

GOVERNMENT REGULATION OF THE REPUBLIC OF INDONESIA

NUMBER 24 YEAR 2012

REGARDING

AMENDMENT OF

GOVERNMENT REGULATION NUMBER 23 YEAR 2010

REGARDING

IMPLEMENTATION OF MINERAL AND COAL MINING BUSINESS ACTIVITIES

WITH THE GRACE OF THE ALMIGHTY GOD

THE PRESIDENT OF THE REPUBLIC OF INDONESIA

- Consider:**
- a. whereas in order to support development of domestic industry, it is necessary to restructure the granting of mining business licenses for non-metal minerals and stone;
 - b. whereas in order to give greater opportunity to Indonesian participants to participate in the mineral and coal mining business, it is necessary to require foreign capital to transfer a portion of its shares to Indonesian participant;
 - c. whereas in order to give legal certainty to the holders of Contracts of Work and Coal Contracts of Work intending to process their extension in the form of Mining Business Licenses, it is necessary to regulate the procedures to apply the said Mining Business Licenses;
 - d. whereas based on the considerations as referred to in letter a, letter b and letter c, it is necessary to stipulate a Government Regulation regarding the Amendment to Government Regulation Number 23 Year 2010 regarding Implementation of Mineral and Coal Mining Business Activities.
- In view of:**
1. Article 5 paragraph (2) of the 1945 Indonesian Constitution;
 2. Law Number 4 Year 2009 regarding Mineral and Coal Mining (State Gazette of the Republic of Indonesia Year 2009 Number 4, Supplement to the State Gazette of the Republic of Indonesia Number 4959);

3. Government Regulation Number 23 Year 2010 regarding Implementation of Mineral and Coal Mining Business Activities (State Gazette of the Republic of Indonesia Year 2010 Number 29, Supplement to the State Gazette of the Republic of Indonesia Number 5111);

DECIDES:

To stipulate: GOVERNMENT REGULATION REGARDING THE AMANDMENT TO GOVERNMENT REGULATION NUMBER 23 YEAR 2010 REGARDING IMPLEMENTATION OF MINERAL AND COAL MINING BUSINESS ACTIVITIES

Article I

A number of provisions in Government Regulation Number 23 Year 2010 regarding Implementation of Mineral and Coal Mining Business Activities (State Gazette of the Republic of Indonesia Year 2010 Number 29, Supplement to the State Gazette of the Republic of Indonesia Number 5111) are amended as follows:

1. Between paragraph (3) and paragraph (4) of Article 6, 2 (two) paragraphs are inserted, namely paragraph (3a) and paragraph (3b), so that Article 6 shall read as follows:

Article 6

- (1) Mining Business Licenses (IUPs) are granted by the Minister, governor, or regent/mayor pursuant to their authorities based on applications submitted by:
 - a. business entities;
 - b. cooperatives; and
 - c. individuals.
- (2) Business entities as referred to in paragraph (1) letter a may be in the form of private business entities, State-owned Enterprises (BUMN), or Regional government-owned Enterprises (BUMD).
- (3) Individuals as referred to in paragraph (1) letter c may be in the form of individuals, firms, or limited partnerships.

- (3a) Private business entities as referred to in paragraph (2) comprise:
 - a. private business entities in the framework of domestic capital investment; and
 - b. private business entities in the framework of foreign capital investment.
 - (3b) An IUP submitted by private business entity in the framework of foreign capital investment as referred to in paragraph (3b) letter b may only be granted by the Minister.
 - (4) An IUP as referred to in paragraph (1) is granted after obtaining a Mining Business License Area (WIUP).
 - (5) Within 1 (one) WIUP, there may be granted 1 (one) or several IUPs.
2. Between Article 7 and Article 8, 2 (two) Articles are inserted, namely Article 7A and Article 7B to read as follows:

Article 7A

- (1) Holders of IUPs and Special IUPs (IUPKs) are not allowed to transfer their IUPs and IUPKs to other parties.
- (2) Other parties as referred to in paragraph (1) are business entities of which 51% (fifty one percent) or more of their shares are not owned by the holder of the IUP or the IUPK.

Article 7B

- (1) For an IUP or IUPK owned by a BUMN, a portion of the WIUP or WIUPK for Operation Production may be transferred to another party.
- (2) Another party as referred to in paragraph (1) is a business entity of which 51% (fifty one percent) or more of its shares are owned by the BUMN IUP or IUPK holder.

- (3) The transfer of a portion of a WIUP or WIUPK for Operation Production as referred to in paragraph (1) shall be done with the approval from the Minister.
3. The provision of Article 9 paragraph (3) is amended so that Article 9 shall read as follows:

Article 9

- (1) Within 1 (one) WUP, there may be 1 (one) or several WIUPs.
 - (2) Each applicant as referred to in Article 6 paragraph (1) may only be granted by 1 (one) WIUP.
 - (3) Each applicant as referred to in Article 6 paragraph (1) may be granted with more than 1 (one) WIUP in the case of:
 - a. a business entity applying for a WIUP which is a listed business entity (go public); or
 - b. a WIUP for a non-metal mineral and/or a WIUP for stone.
4. The provision of Article 74 is supplemented by 2 (two) paragraphs, namely paragraph (4) and paragraph (5) as well as the Elucidation of paragraph (4) and paragraph (5), so that Article 74 shall read as follows:

Article 74

- (1) The holder of an IUP may at any time apply to the Minister, governor, or regent/mayor pursuant to their authorities to relinquish a portion or return all of a WIUP.
- (2) The holder of an IUPK may at any time apply to the Minister to relinquish a portion or return all of a WIUPK.
- (3) The holder of an IUP or IUPK implementing a relinquishment or return of WIUP or WIUPK as referred to in paragraph (1) and paragraph (2) must submit:

- a. reports, data and information relating to the relinquishment or return consisting all technical and geological findings obtained in the area that will be relinquished and the reason for the relinquishment or return together with field data resulting from activities;
 - b. map of the relinquished or returned area and its coordinates;
 - c. evidence of payment of financial obligations;
 - d. an activity report in accordance with the status of the latest phase;
 - e. a report on the implementation of reclamation in the relinquished or released area.
- (4) In the case of an IUP and IUPK which have been expired including WIUP and WIUPK which have been relinquished, the area shall be returned to the Minister.
- (5) An area as referred to in paragraph (4) is stipulated as state reserve area by the Minister pursuant to the laws and regulations.
5. The Elucidation of Article 76 paragraph (1) letter b is amended so as to read as set forth in the Elucidation of Article 76.
6. The provision of Article 97 paragraph (1), paragraph (2), paragraph (3), and paragraph (11) are amended and between paragraph (1) and paragraph (2), 1 (one) paragraph is inserted, namely paragraph (1a) and Elucidation of paragraph (1) is deleted so that Article 97 shall read as follows:

Article 97

- (1) The holder of IUP and IUPK in the framework of foreign capital investment, within 5 (five) years of production, must divest its shares gradually, so that in the tenth year its shares shall be at least 51% (fifty one percent) owned by Indonesian participants.

- (1a) The ownership of Indonesian participants as referred to in paragraph (1), in each year after the end of the fifth year as of its production shall not be less than the following percentages:
 - a. sixth year 20% (twenty percent);
 - b. seventh year 30% (thirty percent);
 - c. eighth year 37% (thirty seven percent);
 - d. ninth year 44% (forty four percent);
 - e. tenth year 51% (fifty one percent), of the total shares.
- (2) The divestment of shares as referred to in paragraph (1) shall be made to Indonesian participants comprising of the Government, provincial regional government, or regency/municipality regional government, BUMN, BUMD, or national private business entities.
- (3) In the event the Government is not willing to purchase the shares as referred to in paragraph (2), they shall be offered to the provincial regional government or the regency/municipality regional government.
- (4) If the provincial regional government or regency/municipality regional government as referred to in paragraph (3) is not willing to purchase the shares, they shall be offered to BUMN and BUMD by way of tender.
- (5) If BUMN and BUMD as referred to in paragraph (4) are not willing to purchase the shares, they shall be offered to national private business entities by way of tender.
- (6) The offer of shares as referred to in paragraph (1) shall be made at the latest of 90 (ninety) calendar days after 5 (five) years after the issuance of the mining phase license for Operation Production phase.
- (7) The Government, provincial regional government, regency/municipality regional government, BUMN, and BUMD must notify their interest within 60 (sixty) calendar days after the offer date.
- (8) In the event the Government and provincial regional government or regency/municipality regional government, BUMN, and BUMD are not interested in

purchasing the divested shares as referred to in paragraph (7), the shares are to be offered to national private business entities within 30 (thirty) calendar days.

- (9) National private business entity must notify their interest within 30 (thirty) calendar days after the offer date.
 - (10) Payment and delivery of shares purchased by the Indonesian participants shall be made within 90 (ninety) calendar days after the date of the notification of interest or determination of the tender awardees.
 - (11) If divestment as referred to in paragraph (1a) is not achieved, an offer of the shares shall be made in the following year.
7. The provision of Article 98 is amended, so that Article 98 shall read as follows:

Article 98

In the event an increase of capital of the company occurs, the shareholding of the Indonesian participant shall not be diluted to become smaller than the number of shares in accordance with the divestment obligation as set forth in Article 97 paragraph (1a).

8. 2 (two) Articles are inserted between Article 112 and Article 113, namely Article 112A and Article 112 B, which shall read as follows:

Article 112A

At the time this Government Regulation is in effect the remaining areas of contracts of work and coal contracts of work which are not accommodated in the extension IUPs as referred to in Article 112 point 2 shall be proposed to be stipulated as state reservation areas in accordance with the provisions of laws and regulations.

Article 112 B

- (1) The extension of Contracts of Work and Coal Contracts of Work to become IUPs as referred to in Article 112 point 2 shall be granted by the Minister.
- (2) To obtain an IUP as referred to in paragraph (1), the holder of a Contract of Work or Coal Contract of Work must submit an application to the Minister at the earliest within 2 (two) years and at the latest within 6 (six) months prior to the expiry of the Contract of Work or Coal Contract of Work.
- (3) An IUP Application as intended in paragraph (2) shall at least fulfill administrative, technical, environmental and financial requirements.
- (4) Administrative requirements as referred to in paragraph (3) shall cover:
 - a. application letter;
 - b. composition of the board of directors and shareholders; and
 - c. certificate of domicile.
- (5) Technical requirements as referred to in paragraph (3) shall cover:
 - a. map and coordinate boundaries of the area;
 - b. final report on operation production activities;
 - c. report on the implementation of environmental management;
 - d. work plan and budget;
 - e. resources and reserves balance sheet;
 - f. reclamation and post-mining plan;
 - g. construction of supporting facility and infrastructure plan for operation production activities;
 - h. availability of a mining expert and/or geologist with minimum 3 (three) years experience;
- (6) Environmental requirements as referred to in paragraph (3) shall cover:
 - a. statement of undertaking to comply with the provisions of laws and regulations related to environmental protection and management;
 - b. approval of environmental documents in accordance with the provisions of laws and regulations related to environmental protection and management.

- (7) Financial requirement as intended in paragraph (3) shall cover:
 - a. financial statements for the last 3 (three) years which have been audited by a public accountant;
 - b. evidence of payment of dead rent and production royalties for the last 3 (three) years.
- (8) In granting an IUP, the Minister must consider the potential of the mineral and coal reserves from the Working Area and the greatest benefit for the interest of the State.
- (9) The Minister may reject an IUP application, if according to the result of his evaluation, the holder of the Contract of Work or the Coal Contract of Work does not demonstrate good mining practices.
- (10) The rejection as referred to in paragraph (9) must be conveyed to the Holder of the Contract of Work or the Coal Contract of Work that submitted the IUP application at the latest prior to the expiry of the Contract of Work or the Coal Contract of Work.

Article II

This Government Regulation shall come into effect as of the date of its promulgation.

For public cognizance, to order the promulgation of this Government Regulation by publishing it in the State Gazette of the Republic of Indonesia.

Enacted in Jakarta
on February 21, 2012

PRESIDENT OF THE REPUBLIC OF INDONESIA

Signed

DR. H. SUSILO BAMBANG YUDHOYONO

Promulgated in Jakarta
on February 21, 2012

MINISTER OF LAW AND HUMAN RIGHTS
REPUBLIC OF INDONESIA,

Signed

AMIR SYAMSUDIN

STATE GAZETTE OF THE REPUBLIC OF INDONESIA YEAR 2012 NUMBER 45

This copy is the same as the original
THE MINISTRY OF STATE SECRETARIAT OF THE REPUBLIC OF INDONESIA
Assistant to the Legislation Deputy
Economic Affairs,

Setio Sapto Nugroho

ELUCIDATION OF GOVERNMENT REGULATION NUMBER 24 YEAR 2012
REGARDING THE AMENDMENT OF
GOVERNMENT REGULATION NUMBER 23 YEAR 2010 REGARDING
IMPLEMENTATION OF MINERAL AND COAL MINING BUSINESS ACTIVITIES

I. GENERAL

In the framework of national development particularly domestic industrial development, it is necessary to support the availability of non-metallic minerals and rocks through the reorganization of the grant of Mining Business Licenses.

Furthermore in the framework of favoring Indonesian participants to encourage their participation in the development of mining and coal, it is necessary to require foreign capital to transfer a portion of its shares to Indonesian participants and to regulate further the provisions on transfers of shares.

Moreover in order to provide legal certainty and business certainty for holders of contracts of work and coal contracts of work in obtaining the first and/or second extension, it is necessary to regulate specifically the grant of contracts of work and coal contracts of work extensions in the form of Mining Business License extensions, by regulating application procedures for Mining Business Licenses which cover the relevant officials authorized to issue Mining Business License extensions, the application period for Mining Business License extensions, and requirements for Mining Business License extension applications.

Based on the foregoing, it is necessary to amend several provisions contained in Government Regulation Number 23 Year 2010 Regarding Implementation of Mineral and Coal Mining Business Activities.

II. ARTICLE BY ARTICLE

Article I

Point 1

Article 6

Self-explanatory.

Point 2

Article 7A

Paragraph (1)

Self-explanatory.

Paragraph (2)

This provision is intended to mean that an IUP or IUPK may only be transferred to a business entity 51% (fifty one percent) or more of the shares of which are owned by the holder of the IUP or IUPK.

Article 7B

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

The transfer of a portion of the area shall be done directly.

Point 3

Article 9

Self-explanatory.

Point 4

Article 74

Paragraph (1)

Self-explanatory.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Letter a

Self-explanatory.

Letter b

Self-explanatory.

Letter c

What is meant by evidence of payment of financial obligations in this provision are dead rent, production royalties, and tax.

Letter d

Self-explanatory.

Letter e

Self-explanatory.

Paragraph (4)

Included in this provision are contracts of work and coal contracts of work.

Paragraph (5)

Self-explanatory.

Point 5

Article 76

Paragraph (1)

Letter a

Force majeure in this provision shall, among others, refer to war, civil disturbances, insurgency, epidemic, earthquake, flood, fire and other natural disaster beyond human capacity.

Letter b

Precluding conditions in this provision shall, among others, refer to blockades, strikes, labor disputes that are not the fault of the holder of the IUP or IUPK and provisions of laws and regulations issued by the Government which preclude the continuation of mineral and coal mining business activities.

Letter c

Environmental supporting capacity condition in this provision shall mean if the environmental supporting capacity condition of the area is unable to bear the burden of mineral and/or coal operation production activities conducted in the area.

Paragraph (2)

Self-explanatory.

Paragraph (3)

Self-explanatory.

Paragraph (4)

Self-explanatory.

Point 6

Article 97

Self-explanatory.

Point 7

Article 98

Self-explanatory.

Point 8

Article 112A

Self-explanatory.

Article 112B

Self-explanatory.

Article II

Self-explanatory.

SUPPLEMENT TO THE STATE GAZETTE OF THE REPUBLIC OF INDONESIA
NUMBER 5282