



Thursday, 14th May 2020

**INFORMATION**

**The Approval of Coal and Mineral Mining (Minerba) Law No. 4/2009 Revision by the House of Representative and Government**

On the previous information we shared regarding the draft of Omnibus Law, the House of Representatives and the government accelerate the revision of the Coal and Mineral Mining (Minerba) Law No. 4/2009 on mineral and coal mining. As of Tuesday May 13<sup>th</sup> 2020, the House of Representatives (DPR) approves revision of the Minerba Law No.4/2009. After months of deliberation, eight of the nine parties at the House of Representatives agreed to pass the draft, with the Democratic Party being the only one to oppose it. The draft revises 82 percent of 175 articles in the original Minerba Law and adds two new chapters. Civil society groups have criticized the changes as sidelining regional autonomy, environmental protection and local communities. The revisions have been designed to harmonize with mining rules under the omnibus law on job creation, another game-changing piece of new legislation.

The Energy and Mineral Resources Minister, Mr. Arifin Tasrif had told legislators on Monday May 12<sup>th</sup> 2020 that the government disagreed with two articles in the draft, both of which were then changed later that day. Article 112 of the draft required foreign-owned miners to divest a 51 percent share to Indonesian entities 'in one go'. The wording was later changed to 'in stages', and the government was given authority to determine the terms of the stages. The draft also added a clause under Article 102 that pegged the minimal metal ore processing output quota to "domestic market demand." The phrase was changed to "market demand" to accommodate export-scale industries, quoted 14/05.

There is an amendment of to improve the norm formulation which consists of 15 regulatory points as quoted 14/20, which are:

1. Related to the mastery of mineral and coal. In the discussion, it was agreed that the control of mineral and coal would be held by the central government through the functions of policy, regulation, administration, management and supervision.
2. The mining area is agreed as part of the mining legal area. That becomes the basis for determining mining business activities.
3. There is a guarantee from the central government and regional governments (Pemda) not to make changes to the use of space and areas of the mining business permit area (WIUP). Including community mining areas (WPR) and special mining permit areas (WIUPK) that have been determined, as well as guaranteeing the issuance of other licenses needed in the implementation of mining business activities.
4. Related to WPR, if previously given a maximum area of 25 hectares and a maximum depth of 25 meters, through the revision of the Minerba Law Revision is given to a maximum area of 100 hectares. Then it has a metal mineral reserve with a maximum depth of 100 meters.
5. Mining business is carried out based on business licenses from the central government. The type of permit under the revised Minerba Law consists of a mining business permit (IUP) and a special mining business permit (IUPK). Regarding licensing, the central government can delegate the authority to grant business licenses to the Governor.
6. Related to the regional government share from the results of mining activities, if previously the provincial government only received 1 percent, through the Minerba Law the revised results increased to 1.5 percent.
7. There is an obligation for the Minister to provide mining data and information to support the preparation of mining areas (WP); develop science and technology; and transferring mining technology.
8. There is an obligation for holders of IUP and IUPK to use mining roads in the implementation of mining business activities. The mining road can be built alone or in collaboration with other parties.
9. There is an obligation for holders of IUP and IUPK to allocate funds in the implementation of community development and empowerment programs, the minimum amount of which is determined by the Minister.
10. The obligation for business entities holding Production Operation IUP or Production Operation IUPK whose shares are owned by foreigners to divest shares of 51 percent. Divestment of this 51 percent stake is carried out in stages to the Central Government, Regional Government, BUMN, BUMD, and / or National Private Business Entity.
11. The obligation for holders of Production Operation IUPs and Production Operation IUPK to provide mineral reserves resilience funds used for new reserve discovery activities.
12. Related to reclamation and post-mining activities, holders of Production Operation IUP or Production Operation IUPK before shrinking or returning their WIUP or WIUPK must carry out reclamation and post-mining activities to reach 100 percent success rate. The same applies to ex-IUP or IUPK holders who are obliged to carry out reclamation and post-mining activities to reach a 100 percent success rate, and place a post-mining guarantee fund.
13. Regarding the existence of mine inspectors. In the revised Minerba Law, the responsibility for managing the budget, infrastructure, and the operation of the mine inspector in carrying out supervision is borne by the Minister.
14. Regarding criminal provisions. Mining activities without permits that were previously imposed with a maximum imprisonment of 10 years and a maximum fine of Rp10 billion, are converted to a maximum of 5 years and a maximum fine of Rp100 billion. Or reduce criminal sanctions for the body, but raise the maximum value of criminal fines.
15. Since the law was enacted there were several things, such as IUP, IUPK, IPR, Special Production Operation IUP for transportation and sales, and IUJP (Mining Service Business Permit) that had existed before the entry into force of this Act was declared to remain in effect until the expiry of the permit. Then IUP, IUPK, IPR, Production Operation IUP specifically for transportation and sales, and IUJP that existed before the enactment of this Act, must fulfill the provisions related to business licenses in accordance with the provisions in this Law within 2 years after the Act was enacted.

The finalized draft revision of Minerba Law will publish soon to the public. This regulation is believed that it will provide a long-term legal and investment certainty in Indonesia. Please find attached the Minerba Law No.4/2009 for your reference. Thank you for your kind attention and we hope this is an informative update for you.

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