

Energy and Natural Resources

Versi Bahasa Indonesia

Enforcement Date

11 January 2017

Related ILB

- Govt Relaxes Mining-Company Divestment Obligations
- 2014: the Year that the Domestic Processing and Purification of Mining Products Becomes Mandatory
- Govt. Clarifies Provisions Relating to Mining-Business Area Maps and the Minerals and Coal-Mining Information System
- Draft Bill on Minerals and Coal
- New Regulation on Mineral-Product Export Recommendations

Government Finally Reregulates Provision on Mineral-Mining Industry

In a bid to provide better certainty for mining companies while ensuring the optimization of benefits for the state deriving from the mining sector, the government has issued Government Regulation [No. 1 of 2017](#) (“Fourth Amendment”), which is the fourth amendment to Government Regulation [No. 23 of 2010](#) on the Implementation of Mineral and Coal-Mining Activities (“Regulation 23/2010”).¹

With this ultimate objective in mind, the Fourth Amendment revises a number of provisions which relate to the following matters:

1. The extension of mining-business permits;
2. Sales of minerals and coal;
3. The divestment obligation; and
4. Refinery obligations and the export of mineral concentrate.

Prior to the issuance of the Fourth Amendment, Regulation 23/2010 had already been amended a full three times through Government Regulation [No. 24 of 2012](#), Government Regulation [No. 1 of 2014](#)² (“Second Amendment”) and Government Regulation [No. 77 of 2014](#)³ (“Third Amendment”).

Extension of Mining-Business Permits

In this regard, the Fourth Amendment basically revises the period within which a mining company (“Company”) may apply for extensions to the following permits:

1. Production Operation Mining Business Permit (*Izin Usaha Pertambangan Operasi Produksi* - “IUP OP”);
or
2. Special Production Operation Mining Business Permit (*Izin Usaha Pertambangan Khusus Operasi Produksi* - “IUPK OP”).

¹ Recitals and general elucidation, Fourth Amendment.

² For more information on the Second Amendment, see ILB [No. 2320](#).

³ For more information on the Third Amendment, see ILB [No. 2518](#).

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The Fourth Amendment then specifies that all applications for the extension of IUP OPs must be submitted within the following periods:⁴

1. For IUP OPs for metal minerals, certain types of non-metallic minerals or coal: between five years and one year before a permit's expiry date; or
2. For IUP OPs for non-metallic minerals (in general) or rocks: between two years and six months before a permit's expiry date.

Meanwhile, applications to extend IUPK OPs must be submitted between five years and one year before a permit's expiry date.⁵

Previously, Regulation 23/2010 stipulated that a Company could only start applying for an extension to either an IUP OP or an IUPK OP between two years and six months before said permit's expiry date.⁶

Sales of Minerals and Coal

The Fourth Amendment requires holders of IUP OPs to comply with certain benchmark prices (*harga patokan*) when selling their mineral or coal products. The Fourth Amendment then further explains that benchmark prices are basically determined by the Ministry of Energy and Mineral Resources ("Ministry") as a basis for the calculation of production retribution (*iuran produksi*) for a given Company.⁷

Previously, Regulation 23/2010 stipulated that such benchmark pricing was mandatory when IUP OP holders wanted to export their minerals and/or coal products. However, Regulation 23/2010 did not clarify the concept of benchmark pricing any further. This area has now been clarified by the Fourth Amendment.⁸

By way of comparison, the Fourth Amendment has also changed the name of this activity from "exporting" to "selling" and limits such selling to minerals or coal only, but not both, as was regulated under Regulation 23/2010.⁹

⁴ Art. 45 (1) and (1a), Fourth Amendment.

⁵ Art. 72 (1), Fourth Amendment.

⁶ Paragraph (1) of Art. 45 and Art. 72, Regulation 23/2010.

⁷ Art. 85 (1) and its elucidation, Fourth Amendment.

⁸ Art. 85 (1) and its elucidation, Regulation 23/2010.

⁹ Compare: Art. 85 (1) of the Fourth Amendment with Art. 85 (1) of Regulation 23/2010.

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Divestment Obligation

Prior to the issuance of the Fourth Amendment, the provisions relating to the obligation of foreign Companies to gradually divest their shares to Indonesian parties were most recently amended by the Third

Amendment. Under the Third Amendment, the divestment schemes on offer differed, based on the following factors:¹⁰

1. Whether the relevant IUP OP or IUPK OP holders undertook their own processing/purification activities or not; or
2. The mining method employed.

However, the Third Amendment went on to exempt from this divestment obligation IUP OP holders who only engaged in processing/purification activities under foreign-investment schemes.¹¹

The Fourth Amendment sets out a whole new divestment scheme, which is applicable to all IUP and IUPK holders (i.e. holders of permits which cover both the exploration and production-operation stages) which are owned or controlled by foreign investors. Furthermore, the Fourth Amendment no longer differentiates between different divestment obligations based on the various factors outlined above and therefore requires that all IUP/IUPK holders gradually divest at least 51% of their total shares after the fifth year of production under the following scheme:¹²

Production-Year Period	Minimum Divestment Percentage (from total shares)
Sixth year	20%
Seventh year	30%
Eighth year	37%
Ninth year	44%
Tenth year	51%

The Fourth Amendment further requires that such divested shares be offered to Indonesian parties, specifically: the government (i.e. central and regional government), state-owned/regionally owned enterprises and national private business entities. Such offerings must take place within 90 calendar days of the five-year period for the Company's IUP OP for the mining stage being issued.¹³

¹⁰ Art. 97 (1a – 1d), Third Amendment.

¹¹ Art. 97 (1e), Third Amendment.

¹² Art. 97 (1-2), Fourth Amendment.

¹³ Art. 97(3) and (7), Fourth Amendment.

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In any of such offering process, the central government must be prioritized. However, if the government refuses to take the divested shares, then the divesting Companies should offer their shares to (in priority order): **1)** Regional governments (at the provincial or regional/municipal level); **2)** State-owned enterprises and regionally owned enterprises; and **3)** National private business entities.¹⁴

Refineries and the Export of Mineral Concentrates

The Fourth Amendment has now removed the provision which previously allowed parties to Mining Working Contracts (*Kontrak Karya* - “KK”) to export their metal mineral products, provided that they had first refined such products.¹⁵

As a consequence, parties to any existing KK are basically now banned from exporting their minerals, unless such parties comply with several requirements, as set out within one of the implementing regulations to the Fourth Amendment, specifically: Ministerial Regulation [No. 5 of 2017](#) on the Enhancement of the Added Value of Minerals Through Domestic Mineral Processing and Refinement Activities (“**Regulation 5/2017**”).

Pursuant to Regulation 5/2017, parties to any KK may export their refined minerals for a period of up to five years (maximum) of any such regulation coming into force, on condition that:¹⁶

1. The parties to any KK convert the basis of their mining activities from a KK into an IUPK OP and then pay the relevant export duty; and
2. Any minerals which are intended for export meet certain refinery thresholds, as set out under Appendix I to Regulation 5/2017.

Aside from these conditions, the Fourth Amendment also adds a new provision which states that any parties who wish to build smelters in Indonesia are required to utilize metal minerals under certain criteria. This matter will be further regulated under a ministerial regulation.¹⁷

The Fourth Amendment has been in force since 11 January 2017.^{AP}

¹⁴ Art. 97 (4 - 6), Fourth Amendment.

¹⁵ Compare: Art. 112C (3) of the Fourth Amendment with Art. 112C (3) of the Second Amendment.

¹⁶ Art. 17 (1-2), Regulation 5/2017.

¹⁷ Art. 112F, Fourth Amendment.

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