

Important Implementing Regulation of the Mining Law: Government Regulation No. 23 of 2010

October 2010 - [Litigation & Dispute Resolution](#). Legal Developments by [Lubis Ganie Surowidjojo](#).

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On 1 February 2010, Government Regulation No. 23 of 2010 on the Implementation of Mineral and Coal Mining Business Activities ("PP 23/2010") was enacted.

The enactment of this implementing regulation is an indication of the Indonesian government's commitment to developing investment in the mining business. PP 23/2010 is one of the implementing regulations that contain further stipulations in regards to Law No. 4 of 2009 on Mining ("Mining Law").

PP 23/2010 sets out more detailed provisions with regards to:

- a. classification of mining commodities;
- b. procedure for the issuance of Mining Business Permits (IUP);
- c. procedure for the issuance of Mining Business Permit Areas (WIUP);
- d. administrative, technical, environment, and financial requirements to obtain an IUP;
- e. compulsory reports that have to be submitted by the holder of an IUP; and
- f. divestment of shares.

PP 23/2010 stipulates that mining commodities are classified into five different categories, namely: radioactive minerals, metal minerals, non-metal minerals, stone, and coal. Each of the categories is made up of more specific mineral types, with changes to such categories being determined by the Minister of Energy and Mineral Resources ("Minister"). Furthermore, PP 23/2010 stipulates that the issuance of an IUP is conducted by the Minister, Governor, or Regent/Mayor pursuant to their respective authority, by means of the set out procedures. Prior to the issuance of an IUP the applicant must first obtain an WIUP. The procedure for obtaining a WIUP varies in accordance with the aforementioned categories, for instance: a metal mineral WIUP is obtained by means of an auction, while a non-metal mineral WIUP is obtained by means of an application.

In order to obtain an IUP the applicant must also fulfill certain administrative, technical, environmental, and financial requirements. PP 23/2010 elaborates on these requirements by setting out the minimum standards that companies engaging in mining businesses have to meet in order to carry on operations in Indonesia. A further issue that is addressed in PP 23/2010 are the compulsory reports, which must be submitted by business entities holding an IUP. Such reports consist of the business plan and the budget, and are submitted periodically to the Minister, Governor, or Regent/Mayor according to their respective authority.

Another important issue that PP 23/2010 regulates is the divestment of shares. Requiring foreign parties, who invest in a mining company, to partially divest their shares after five (5) years of

production, so that the mining company is at least 20 % owned by the Indonesian parties. However, if after five years of production, the foreign parties already own less than 80%, with the rest of the shares owned by Indonesian parties, the divestment obligation will not apply.

Although PP 23/2010 addresses divestment, the provisions dealing with it are not comprehensive. Therefore, the government of Indonesia, along with the Ministry of Energy and Mineral Resources, is in the process of drafting a specific Minister of Energy and Mineral Resources Regulation on the divestment of mining businesses. Other than this issue, however, the enactment of PP 23/2010 can be considered as an important development in terms of Indonesian mining legislation, since it addresses a number of issues that are not covered in the Mining Law, such as the WIUP application requirements and procedure, in Articles 8 through 21, and value improvement, by means of processing and refining of minerals and coal, in Articles 93 through 96.

21 October 2010

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[Lubis Ganie Surowidjojo \(LGS\)](#) was founded in 1985 by Mr. Timbul Thomas Lubis, Mr. Mohamed Idwan Ganie and Mr. Arief Tarunakarya Surowidjojo. Since then, it has rapidly expanded into one of Indonesia's largest and most dynamic law firms. LGS currently employs nearly fifty five lawyers, including six partners.

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