

## Memo on Law No. 4 of 2009 on Mineral and Coal Mining

### **Background**

Formerly, mining was regulated with Law No. 11 of 1967 on Basic Regulation on Mining (“Law No. 11 of 1967”). But with the highly development of mining, nationally and internationally, Law No. 11 of 1967 is no longer suitable with the conditions nowadays. That is why there is the need for changes of regulation on mineral and coal mining which could manage and utilize the potential of mineral and coal in Indonesia and could ensure a continuous national development accordingly.

In January 2009 the government stipulated a new regulation on mining. It is Law No. 4 of 2009 on Mineral and Coal Mining (“Law No. 4 of 2009”). This Law is changing the use of *Kuasa Pertambangan* into Mining Business License (*Izin Usaha Pertambangan*) (“IUP”).

### **Mining in General**

Definition of mining according to Law No. 4 of 2009 is some or all stages of activities in the event of research, management and utilization of mineral or coal which include general investigation, exploration, feasibility study, construction, mining, utilization and purification, transportation and sales, and also after mining activities. The activity to utilize mineral or coal is called mining business.

Mining Business is categorized in two, Mineral Mining and Coal Mining and there are three form of Mining Business which are, (i) Mining Business License (*Izin Usaha Pertambangan*), license to do mining business; (ii) Public Mining License (*Izin Pertambangan Rakyat*) (“IPR”), license to do mining business in the area of public mining area and with limited area width and investment; and (iii) Special Mining Business License (*Izin Usaha Pertambangan Khusus*) (“IUPK”), license to do mining business in the area of Special Mining Business License.

### **Coal Mining**

Definition of coal in the Law No. 4 of 2009 is sediment of organic compound formed naturally from the remaining of plants.

### **Types of IUP**

IUP consists of two stages:

- a. Exploration IUP, including activities of general investigation, exploration, and feasibility study;

- b. Production Operation *IUP*, including activities of construction, mining, utilization and purification, and also transportation and sales.

Every Exploration *IUP* holder is guaranteed to get Operation Production *IUP* as a continuation of mining activities. *IUP* is given to (i) business entity; (ii) cooperation; and (iii) individual and for one type of mineral or coal only. For business entity who wants to sell dug out mineral and/or coal but is not in the area of mining business, shall, beforehand, obtains a Production Operation License to sell.

### Transfer of *IUP* and *IUPK*

*IUP* and *IUPK* holder (the “License Holder”) cannot transfer their *IUP* and *IUPK* to another party. Meanwhile, to transfer ownership and/or share in Stock Exchange in Indonesia, it can only be done after a specific stage of exploration activities has been done. To transfer ownership and/or share, the holder shall inform the minister, governor, or regent/mayor (the “Authorities”) suitable with the authorities and the transfer itself is not in conflict with the applicable regulations.

### Time Period

Every kind of mineral or stone or coal is given a different time period for its License. The period of time for Exploration License for coal mining is 7 (seven) years. Meanwhile, the period of time for Operation Production License for coal mining is 20 (twenty) years and can be extended twice each for a period of 10 (ten) years. In the event of such time is expired and the License Holder does not apply for an upgrade or extension or has submitted an application for extension but does not meet the conditions then the License is terminated.

### Termination of *IUP* and *IUPK*

*IUP* and *IUPK* will terminate by the following reason, (i) returned; (ii) revoked; or (iii) expired. License Holder can return their *IUP* or *IUPK* by giving a written statement to the Authorities with full and detail explanation of the reason. *IUP* and *IUPK* can also be revoked by the Authorities if (i) the License Holder did not fulfil their obligations as stipulated in the *IUP* or *IUPK* and regulations; (ii) the License Holder committed violation as referred in this Law; or (iii) the License Holder is declared bankrupt.

### Taxes

Operation Production License Holder shall pay to the government 4% (four percent) and to the local government 6% (six percent) of the total net income since the production is started.

### Refining

License Holder shall increase the value of the dug out mineral and/or coal in the activity of mining, processing and refining, and also the utilization of mineral and coal. License Holder

shall conduct the processing and refining of the mine results in the country. License Holder is allowed to process and refine mine results from other License Holders.

### The Use of Local Service

License Holder shall use the service of local and/or national mining service company to do all sorts of mining activities such as, general investigation, exploration, feasibility study, mining construction, transportation and many more. In the event of the License Holder is using a Mining Service's help, the responsibility for the activities of mining business lies on the License Holder.

### Divestation of Shares

After 5 (five) years of production, legal entity whose shares is owned by foreigners, must divest the shares to the Government, local government, state company, local company, or national public company.

### Types of Mining Area

Mining Area (*Wilayah Pertambangan*) ("WP") is areas with mineral and coal potentials and not bound by the limits of government administration which is a part of the national spatial. There are 3 (three) kinds of WP, (i) The Area for Mining Business License (*Wilayah Izin Usaha Pertambangan*) ("WIUP"); (ii) The Area for Public Mining (*Wilayah Pertambangan Rakyat*) ("WPR"); and (iii) The Area for State Reserve (*Wilayah Pencadangan Negara*) ("WPN"). WIUP is a mining area given to the holder of IUP.

Right over WIUP, WPR, or WIUPK does not include right over land. Exploration License shall have an agreement with the holder of right over land prior to do the activities. Right over IUP, IPR, or IUPK is not a right to own land.

WIUP for coal is given to business entity, cooperation and person through tender. The License Holder for coal exploration is given WIUP at least 5.000 (five thousand) hectare and maximum of 50.000 (fifty thousand) hectare. As for the License Holder for operation is given maximum of 15.000 (fifteen thousand) hectare.

### Dispute Settlement

Every dispute arises from the implementation of IUP, IPR, or IUPK (the "License") is settled through national court and/or arbitration in accordance with the applicable regulations.

### Sanctions

There are two kinds of sanctions in this law. Administrative sanction and criminal sanction.

The administrative sanction is given by the Authorities to the License Holder for the violation against Law No. 4 of 2009. The administrative sanction is as follows:

- a. Written warning;
- b. A temporary halt, partly or wholly, of the exploration or production operation; and/or
- c. Revoked of *IUP*, *IPR*, or *IUPK*.

As for the criminal penalty is differ, depends on the committed violation. One of the example, anybody who does mining activity without *IUP*, *IPR* or *IUPK* is convicted with imprisonment for maximum 10 (ten) years and fine penalty with maximum Rp.10.000.000.000 (ten billion rupiah).

## **Transitional Provision**

This Law No. 4 of 2009 also regulated the transition from the former mining law in some aspect. By the times the Law No. 4 of 2009 is stipulated, every existing *Kontrak Karya* (“*KK*”) and *Perjanjian Karya Pengusahaan Pertambangan Batubara* (“*PKP2B*”) remain in force until the expiration date of it. The provisions contained in such *KK* and *PKP2B* shall be modified in accordance with this Law No. 4 of 2009 at the latest one year after the enactment date. As for the application for *KK* and *PKP2B* that have been submitted to the minister at least 1 (one) year before the enforcement date of this Law and have got the principle approval letter or preliminary investigation permit letter remain in respect and can be processed without tender according to this Law.