

Key Updates in Mineral and Coal Mining Regulations and the surrounding controversy

To provide more certainty and transparency for business actors in the mineral and coal sector, the government recently issued Government Regulation No. 25 of 2024 on Amendments to Government Regulation No. 96 of 2021 on the Implementation of Mineral and Coal Mining Business Activities ("**GR 25/2024**"), which took effect as of 30 May 2024.

Separately, the government also recently issued new regulations concerning export restriction policies related to mining products, through Minister of Trade Regulation No. 10 of 2024, which amends Minister of Trade Regulation No. 22 of 2023 on Prohibited Export Goods ("**MOTR 10/2024**") which took effect as of 1 June 2024, and Minister of Trade Regulation No. 11 of 2024, which amends Minister of Trade Regulation No. 23 of 2023 on Export Policy and Regulations ("**MOTR 11/2024**") which took effect as of 1 June 2024.

Below are our highlights on some of the noteworthy updates.

Special Mining Business License Area (*Wilayah Izin Usaha Pertambangan Khusus*) Offer to Business Entities Owned by Religious Community Organizations

GR 25/2024 introduces a new breakthrough by prioritizing the offering of Special Mining Business License Area (*Wilayah Izin Usaha Pertambangan Khusus* or "**WIUPK**") to religious community organizations¹. Previously, under GR 96/2021², WIUPK was primarily offered to State-Owned Enterprises (*Badan Usaha Milik Negara* or "**BUMN**") and Regional Government-Owned Enterprises (*Badan Usaha Milik Daerah* or "**BUMD**"). With this change, the government intends to enhance community welfare by providing equal opportunities in the management of natural resources.

WIUPK can be prioritized for offering to business entities owned by religious community organizations, with conditions including the following³:

- The religious community organizations hold a majority share and maintain control of the business;
- the ownership of shares by religious community organizations in such business entities cannot be transferred or assigned without the approval from the Minister of Energy and Mineral Resources; and
- any business entity owned by a religious community organization is prohibited from collaborating with previous holders of Coal Contract of Work (*Perjanjian Karya Pengusahaan Pertambangan Batubara* or "**PKP2B**") or their affiliates.

¹ Article 83A of GR 25/2024

² Article 75 (3) of GR 96/2021

³ Article 83A (1), (3) and (4) of GR 25/2024

In this case, the WIUPK offered will prioritize areas previously under the PKP2B scheme. The prioritized offering of WIUPK as outlined in this regulation is valid for a period of 5 (five) years from the enactment of GR 25/2024.

However, the offering of WIUPK to religious community organizations, has garnered widespread public criticism, urging the government to promptly revoke the policy. Granting WIUPK in this manner raises questions regarding the demand for professionalism in mining management. Many parties question the expertise or experience of religious community organizations in the mining sector.

Furthermore, the public perceives that several changes in GR 25/2024 contradict the Law No. 4 of 2009 on Mineral and Coal Mining as amended by Law No. 3 of 2020 (“**Mineral and Coal Mining Law**”), as the law does not stipulate granting WIUPK priority rights to religious community organizations. The mechanism for prioritizing WIUPK allocation is also under scrutiny, raising concerns about its implementation. However, the government asserts that the implementation of granting WIUPK to religious community organizations will be conducted in a competent and professional manner, free from conflicts of interest.

A more relaxed requirement to secure license extension for a Production Operation integrated with minerals processing and/or refining or coal development and/or utilization

License validity extension for Production Operation activities that are integrated with minerals processing and/or refining or coal development and/or utilization, which previously can only be granted to an entity holding an *Izin Usaha Pertambangan* or “IUP”; now can also be granted to a non-IUP holder entity that is at least 30% (thirty percent) directly or indirectly owned by an IUP holder and cannot be diluted⁴.

The Annual Work Plan and Budget (*Rencana Kerja dan Anggaran Biaya Tahunan* or “*RKAB Tahunan*”) is now changed to Work Plan and Budget (“*RKAB*”)

GR 25/2024 has now replaced the *RKAB Tahunan* to simply *RKAB* in several provisions in GR 25/2024, which aligns with the provisions of the Minister of Energy and Mineral Resources Regulation No. 10 of 2023. *RKAB*’s validity periods are categorized into the following:

- a one-year *RKAB* validity for mining business permit holders in the Exploration stage; and
- a three-year *RKAB* validity for mining business permit holders in the Production Operation stage.

Mining License extension now also applicable for State-Owned Enterprises' Subsidiaries

⁴ Article 56 (1) and 111 (1) of GR 25/2024

Previously under GR 96/2021, the extension of the production operation stage for Mining Business Permits and Special Mining Business Permits could be extended for 10 (ten) years only for State-Owned Enterprises holding mining business permits⁵. GR 25/2024 now allows the extension of such permits to also be granted to subsidiaries of State-Owned Enterprises.

Production Operation IUPK now constitutes as IUPK for Continuation of Operation Contract/Agreement

Previously states that the IUPK for Production Operation that has been issued remains valid until its expiration date⁶. GR 25/2024 now further clarifies that the IUPK for Production Operation constitutes as IUPK for Continuation of Operation Contract/Agreement.

Such existing IUPK for Production Operation which is a transformation of the Contract of Work (*Kontrak Karya*) prior to the enactment of the Mineral and Coal Mining Law, must meet the following criteria to be eligible for an extension⁷:

- Possessing integrated domestic minerals processing and/or refining facilities;
- Availability of reserves to meet the operational needs of the minerals processing and/or refining facilities;
- At least 51% (fifty-one percent) of shares are owned by Indonesian participants;
- Having entered into a new share purchase agreement, with at least 10% (ten percent) of the total share ownership being non-dilutable and owned by a State-Owned Enterprise;
- Considering efforts to increase state revenue; and
- Having a commitment to new investments, at a minimum in the form of further exploration activities; and increasing the capacity of refining facilities which have been approved by the Minister of Energy and Mineral Resources.

The application for extension must be submitted to the Minister of Energy and Mineral Resources at least 1 (one) year before the Production Operation period expires. It should be noted that the application for the extension of the IUPK for Production Operation will be approved by the Minister of Energy and Mineral Resources based on the evaluation of the abovementioned criteria. The extension will be granted as long as the reserves are available and will be subject to evaluation every 10 (ten) years.

Export Ban on Certain Mining Products (other than those exempted) Extended For an Unspecified Period of Time.

MOTR 10/2024 and MOTR 11/2024 have further extended the export ban period for several mining products or goods stipulated under the Minister of Trade Regulation No. 22 of 2023 on Prohibited Export Goods (“**MOTR 22/2023**”) and Minister of Trade Regulation No. 23 of 2023 on Export Policy and Regulations (“**MOTR 23/2023**”). Which such export ban was

⁵ Article 54 (3) and Article 109 (3) of GR 96/2021

⁶ Article 195 of GR 96/2021

⁷ Article 195B (1) of GR 25/2024

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originally to start at 31st of May 2024 has now been amended to continue to be in force from 1st of January 2025 onwards for an unspecified period of time.

The said mining products or goods are as follows:

- a. Nickel iron ore concentrate (guttit, hematite, magnetite) with $\geq 50\%$ Fe (iron) and $\geq 10\%$ (Al₂O₃+SiO₂);
- b. Copper concentrate with $\geq 15\%$ Cu (copper);
- c. Lead concentrate with $\geq 56\%$ Pb (lead);
- d. Zinc concentrate with $\geq 51\%$ Zn (zinc); and
- e. Anode slime,

However, those products or goods can be exempted from the restriction, provided that those are exported for following purposes⁸:

- For research and development purposes;
- For re-export to the country of origin due to being imported raw materials that do not meet the desired specifications and/or are not fully utilized by the importer;
- For the export of industrial products where the main raw materials are imported;
- For the export of service products in the field of radiation and radioactive substances, which are categorized as mining products (specifically stones) and are entirely imported to the country of origin of the exporting goods.

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⁸ Article 49 (2) of MOTR 23/2023