safety and health.

b. consultation, planning, and equipment testing in the field of:

- 1) mines; or
- 2) processing and refining/smelting.

Elucidation of Article 124 (3): Sufficiently clear

Article 125

- (1) Where Mining Permit holders or Special Mining Permit holders engage mining services, Mining Permit holders or Special Mining Permit holders shall remain to assume responsibility for mining business activities.
- (2) Mining services providers may be in the form of entities, cooperatives, or sole proprietorships under classification and qualification that are established by the Minister.
- (3) Mining services providers must give preference for local contractors and workers.

Elucidation of Article 125: Sufficiently clear

Article 126

- (1) At no time shall any Mining Permit holders or Special Mining Permit holders involving their subsidiaries and/or affiliates in the field of mining services business in mining areas they commercialize, unless the Minister grants permits therefor.
- (2) Permits as intended by section (1) shall be granted where:

- a. tidak terdapat perusahaan jasa pertambangan sejenis di wilayah tersebut; atau
- b. tidak ada perusahaan jasa pertambangan yang berminat/mampu.

Penjelasan Pasal 126: Cukup jelas

Pasal 127

Ketentuan lebih lanjut mengenai penyelenggaraan usaha jasa pertambangan sebagaimana dimaksud dalam Pasal 124, Pasal 125, dan Pasal 126 diatur dengan peraturan menteri.

Penjelasan Pasal 127: Cukup jelas

BAB XVII

PENDAPATAN NEGARA DAN DAERAH

Pasal 128

- (1) Pemegang IUP atau IUPK wajib membayar pendapatan negara dan pendapatan daerah.
- (2) Pendapatan negara sebagaimana dimaksud pada ayat (1) terdiri atas penerimaan pajak dan penerimaan negara bukan pajak.
- (3) Penerimaan pajak sebagaimana dimaksud pada ayat (2) terdiri atas:
 - a. pajak-pajak yang menjadi kewenangan Pemerintah sesuai dengan ketentuan peraturan perundang-undangan di bidang perpajakan; dan
 - b. bea masuk dan cukai.
- (4) Penerimaan negara bukan pajak sebagaimana dimaksud pada ayat (2) terdiri atas:
 - a. iuran tetap;
 - b. iuran eksplorasi;
 - c. iuran produksi; dan
 - d. kompensasi data informasi.
- (5) Pendapatan daerah sebagaimana dimaksud

- a. no mining services company of similar type is available in those areas; or
- b. no mining services company is interested/capable;

Elucidation of Article 126: Sufficiently clear

Article 127

Ancillary provisions on the conduct of mining services business as intended by Article 124, Article 125, and Article 126 shall be governed by regulation of the minister.

Elucidation of Article 127: Sufficiently clear

CHAPTER XVII

STATE AND REGIONAL INCOME

Article 128

- (1) Mining Permit holders or Special Mining Permit holders must pay state income and regional income.
- (2) State income as intended by section (1) shall include tax income and nontax state revenues.
- (3) Tax income as intended by section (2) shall include:
 - a. taxes within the authority of the Government under the provisions of laws and regulations in the field of taxation; and
 - b. customs and excise duties.
- (4) Nontax state revenues as intended by section (2) shall include:
 - a. dead rents;
 - b. exploration royalties;
 - c. production royalties; and
 - d. compensation for access to data/information.
- (5) Regional income as intended by section (1)

pada ayat (1) terdiri atas:

- a. pajak daerah;
- b. retribusi daerah; dan
- c. pendapatan lain yang sah berdasarkan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 128: Cukup jelas

Pasal 129

- (1) Pemegang IUPK Operasi Produksi untuk pertambangan mineral logam dan batubara wajib membayar sebesar 4% (empat persen) kepada Pemerintah dan 6% (enam persen) kepada pemerintah daerah dari keuntungan bersih sejak berproduksi.
- (2) Bagian pemerintah daerah sebagaimana dimaksud pada ayat (1) diatur sebagai berikut:
 - a. pemerintah provinsi mendapat bagian sebesar 1% (satu persen);
 - b. pemerintah kabupaten/kota penghasil mendapat bagian sebesar 2,5% (dua koma lima persen); dan
 - c. pemerintah kabupaten/kota lainnya dalam provinsi yang sama mendapat bagian sebesar 2,5% (dua koma lima persen).

Penjelasan Pasal 129: Cukup jelas

Pasal 130

- (1) Pemegang IUP atau IUPK tidak dikenai iuran produksi sebagaimana dimaksud dalam Pasal 128 ayat (4) huruf c dan pajak daerah dan retribusi daerah sebagaimana dimaksud dalam Pasal 128 ayat (5) atas tanah/batuan yang ikut tergali pada saat penambangan.
- (2) Pemegang IUP atau IUPK dikenai iuran produksi sebagaimana dimaksud dalam Pasal 128 ayat (4) huruf c atas pemanfaatan tanah/batuan yang ikut tergali pada saat penambangan.

shall include:

- a. regional taxes;
- b. regional charges; and
- c. other lawful income under provisions of laws and regulations.

Elucidation of Article 128: Sufficiently clear

Article 129

- (1) Metal mineral and coal Production Operation Special Mining Permit holders must pay 4% (four percent) to the Government and 6% (six percent) to the regional government, of net profits since making production.
- (2) A portion of the regional government as intended by section (1) shall be given as follows:
 - a. the provincial government shall receive a portion of 1% (one percent);
 - b. the producing district/city government shall receive a portion of 2.5% (two point five percent); and
 - c. other district/city government within the same province shall receive a portion of 2.5% (two point five percent).

Elucidation of Article 129: Sufficiently clear

Article 130

- (1) Mining Permit holders or Special Mining Permit holders shall not be subject to production royalties as intended by Article 128 section (4) point (c) and regional taxes and regional charges as intended by Article 128 section (5) on earth/rocks taken during excavation in mine operations.
- (2) Mining Permit holders or Special Mining Permit holders shall be subject to production royalties as intended by Article 128 section (4) point (c) on use of earth/rocks taken during excavation in mine operations.

Penjelasan Pasal 130: Cukup jelas

Pasal 131

Besarnya pajak dan penerimaan negara bukan pajak yang dipungut dari pemegang IUP, IPR, atau IUPK ditetapkan berdasarkan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 131: Cukup jelas

Pasal 132

- (1) Besaran tarif iuran produksi ditetapkan berdasarkan tingkat perusahaan, produksi, dan harga komoditas tambang.
- (2) Besaran tarif iuran produksi sebagaimana dimaksud pada ayat (1) ditetapkan berdasarkan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 132: Cukup jelas

Pasal 133

- (1) Penerimaan negara bukan pajak sebagaimana dimaksud dalam Pasal 128 ayat (4) merupakan pendapatan negara dan daerah yang pembagiannya ditetapkan berdasarkan ketentuan peraturan perundang-undangan.
- (2) Penerimaan negara bukan pajak yang merupakan bagian daerah dibayar langsung ke kas daerah setiap 3 (tiga) bulan setelah disetor ke kas negara.

Penjelasan Pasal 133: Cukup jelas

BAB XVIII

PENGUNAAN TANAH UNTUK KEGIATAN USAHA PERTAMBANGAN

Pasal 134

- (1) Hak atas WIUP, WPR, atau WIUPK tidak meliputi hak atas tanah permukaan bumi.
- (2) Kegiatan usaha pertambangan tidak dapat

Elucidation of Article 130: Sufficiently clear

Article 131

Amounts of taxes and nontax state revenues that are levied from Mining Permit holders, Small-Scale Mining Permit holders, or Special Mining Permit holders shall be determined under provisions of laws and regulations.

Elucidation of Article 131: Sufficiently clear

Article 132

- (1) Production royalty rates shall be determined under levels of business, production, and prices of mining commodities.
- (2) Production royalty rates as intended by section (1) shall be determined under provisions of laws and regulations.

Elucidation of Article 132: Sufficiently clear

Article 133

- (1) Nontax state revenues as intended by Article 128 section (4) shall be state and regional income, of which the apportionments shall be determined under laws and regulations.
- (2) Nontax state revenues of which the portions belong to regions shall directly be paid to regional treasury quarterly (every 3 (three) months) after deposit into the state treasury.

Elucidation of Article 133: Sufficiently clear

CHAPTER XVIII

USE OF LAND FOR MINING BUSINESS ACTIVITIES

Article 134

- (1) Titles to Mining Permit Areas, to Small-Scale Mining Areas, or to Special Mining Permit Areas in Special Mining Areas shall not include surface land titles.
- (2) Mining business activities may not be

dilaksanakan pada tempat yang dilarang untuk melakukan kegiatan usaha pertambangan sesuai dengan ketentuan peraturan perundang-undangan.

- (3) Kegiatan usaha pertambangan sebagaimana dimaksud pada ayat (2) dapat dilaksanakan setelah mendapat izin dari instansi Pemerintah sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 134: Cukup jelas

Pasal 135

Pemegang IUP Eksplorasi atau IUPK Eksplorasi hanya dapat melaksanakan kegiatannya setelah mendapat persetujuan dari pemegang hak atas tanah.

Penjelasan Pasal 135:

Persetujuan dari pemegang hak atas tanah dimaksudkan untuk menyelesaikan lahan-lahan yang terganggu oleh kegiatan eksplorasi seperti pengeboran, parit uji, dan pengambilan contoh.

Pasal 136

- (1) Pemegang IUP atau IUPK sebelum melakukan kegiatan operasi produksi wajib menyelesaikan hak atas tanah dengan pemegang hak sesuai dengan ketentuan peraturan perundang-undangan.
- (2) Penyelesaian hak atas tanah sebagaimana dimaksud pada ayat (1) dapat dilakukan secara bertahap sesuai dengan kebutuhan atas tanah oleh pemegang IUP atau IUPK.

Penjelasan Pasal 136: Cukup jelas

Pasal 137

Pemegang IUP atau IUPK sebagaimana dimaksud dalam Pasal 135 dan Pasal 136 yang telah melaksanakan penyelesaian terhadap bidang-bidang tanah dapat diberikan hak atas tanah sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 137: Cukup jelas

Pasal 138

performed on sites where mining business activities are banned under provisions of laws and regulations.

- (2) Mining business activities as intended by section (2) may be performed upon obtainment of permits from the Government agencies under provisions of laws and regulations.

Elucidation of Article 134: Sufficiently clear

Article 135

Exploration Mining Permit holders or Exploration special Mining Permit holders may perform their activities upon approval of land titleholders.

Elucidation of Article 135:

Approval of land titleholders is intended to settle lands disrupted by exploration activities, such as drilling, trenches, and sampling.

Article 136

- (1) Mining Permit holders or Special Mining Permit holders, prior to the performance of production operation activities, must settle land titles with titleholders under provisions of laws and regulations.
- (2) Settlement of land titles as intended by section (1) may be conducted in stages adjusted to Mining Permit holders' or Special Mining Permit holders' needs for land.

Elucidation of Article 136: Sufficiently clear

Article 137

Mining Permit holders or Special Mining Permit holders as intended by Article 135 and Article 136 that have settled parcels of land may be granted land titles under provisions of laws and regulations.

Elucidation of Article 137: Sufficiently clear

Article 138

Hak atas IUP, IPR, atau IUPK bukan merupakan pemilikan hak atas tanah.

Penjelasan Pasal 138: Cukup jelas

BAB XIX
PEMBINAAN, PENGAWASAN, DAN
PERLINDUNGAN MASYARAKAT

Bagian Kesatu

Pembinaan dan Pengawasan

Pasal 139

- (1) Menteri melakukan pembinaan terhadap penyelenggaraan pengelolaan usaha pertambangan yang dilaksanakan oleh pemerintah provinsi dan pemerintah kabupaten/kota sesuai dengan kewenangannya.
- (2) Pembinaan sebagaimana dimaksud pada ayat (1) meliputi:
 - a. pemberian pedoman dan standar pelaksanaan pengelolaan usaha pertambangan;
 - b. pemberian bimbingan, supervisi, dan konsultasi;
 - c. pendidikan dan pelatihan; dan
 - d. perencanaan, penelitian, pengembangan, pemantauan, dan evaluasi pelaksanaan penyelenggaraan usaha pertambangan di bidang mineral dan batubara.
- (3) Menteri dapat melimpahkan kepada gubernur untuk melakukan pembinaan terhadap penyelenggaraan kewenangan pengelolaan di bidang usaha pertambangan sebagaimana dimaksud pada ayat (1) yang dilaksanakan oleh pemerintah kabupaten/kota.
- (4) Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya bertanggung jawab melakukan pembinaan atas pelaksanaan kegiatan usaha pertambangan yang dilakukan oleh pemegang IUP, IPR, atau IUPK.

Penjelasan Pasal 139: Cukup jelas

Titles to Mining Permit, to Small-Scale Mining Permits, or to Special Mining Permits shall not constitute ownership of land titles.

Elucidation of Article 138: Sufficiently clear

CHAPTER XIX
DIRECTIONS, SUPERVISION, AND PUBLIC
PROTECTION

Part One

Directions and Supervision

Article 139

- (1) The Minister shall set directions of management of mining business conducted by the provincial governments and district/city governments within his/her authority.
- (2) Directions as intended by section (1) shall include:
 - a. providing guidelines and standards of performing management of mining business;
 - b. providing directives, supervision, and consultation;
 - c. education and training; and
 - d. planning, research, development, monitoring, and evaluations of the conduct of mining business in the field of minerals and coal.
- (3) The Minister may assign the governors to set directions of the authority of management in the field of mining exercised by the district/city governments as intended by section (1).
- (4) The Minister, the governors, or the regents/mayors shall within their authority be responsible to set directions of mining business activities performed by Mining Permit holders, Small-Scale Mining Permit holders, or Special Mining Permit holders.

Elucidation of Article 139: Sufficiently clear

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Pasal 140

- (1) Menteri melakukan pengawasan terhadap penyelenggaraan pengelolaan usaha pertambangan yang dilaksanakan oleh pemerintah provinsi dan pemerintah kabupaten/kota sesuai dengan kewenangannya.
- (2) Menteri dapat melimpahkan kepada gubernur untuk melakukan pengawasan terhadap penyelenggaraan kewenangan pengelolaan di bidang usaha pertambangan sebagaimana dimaksud pada ayat (1) yang dilaksanakan oleh pemerintah kabupaten/kota.
- (3) Menteri, gubernur, dan bupati/walikota sesuai dengan kewenangannya melakukan pengawasan atas pelaksanaan kegiatan usaha pertambangan yang dilakukan oleh pemegang IUP, IPR, atau IUPK.

Penjelasan Pasal 140: Cukup jelas

Pasal 141

- (1) Pengawasan sebagaimana dimaksud dalam Pasal 140, antara lain, berupa:
 - a. teknis pertambangan;
 - b. pemasaran;
 - c. keuangan;
 - d. pengolahan data mineral dan batubara;
 - e. konservasi sumber daya mineral dan batubara;
 - f. keselamatan dan kesehatan kerja pertambangan;
 - g. keselamatan operasi pertambangan;
 - h. pengelolaan lingkungan hidup, reklamasi, dan pascatambang;
 - i. pemanfaatan barang, jasa, teknologi, dan kemampuan rekayasa dan

Article 140

- (1) The Minister shall exercise supervision for management of mining business conducted by the provincial governments and district/city governments within their authority.
- (2) The Minister may delegate the governors to exercise supervision for the authority of management in the field of mining exercised by district/city governments as intended by section (1).
- (3) The Minister, the governors, or the regents/mayors shall within their authority exercise supervision for mining business activities performed by Mining Permit holders, Small-Scale Mining Permit holders, or Special Mining Permit holders.

Elucidation of Article 140: Sufficiently clear

Article 141

- (1) Supervision as intended by Article 140, shall be in the form of, inter alia:
 - a. mining techniques;
 - b. marketing;
 - c. finance;
 - d. processing of data on minerals and coal;
 - e. conservation of mineral and coal resources;
 - f. mining occupational safety and health;
 - g. mining operation safety;
 - h. management of the environment, reclamations, and postmining;
 - i. utilization of goods, services, technology, and capability of

rancang bangun dalam negeri;

- j. pengembangan tenaga kerja teknis pertambangan;
- k. pengembangan dan pemberdayaan masyarakat setempat;
- l. penguasaan, pengembangan, dan penerapan teknologi pertambangan;
- m. kegiatan-kegiatan lain di bidang kegiatan usaha pertambangan yang menyangkut kepentingan umum;
- n. pengelolaan IUP atau IUPK; dan
- o. jumlah, jenis, dan mutu hasil usaha pertambangan.

(2) Pengawasan sebagaimana dimaksud pada ayat (1) huruf a, huruf e, huruf f, huruf g, huruf h, dan huruf l dilakukan oleh inspektur tambang sesuai dengan ketentuan peraturan perundang-undangan.

(3) Dalam hal pemerintah daerah provinsi atau pemerintah daerah kabupaten/kota belum mempunyai inspektur tambang, Menteri menugaskan inspektur tambang yang sudah diangkat untuk melaksanakan pembinaan dan pengawasan sebagaimana dimaksud pada ayat (2).

Penjelasan Pasal 141: Cukup jelas

Pasal 142

- (1) Gubernur dan bupati/walikota wajib melaporkan pelaksanaan usaha pertambangan di wilayahnya masing-masing sekurang-kurangnya sekali dalam 6 (enam) bulan kepada Menteri.
- (2) Pemerintah dapat memberi teguran kepada pemerintah daerah apabila dalam pelaksanaan kewenangannya tidak sesuai dengan ketentuan Undang-Undang ini dan ketentuan peraturan perundang-undangan lainnya.

Penjelasan Pasal 142: Cukup jelas

engineering and design and build;

- j. development of mining technical workers;
- k. development and empowerment of local community;
- l. mastery, development, and application of mineral technology;
- m. other activities in the field of mining business activities in which public interests are involved;
- n. management of Mining Permits or Special Mining Permits; and
- o. quantity, types, and quality of mining business products.

(2) Supervision as intended by section (1) point (a), point (e), point (f), point (g), point (h), and point (l) shall be exercised by mine inspectors under provisions of laws and regulations.

(3) Where the provincial governments or the district/city governments have not yet had mine inspectors, the Minister shall assign mine inspectors already appointed to set directions and exercise supervision as intended by section (2).

Elucidation of Article 141: Sufficiently clear

Article 142

- (1) The governors and the regents/mayors must report to the Minister the conduct of mining business in their respective regions every 6 (six) months as a minimum.
- (2) The government may issue the regional governments with a reprimand if their exercise of authority is other than in accordance with the provisions of this Law and other provisions of laws and regulation.

Elucidation of Article 142: Sufficiently clear

Pasal 143

- (1) Bupati/walikota melakukan pembinaan dan pengawasan terhadap usaha pertambangan rakyat.
- (2) Ketentuan lebih lanjut mengenai pembinaan dan pengawasan pertambangan rakyat diatur dengan peraturan daerah kabupaten/kota.

Penjelasan Pasal 143: Cukup jelas

Pasal 144

Ketentuan lebih lanjut mengenai standar dan prosedur pembinaan serta pengawasan sebagaimana dimaksud dalam Pasal 139, Pasal 140, Pasal 141, Pasal 142 dan Pasal 143 diatur dengan peraturan pemerintah.

Penjelasan Pasal 144: Cukup jelas

Bagian Kedua

Perlindungan Masyarakat

Pasal 145

- (1) Masyarakat yang terkena dampak negatif langsung dari kegiatan usaha pertambangan berhak:
 - a. memperoleh ganti rugi yang layak akibat kesalahan dalam pengusahaan kegiatan pertambangan sesuai dengan ketentuan peraturan perundang-undangan.
 - b. mengajukan gugatan kepada pengadilan terhadap kerugian akibat pengusahaan pertambangan yang menyalahi ketentuan.

Penjelasan Pasal 145 (1):

Yang dimaksud dengan masyarakat adalah mereka yang terkena dampak negatif langsung dari kegiatan usaha pertambangan.

- (2) Ketentuan mengenai perlindungan masyarakat sebagaimana dimaksud pada ayat (1) ditetapkan berdasarkan ketentuan peraturan perundang-undangan.

Article 143

- (1) The regents/mayors shall set directions and exercise supervision for small-scale mining business.
- (2) Ancillary provisions on directions and supervision of small-scale mining shall be governed by regulation of the district/city.

Elucidation of Article 143: Sufficiently clear

Article 144

Ancillary provisions on standards and procedures for directions as well as supervision as intended by Article 139, Article 140, Article 141, Article 142 and Article 143 shall be governed by regulation of the government.

Elucidation of Article 144: Sufficiently clear

Part Two

Public Protection

Article 145

- (1) The public directly affected by negative impacts of mining business activities shall have the right to:
 - a. recover reasonable damages resulting from faults in the conduct of mining business activities under provisions of laws and regulations.
 - b. file a claim with the court for damage resulting from the conduct of mining business that is other than in accordance with the requirements.

Elucidation of Article 145 (1):

"The public" means those that are directly affected by negative impacts of mining business activities.

- (2) Provisions on public protection as intended by section (1) shall be made under provisions of laws and regulations.

BAB XX

CHAPTER XX

PENELITIAN DAN PENGEMBANGAN SERTA
PENDIDIKAN DAN PELATIHAN

RESEARCH AND DEVELOPMENT AS WELL
AS EDUCATION AND TRAINING

Bagian Kesatu

Part One

Penelitian dan Pengembangan

Research and Development

Pasal 146

Article 146

Pemerintah dan pemerintah daerah wajib mendorong, melaksanakan, dan/atau memfasilitasi pelaksanaan penelitian dan pengembangan mineral dan batubara.

The government and regional governments must encourage, perform, and/or facilitate the conduct of research and development of minerals and coal.

Penjelasan Pasal 146: Cukup jelas

Elucidation of Article 146: Sufficiently clear

Bagian Kedua

Part Two

Pendidikan dan Pelatihan

Education and Training

Pasal 147

Article 147

Pemerintah dan pemerintah daerah wajib mendorong, melaksanakan, dan/atau memfasilitasi pelaksanaan pendidikan dan pelatihan di bidang perusahaan mineral dan batubara.

The government and regional governments must encourage, perform, and/or facilitate the conduct of education and training in the field of mineral and coal business.

Penjelasan Pasal 147: Cukup jelas

Elucidation of Article 147: Sufficiently clear

Pasal 148

Article 148

Penyelenggaraan pendidikan dan pelatihan dapat dilakukan oleh Pemerintah, pemerintah daerah, swasta, dan masyarakat.

Education and training may be conducted by the Government, regional governments, private sector, and the public.

Penjelasan Pasal 148: Cukup jelas

Elucidation of Article 148: Sufficiently clear

BAB XXI

CHAPTER XXI

PENYIDIKAN

INVESTIGATIONS

Pasal 149

Article 149

(1) Selain penyidik pejabat polisi Negara Republik Indonesia, pejabat pegawai negeri sipil yang lingkup tugas dan tanggung jawabnya di bidang pertambangan diberi wewenang khusus sebagai penyidik sesuai dengan ketentuan peraturan perundang-undangan.

(1) In addition to investigating officers of the State Police of the Republic of Indonesia, civil service officials with the scope of duties and responsibilities includes the field of mining shall be granted special authority as investigators under provisions of laws and regulations.

(2) Penyidik pegawai negeri sipil sebagaimana dimaksud pada ayat (1) berwenang:

(2) Civil servant investigators as intended by section (1) shall be authorized:

- a. melakukan pemeriksaan atas kebenaran laporan atau keterangan berkenaan dengan tindak pidana dalam kegiatan usaha pertambangan;
- b. melakukan pemeriksaan terhadap orang atau badan yang diduga melakukan tindak pidana dalam kegiatan usaha pertambangan;
- c. memanggil dan/atau mendatangkan secara paksa orang untuk didengar dan diperiksa sebagai saksi atau tersangka dalam perkara tindak pidana kegiatan usaha pertambangan;
- d. menggeledah tempat dan/atau sarana yang diduga digunakan untuk melakukan tindak pidana dalam kegiatan usaha pertambangan;
- e. melakukan pemeriksaan sarana dan prasarana kegiatan usaha pertambangan dan menghentikan penggunaan peralatan yang diduga digunakan untuk melakukan tindak pidana;
- f. menyegel dan/atau menyita alat kegiatan usaha pertambangan yang digunakan untuk melakukan tindak pidana sebagai alat bukti;
- g. mendatangkan dan/atau meminta bantuan tenaga ahli yang diperlukan dalam hubungannya dengan pemeriksaan perkara tindak pidana dalam kegiatan usaha pertambangan; dan/atau
- h. menghentikan penyidikan perkara tindak pidana dalam kegiatan usaha pertambangan.

Penjelasan Pasal 149: Cukup jelas

Pasal 150

- (1) Penyidik pegawai negeri sipil sebagaimana dimaksud dalam Pasal 149 dapat menangkap pelaku tindak pidana dalam kegiatan usaha pertambangan.
- (2) Penyidik pegawai negeri sipil sebagaimana

- a. to make examination of the truth of reports or information about criminal acts in mining business activities;
- b. to make examination of persons or entities that are suspected of perpetrating criminal acts in mining business activities;
- c. to forcibly call and/or procure persons to be heard and examined as witnesses or suspects in criminal cases in mining business activities;
- d. to search places and/or facilities that are suspected of being used to perpetrate criminal acts in mining business activities;
- e. to make examination of facilities and infrastructure of mining business activities and cease the use of equipment that is suspected of being used to perpetrate criminal acts;
- f. to seal and/or seize mining business activity instruments that are used to perpetrate criminal acts as means of proof;
- g. to procure and/or request experts' assistance required in connection with examination of criminal cases in mining business activities and/or
- h. to cease investigations into criminal cases in mining business activities.

Elucidation of Article 149: Sufficiently clear

Article 150

- (1) Civil servant investigators as intended by Article 149 may arrest perpetrators of mining business activities.
- (2) Civil servant investigators as intended by

dimaksud pada ayat (1) memberitahukan dimulai penyidikan dan menyerahkan hasil penyidikannya kepada pejabat polisi negara Republik Indonesia sesuai dengan ketentuan peraturan perundang-undangan.

- (3) Penyidik pegawai negeri sipil sebagaimana dimaksud pada ayat (1) wajib menghentikan penyidikannya dalam hal tidak terdapat cukup bukti dan/atau peristiwanya bukan merupakan tindak pidana.
- (4) Pelaksanaan kewenangan sebagaimana dimaksud pada ayat (2) dan ayat (3) dilakukan sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 150: Cukup jelas

BAB XXII
SANKSI ADMINISTRATIF

Pasal 151

- (1) Menteri, gubernur, atau bupati/walikota sesuai dengan kewenangannya berhak memberikan sanksi administratif kepada pemegang IUP, IPR atau IUPK atas pelanggaran ketentuan sebagaimana dimaksud dalam Pasal 40 ayat (3), Pasal 40 ayat (5), Pasal 41, Pasal 43, Pasal 70, Pasal 71 ayat (1), Pasal 74 ayat (4), Pasal 74 ayat (6), Pasal 81 ayat (1), Pasal 93 ayat (3), Pasal 95, Pasal 96, Pasal 97, Pasal 98, Pasal 99, Pasal 100, Pasal 102, Pasal 103, Pasal 105 ayat (3), Pasal 105 ayat (4), Pasal 107, Pasal 108 ayat (1), Pasal 110, Pasal 111 ayat (1), Pasal 112 ayat (1), Pasal 114 ayat (2), Pasal 115 ayat (2), Pasal 125 ayat (3), Pasal 126 ayat (1), Pasal 128 ayat (1), Pasal 129 ayat (1), atau Pasal 130 ayat (2).
- (2) Sanksi administratif sebagaimana dimaksud pada ayat (1) berupa:
 - a. peringatan tertulis;
 - b. penghentian sementara sebagian atau seluruh kegiatan eksplorasi atau operasi produksi; dan/atau

section (1) shall inform of the initiation of investigations and shall turn in the findings of investigations to investigating officers of the State Police of the Republic of Indonesia under provisions of laws and regulations.

- (3) Civil servant investigators as intended by section (1) must cease their investigations where no sufficient evidence is found and/or the occurrence of an event is not a criminal act.
- (4) Authority as intended by section (2) and section (3) shall be exercised under provisions of laws and regulations.

Elucidation of Article 150: Sufficiently clear

CHAPTER XXII
ADMINISTRATIVE SANCTIONS

Article 151

- (1) The Minister, the governors, or the regents/mayors shall within their authority have the authority to impose administrative sanctions against Mining Permit holders, Small-Scale Mining Permit holders or Special Mining Permit holders for violations of the provisions as intended by Article 40 section (3), Article 40 section (5), Article 41, Article 43, Article 70, Article 71 section (1), Article 74 section (4), Article 74 section (6), Article 81 section (1), Article 93 section (3), Article 95, Article 96, Article 97, Article 98, Article 99, Article 100, Article 102, Article 103, Article 105 section (3), Article 105 section (4), Article 107, Article 108 section (1), Article 110, Article 111 section (1), Article 112 section (1), Article 114 section (2), Article 115 section (2), Article 125 section (3), Article 126 section (1), Article 128 section (1), Article 129 section (1), or Article 130 section (2).
- (2) Administrative sanctions as intended by section (1) shall be in the form of:
 - a. written warnings;
 - b. suspension of part or all of the exploration or production operation activities; and/or

c. pencabutan IUP, IPR, atau IUPK.

Penjelasan Pasal 151: Cukup jelas

Pasal 152

Dalam hal pemerintah daerah tidak melaksanakan ketentuan sebagaimana dimaksud dalam Pasal 151 dan hasil evaluasi yang dilakukan oleh Menteri sebagaimana dimaksud dalam Pasal 6 ayat (1) huruf j, Menteri dapat menghentikan sementara dan/atau mencabut IUP atau IPR sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 152: Cukup jelas

Pasal 153

Dalam hal pemerintah daerah berkeberatan terhadap penghentian sementara dan/atau pencabutan IUP dan IPR oleh Menteri sebagaimana dimaksud dalam Pasal 152, pemerintah daerah dapat mengajukan keberatan sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 153: Cukup jelas

Pasal 154

Setiap sengketa yang muncul dalam pelaksanaan IUP, IPR, atau IUPK diselesaikan melalui pengadilan dan arbitrase dalam negeri sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 154: Cukup jelas

Pasal 155

Segala akibat hukum yang timbul karena penghentian sementara dan/atau pencabutan IUP, IPR atau IUPK sebagaimana dimaksud dalam Pasal 151 ayat (2) huruf b dan huruf c diselesaikan sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 155: Cukup jelas

c. revocation of Mining Permits, Small-Scale Mining Permits, or Special Mining Permits.

Elucidation of Article 151: Sufficiently clear

Article 152

Where the regional governments do not implement the provisions as intended by Article 151 and the results of evaluation made by the Minister as intended by Article 6 section (1) point (j), the Minister may suspend and/or revoke Mining Permits or Small-Scale Mining Permits under provisions of laws and regulations.

Elucidation of Article 152: Sufficiently clear

Article 153

Where the regional governments object to suspension and/or revocation of Mining Permits or Small-Scale Mining Permits by the Minister as intended by Article 152, the regional governments may file an objection under provisions of laws and regulations.

Elucidation of Article 153: Sufficiently clear

Article 154

Any dispute arising in the implementation of Mining Permits, Small-Scale Mining Permits, or Special Mining Permits shall be settled through the court and domestic arbitration under provisions of laws and regulations.

Elucidation of Article 154: Sufficiently clear

Article 155

Any legal consequence arising from suspension and/or revocation of Mining Permits, Small-Scale Mining Permits, or Special Mining Permits as intended by Article 151 section (2) point (b) and point (c) shall be dealt with under provisions of laws and regulations.

Elucidation of Article 155: Sufficiently clear

Pasal 156

Ketentuan lebih lanjut mengenai tata cara pelaksanaan sanksi administratif sebagaimana dimaksud dalam Pasal 151 dan Pasal 152 diatur dengan peraturan pemerintah.

Penjelasan Pasal 156: Cukup jelas

Pasal 157

Pemerintah daerah yang tidak memenuhi ketentuan sebagaimana dimaksud dalam Pasal 5 ayat (4) dikenai sanksi administratif berupa penarikan sementara kewenangan atas hak pengelolaan usaha pertambangan mineral dan batubara.

Penjelasan Pasal 157: Cukup jelas

BAB XXIII

KETENTUAN PIDANA

Pasal 158

Setiap orang yang melakukan usaha penambangan tanpa IUP, IPR atau IUPK sebagaimana dimaksud dalam Pasal 37, Pasal 40 ayat (3), Pasal 48, Pasal 67 ayat (1), Pasal 74 ayat (1) atau ayat (5) dipidana dengan pidana penjara paling lama 10 (sepuluh) tahun dan denda paling banyak Rp10.000.000.000,00 (sepuluh miliar rupiah).

Penjelasan Pasal 158: Cukup jelas

Pasal 159

Pemegang IUP, IPR atau IUPK yang dengan sengaja menyampaikan laporan sebagaimana dimaksud dalam Pasal 43 ayat (1), Pasal 70 huruf e, Pasal 81 ayat (1), Pasal 105 ayat (4), Pasal 110, atau Pasal 111 ayat (1) dengan tidak benar atau menyampaikan keterangan palsu dipidana dengan pidana penjara paling lama 10 (sepuluh) tahun dan denda paling banyak Rp10.000.000.000,00 (sepuluh miliar rupiah).

Penjelasan Pasal 159: Cukup jelas

Article 156

Ancillary provisions on procedures for administrative sanctions as intended by Article 151 and Article 152 shall be governed by regulation of the government.

Elucidation of Article 156: Sufficiently clear

Article 157

The regional governments that fail to meet the provisions as intended by Article 5 section (4) shall be subject to administrative sanctions by suspension of their authority over mineral and coal mining business concessions.

Elucidation of Article 157: Sufficiently clear

CHAPTER XXIII

PENAL PROVISIONS

Article 158

Any person who conducts any mine business without Mining Permits, Small-Scale Mining Permits or Special Mining Permits as intended by Article 37, Article 40 section (3), Article 48, Article 67 section (1), Article 74 section (1) or section (5) shall be sentenced to imprisonment of at most 10 (ten) years and a fine of at most Rp10,000,000,000.00 (ten billion rupiah).

Elucidation of Article 158: Sufficiently clear

Article 159

Mining Permit holders, Small-Scale Mining Permit holders or Special Mining Permit holders that knowingly submit untrue reports as intended by Article 43 section (1), Article 70 point (e), Article 81 section (1), Article 105 section (4), Article 110, or Article 111 section (1), or to make false representations shall be sentenced to imprisonment of at most 10 (ten) years and a fine of at most Rp10,000,000,000.00 (ten billion rupiah).

Elucidation of Article 159: Sufficiently clear

Pasal 160

- (1) Setiap orang yang melakukan eksplorasi tanpa memiliki IUP atau IUPK sebagaimana dimaksud dalam Pasal 37 atau Pasal 74 ayat (1) dipidana dengan pidana kurungan paling lama 1 (satu) tahun atau denda paling banyak Rp200.000.000,00 (dua ratus juta rupiah).
- (2) Setiap orang yang mempunyai IUP Eksplorasi tetapi melakukan kegiatan operasi produksi dipidana dengan pidana penjara paling lama 5 (lima) tahun dan denda paling banyak Rp10.000.000.000,00 (sepuluh miliar rupiah).

Penjelasan Pasal 160: Cukup jelas

Pasal 161

Setiap orang atau pemegang IUP Operasi Produksi atau IUPK Operasi Produksi yang menampung, memanfaatkan, melakukan pengolahan dan pemurnian, pengangkutan, penjualan mineral dan batubara yang bukan dari pemegang IUP, IUPK, atau izin sebagaimana dimaksud dalam Pasal 37, Pasal 40 ayat (3), Pasal 43 ayat (2), Pasal 48, Pasal 67 ayat (1), Pasal 74 ayat (1), Pasal 81 ayat (2), Pasal 103 ayat (2), Pasal 104 ayat (3), atau Pasal 105 ayat (1) dipidana dengan pidana penjara paling lama 10 (sepuluh) tahun dan denda paling banyak Rp10.000.000.000,00 (sepuluh miliar rupiah).

Penjelasan Pasal 161: Cukup jelas

Pasal 162

Setiap orang yang merintangikan atau mengganggu kegiatan usaha pertambangan dari pemegang IUP atau IUPK yang telah memenuhi syarat-syarat sebagaimana dimaksud dalam Pasal 136 ayat (2) dipidana dengan pidana kurungan paling lama 1 (satu) tahun atau denda paling banyak Rp100.000.000,00 (seratus juta rupiah).

Penjelasan Pasal 162: Cukup jelas

Article 160

- (1) Any person who conducts exploration without Mining Permits or Special Mining Permit as intended by Article 37 or Article 74 section (1) shall be sentenced to imprisonment of at most 1 (one) year or a fine of at most Rp200,000,000.00 (two hundred million rupiah).
- (2) Any person who holds Exploration Mining Permits while performing production operation activities shall be sentenced to imprisonment of at most 5 (five) years and a fine of at most Rp10.000.000.000,00 (ten billion rupiah).

Elucidation of Article 160: Sufficiently clear

Article 161

Any person or Production Operation Mining Permit holder or Production Operation Special Mining Permit holder that collects, utilizes, processes and refines/smelts, hauls, sells minerals and coal that are not from Mining Permit holders, Special Mining Permit holders, or permits as intended by Article 37, Article 40 section (3), Article 43 section (2), Article 48, Article 67 section (1), Article 74 section (1), Article 81 section (2), Article 103 section (2), Article 104 section (3), or Article 105 section (1) shall be sentenced to imprisonment of at most 10 (ten) years and a fine of at most Rp10,000,000,000.00 (ten billion rupiah).

Elucidation of Article 161: Sufficiently clear

Article 162

Any person who prevents or disrupts any mining business activities of the eligible Mining Permit holders or Special Mining Permit holders as intended by Article 136 section (2) shall be sentenced to imprisonment of at most 1 (one) year or a fine of at most Rp100.000.000,00 (one hundred million rupiah).

Elucidation of Article 162: Sufficiently clear

Pasal 163

- (1) Dalam hal tindak pidana sebagaimana dimaksud dalam bab ini dilakukan oleh suatu badan hukum, selain pidana penjara dan denda terhadap pengurusnya, pidana yang dapat dijatuhkan terhadap badan hukum tersebut berupa pidana denda dengan pemberatan ditambah 1/3 (satu per tiga) kali dari ketentuan maksimum pidana denda yang dijatuhkan.
- (2) Selain pidana denda sebagaimana dimaksud pada ayat (1), badan hukum dapat dijatuhi pidana tambahan berupa:
- pencabutan izin usaha; dan/atau
 - pencabutan status badan hukum.

Penjelasan Pasal 163: Cukup jelas

Pasal 164

Selain ketentuan sebagaimana dimaksud dalam Pasal 158, Pasal 159, Pasal 160, Pasal 161, dan Pasal 162 kepada pelaku tindak pidana dapat dikenai pidana tambahan berupa:

- perampasan barang yang digunakan dalam melakukan tindak pidana;
- perampasan keuntungan yang diperoleh dari tindak pidana; dan/ atau
- kewajiban membayar biaya yang timbul akibat tindak pidana.

Penjelasan Pasal 164: Cukup jelas

Pasal 165

Setiap orang yang mengeluarkan IUP, IPR atau IUPK yang bertentangan dengan Undang-Undang ini dan menyalahgunakan kewenangannya diberi sanksi pidana paling lama 2 (dua) tahun penjara dan denda paling banyak Rp200.000.000,00 (dua ratus juta rupiah).

Penjelasan Pasal 165:

Yang dimaksud dengan setiap orang adalah pejabat yang

Article 163

- (1) Where criminal acts as intended by this chapter are perpetrated by a legal entity, in addition to imprisonment and fine for its management, a sentence that may be inflicted on such a legal entity shall be in the form of a fine with an increase in the sentence by 1/3 (one third) of the maximum fine inflicted.
- (2) In addition to sentence to a fine as intended by section (1), a legal entity may be subject to an additional sentence in the form of:
- revocation of business permits; and/or
 - revocation of the status of legal entity.

Elucidation of Article 163: Sufficiently clear

Article 164

In addition to the provisions as intended by Article 158, Article 159, Article 160, Article 161, and Article 162, perpetrators may be subject to an additional sentence in the form of:

- seizure of goods that are used in the perpetration of criminal acts;
- seizure of proceeds that are reaped from criminal acts; and/or
- obligations to pay costs incurred resulting from criminal acts.

Elucidation of Article 164: Sufficiently clear

Article 165

Any person who issues Mining Permits, Small-Scale Mining Permits or Special Mining Permits against this Law, and abuses his/her authority shall be subject to criminal sanctions involving imprisonment of at most 2 (two) years and a fine of at most Rp200.000.000,00 (two hundred million rupiah).

Elucidation of Article 165:

"Any person" means any official by whom Mining Permits, Small-Scale Mining Permits, or Special Mining

menerbitkan IUP, IPR, atau IUPK.

BAB XXIV
KETENTUAN LAIN-LAIN
Pasal 166

Setiap masalah yang timbul terhadap pelaksanaan IUP, IPR, atau IUPK yang berkaitan dengan dampak lingkungan diselesaikan sesuai dengan ketentuan peraturan perundang-undangan.

Penjelasan Pasal 166: Cukup jelas

Pasal 167

WP dikelola oleh Menteri dalam suatu sistem informasi WP yang terintegrasi secara nasional untuk melakukan penyeragaman mengenai sistem koordinat dan peta dasar dalam penerbitan WUP, WIUP, WPR, WPN, WUPK, dan WIUPK.

Penjelasan Pasal 167: Cukup jelas

Pasal 168

Untuk meningkatkan investasi di bidang pertambangan, Pemerintah dapat memberikan keringanan dan fasilitas perpajakan sesuai dengan ketentuan peraturan perundang-undangan kecuali ditentukan lain dalam IUP atau IUPK.

Penjelasan Pasal 168: Cukup jelas

BAB XXV
KETENTUAN PERALIHAN
Pasal 169

Pada saat Undang-Undang ini mulai berlaku:

- a. Kontrak karya dan perjanjian karya perusahaan pertambangan batubara yang telah ada sebelum berlakunya Undang-Undang ini tetap diberlakukan sampai jangka waktu berakhirnya kontrak/perjanjian.

Penjelasan Pasal 169 (a): Cukup jelas

Permits are issued.

CHAPTER XXIV
MISCELLANEOUS PROVISIONS
Article 166

Any problem arising in the implementation of Mining Permits, Small-Scale Mining Permits, or Special Mining Permits in connection with environmental impacts shall be settled under provisions of laws and regulations.

Elucidation of Article 166: Sufficiently clear

Article 167

Mining Zones shall be managed by the Minister within a nationally-integrated Mining Zone information system in order to maintain uniformity of the coordinate and base map system in issuing Mining Areas, Mining Permit Areas, Small-Scale Mining Areas, State Reserve Areas, Special Mining Areas, and Special Mining Permit Areas in Special Mining Areas.

Elucidation of Article 167: Sufficiently clear

Article 168

To increase investments in the field of mines, the Government may grant tax relief and facilities under provisions of laws and regulations unless provided otherwise by Mining Permits or Special Mining Permits.

Elucidation of Article 168: Sufficiently clear

CHAPTER XXV
TRANSITIONAL PROVISIONS
Article 169

Upon effectiveness of this Law:

- a. Contracts of works and coal contracts of works already in existence prior to the effectiveness of this Law shall remain valid until the contracts/agreements expire.

Elucidation of Article 169 (a): Sufficiently clear

- b. Ketentuan yang tercantum dalam pasal kontrak karya dan perjanjian karya perusahaan pertambangan batubara sebagaimana dimaksud pada huruf a disesuaikan selambat-lambatnya 1 (satu) tahun sejak Undang-Undang ini diundangkan kecuali mengenai penerimaan negara.

Penjelasan Pasal 169 (b):

Semua pasal yang terkandung dalam kontrak karya dan perjanjian karya perusahaan pertambangan batubara harus disesuaikan dengan Undang-Undang.

- c. Pengecualian terhadap penerimaan negara sebagaimana dimaksud pada huruf b adalah upaya peningkatan penerimaan negara.

Penjelasan Pasal 169 (c): Cukup jelas

Pasal 170

Pemegang kontrak karya sebagaimana dimaksud dalam Pasal 169 yang sudah memproduksi wajib melakukan pemurnian sebagaimana dimaksud dalam Pasal 103 ayat (1) selambat-lambatnya 5 (lima) tahun sejak Undang-Undang ini diundangkan.

Penjelasan Pasal 170: Cukup jelas

Pasal 171

- (1) Pemegang kontrak karya dan perjanjian karya perusahaan pertambangan batubara sebagaimana dimaksud dalam Pasal 169 yang telah melakukan tahapan kegiatan eksplorasi, studi kelayakan, konstruksi, atau operasi produksi paling lambat 1 (satu) tahun sejak berlakunya Undang-Undang ini harus menyampaikan rencana kegiatan pada seluruh wilayah kontrak/perjanjian sampai dengan jangka waktu berakhirnya kontrak/perjanjian untuk mendapatkan persetujuan pemerintah.
- (2) Dalam hal ketentuan sebagaimana dimaksud pada ayat (1) tidak terpenuhi, luas wilayah pertambangan yang telah diberikan kepada pemegang kontrak karya dan perjanjian karya perusahaan pertambangan batubara disesuaikan dengan Undang-Undang ini.

Penjelasan Pasal 171: Cukup jelas

- b. The terms that are stated by articles of Contracts of works and coal contracts of works as intended by point (a) shall be adjusted at the latest 1 (one) year of the promulgation of this Law, with the exception of state revenues.

Elucidation of Article 169 (b):

All of the articles that are contained in contracts of works and coal contracts of works are subject to adjustment to the Law.

- c. Exception of state revenues as intended by point (b) shall be an effort to increase state revenues.

Elucidation of Article 169 (c): Sufficiently clear

Article 170

Holders of contracts of works as intended by Article 169 already in production must conduct refining/smelting as intended by Article 103 section (1) at the latest 5 (five) years of the promulgation of this Law.

Elucidation of Article 170: Sufficiently clear

Article 171

- (1) Holders of contracts of works and coal contracts of works as intended by Article 169 that already undertakes stages of explorations, feasibility studies, construction, or production operations at the latest 1 (one) year of the effectiveness of this Law must submit activity plans of all contract/agreement areas until the contracts/agreements expire for obtainment of government approval.
- (2) Failure to meet the provisions as intended by section (1) shall cause the size of mining areas having been authorized to the holders of contracts of works and coal contracts of works to be adjusted to this Law.

Elucidation of Article 171: Sufficiently clear

Pasal 172

Permohonan kontrak karya dan perjanjian karya perusahaan pertambangan batubara yang telah diajukan kepada Menteri paling lambat 1 (satu) tahun sebelum berlakunya Undang-Undang ini dan sudah mendapatkan surat persetujuan prinsip atau surat izin penyelidikan pendahuluan tetap dihormati dan dapat diproses perizinannya tanpa melalui lelang berdasarkan Undang-Undang ini.

Penjelasan Pasal 172: Cukup jelas

BAB XXVI

KETENTUAN PENUTUP

Pasal 173

- (1) Pada saat Undang-Undang ini mulai berlaku, Undang-Undang Nomor 11 Tahun 1967 tentang Ketentuan-Ketentuan Pokok Pertambangan (Lembaran Negara Republik Indonesia Tahun 1967 Nomor 22, Tambahan Lembaran Negara Republik Indonesia Nomor 2831) dicabut dan dinyatakan tidak berlaku.
- (2) Pada saat Undang-Undang ini mulai berlaku, semua Peraturan Perundang-undangan yang merupakan peraturan pelaksanaan dari Undang-Undang Nomor 11 Tahun 1967 tentang Ketentuan-Ketentuan Pokok Pertambangan (Lembaran Negara Republik Indonesia Tahun 1967 Nomor 22, Tambahan Lembaran Negara Republik Indonesia Nomor 2831) dinyatakan masih tetap berlaku sepanjang tidak bertentangan dengan ketentuan dalam Undang-Undang ini.

Penjelasan Pasal 173: Cukup jelas

Pasal 174

Peraturan pelaksanaan Undang-Undang ini harus telah ditetapkan dalam waktu 1 (satu) tahun sejak Undang-Undang ini diundangkan.

Penjelasan Pasal 174: Cukup jelas

Article 172

Applications for contracts of works and coal contracts of works already filed with the Minister within at most 1 (one) year prior to the effectiveness of this Law and already obtain principle approvals or preliminary survey permits shall remain upheld, and their permits therefor may be processed without bids under this Law.

Elucidation of Article 172: Sufficiently clear

CHAPTER XXVI

CONCLUDING PROVISIONS

Article 173

- (1) Upon effectiveness of this Law, Law Number 11 of 1967 concerning Basic Provisions of Mining (State Gazette of the Republic of Indonesia Number 22 of 1967, Supplement to State Gazette of the Republic of Indonesia Number 2831) shall be revoked and declared to no longer valid.
- (2) Upon effectiveness of this Law, all laws and regulations that are ancillary to Law Number 11 of 1967 concerning Basic Provisions of Mining (State Gazette of the Republic of Indonesia Number 22 of 1967, Supplement to State Gazette of the Republic of Indonesia Number 2831) shall be declared to remain valid to the extent not against the provisions of this Law.

Elucidation of Article 173: Sufficiently clear

Article 174

Regulations that are ancillary to this Law must have been issued within 1 (one) year of the promulgation of this Law.

Elucidation of Article 174: Sufficiently clear

Pasal 175

Undang-Undang ini mulai berlaku pada tanggal diundangkan.

Agar setiap orang mengetahuinya, memerintahkan pengundangan Undang-Undang ini dengan penempatannya dalam Lembaran Negara Republik Indonesia.

Penjelasan Pasal 175: Cukup jelas

Disahkan di Jakarta
pada tanggal 12 Januari 2009
PRESIDEN REPUBLIK INDONESIA,
Ttd.
DR. H. SUSILO BAMBANG YUDHOYONO

Diundangkan di Jakarta
pada tanggal 12 Januari 2009
MENTERI HUKUM DAN HAK ASASI MANUSIA
REPUBLIK INDONESIA,
Ttd.
ANDI MATTALATTA

LEMBARAN NEGARA REPUBLIK INDONESIA
TAHUN 2009 NOMOR 4

TAMBAHAN LEMBARAN NEGARA REPUBLIK
INDONESIA NOMOR 4959

Article 175

This Law shall take effect from the date of its promulgation.

In order that every person may know of it, the promulgation of this Law is ordered by placement in the State Gazette of the Republic of Indonesia.

Elucidation of Article 175: Sufficiently clear

Ratified in Jakarta
on January 12, 2009
PRESIDENT OF THE REPUBLIC OF INDONESIA,
Sgd.
DR. H. SUSILO BAMBANG YUDHOYONO

Promulgated in Jakarta
on January 12, 2009
MINISTER OF LAW AND HUMAN RIGHTS OF
THE REPUBLIC OF INDONESIA,
Sgd.
ANDI MATTALATTA

STATE GAZETTE OF THE REPUBLIC OF
INDONESIA NUMBER 4 OF 2009

SUPPLEMENT TO STATE GAZETTE OF THE
REPUBLIC OF INDONESIA NUMBER 4959

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