

No major changes in new mining licencing regulation: UMBRA

On March 2020, the Minister of Energy and Mineral Resources (**MEMR**) issued a new regulation on the Procedures for the Granting of Areas, Licensing and Reporting in Relation to Mineral and Coal-Mining Business Activities under MEMR Regulation No. 7 of 2020 (**Reg 7/2020**). This new regulation revokes the previous regulation, which is MEMR Regulation No. 11/2018 as lastly amended by MEMR Regulation No. 51/2018 (**Reg 11/2018**).

Reg 7/2020 sets out provisions regarding conversion of Contract of Work/*Kontrak Karya* (**KK**) of Metal Mineral into IUPK Operation Production, “however, we do not see any significant changes from its predecessor, namely, Reg 51/2018,” UMBRA, strategic legal solution, said in its analysis of MEMR Regulation 7 of 2020 to Petromindo.com.

Reg 7/2020 sets out that the IUPK Operation Production will contain rights and obligations in conformity with the prevailing laws and regulations; and in implementing the license, all approval which has been given by the Central Government and Regional Government will still be valid, to the extent that it does not contradict the prevailing laws and regulation.<sup>[1]</sup> This means that the KK will have all of its terms to be adjusted according to the prevailing laws and regulations (prevailing principle) instead of having some nail down provisions that it currently has.

This lack of changes or update is not unexpected because MEMR Regulation can only sets out provisions to implement a higher hierarchy regulation (e.g. Laws, Government Regulations, etc.) or to regulate matters that are not yet regulated clearly in the higher hierarchy regulation. Conversion of KK or PKP2B and provisions regarding IUPK are regulated under the Mining Law and Government Regulation. As such, to obtain more clarity for mining business stakeholders and to protect their interest, the stakeholders should focus on and involve closely in the drafting of the Mining Law (or the Omnibus Law) revision or in the amendment of Government Regulation regarding Mining Business. For example, we have seen the draft Omnibus Law, particularly for mining activity, has set out that the total area of the KK or PKP2B can be maintained in case the KK or PKP2B is converted into IUPK OP.

---

<sup>[1]</sup> Article 103 (2) jo. Article 103 (3) of Reg. 7/2020

Aside from the matter regarding conversion of KK and PKP2B that is quite the same, we note that Reg 7/2020 has brought a positive effort in streamlining administrative process for mining companies (IUP or IUP holders), namely, the process for changing the IUP or IUPK holder's Board of Directors (**BOD**) and Board of Commissioners (**BOC**) members. Previously, an IUP or IUPK holder must obtain approval from the MEMR or the Governor prior to the change of BOD or BOC members, before such change is registered to the Ministry of Law and Human Rights (**MOLHR**).<sup>[2]</sup> Now, the IUP or IUPK holders are only required to file a report to the MEMR or the Governor in no later than 14 working days after the change of the BOD or BOC members is notified to the MOLHR.

---

<sup>[2]</sup> Article 63 of Reg. 11/2018