

# GR 96 of 2021 as New Implementing Regulation on Mining Business Activities

The recently issued Government Regulation No. 96 of 2021 concerning Implementation of Mineral and Coal Mining Business Activities (“**GR 96/2021**”) now serves as the latest regulatory framework for Law No. 4 of 2009 concerning Coal and Mineral Mining as lastly amended by Law No. 11 of 2020 concerning Job Creation (“**Mining Law**”), and its promulgation revokes Government Regulation No. 23 of 2010 concerning Implementation of Mineral and Coal Mining Business Activities as lastly amended by Government Regulation No. 8 of 2018 (“**GR 23/2010**”).

GR 96/2021 includes several provisions which are considered significant changes from the previous GR 23/2010 and which may provide mining business actors opportunities to develop and expand their mining business in Indonesia. This write up is prepared to briefly elaborate on the highlighted provisions of GR 96/2021 which may be applicable to the stakeholders of mining businesses in Indonesia.

## Business Licensing

In line with the provisions under the Mining Law, GR 96/2021 reiterates that mining business activities must be conducted based on Business Licensing (*Perizinan Berusaha*) issuance of which is under the authority of the Central Government. GR 96/2021 also allows delegation of authority to Regional Governments for the standard certificates and licenses, implementation of which will be governed by a Presidential Regulation that has yet to be issued.

The aforementioned Business Licensing takes the following forms:

1. Business Identification Number (*Nomor Induk Berusaha* – NIB);
2. Standard Certificates; and
3. Licenses.

Under Article 6 of GR 96/2021, the abovementioned Licenses consist of:

1. Mining Business License (*Izin Usaha Pertambangan* or “**IUP**”);
2. Special Mining Business License (*Izin Usaha Pertambangan Khusus* or “**IUPK**”);

3. IUPK as a Continuation of the Operation of Contracts of Work/Coal-Mining Concession Work Agreements, also known as IUPK as a Continuation of the Operation of Contracts/Agreements;
4. Community Mining License (*Izin Pertambangan Rakyat* or “**IPR**”);
5. Authorization Letter for Rock Mining (*Surat Izin Penambangan Batuan* or **SIPB**);
6. Assignment License (*Izin Penugasan*);
7. Transportation and Sales License;
8. Mining Services Business License (*Izin Usaha Jasa Pertambangan* or “**IUJP**”); and
9. IUP for Sales.

It is to be noted that new forms of Business License that were introduced earlier in the latest amendment to Mining Law (i.e. SIPB, *Izin Penugasan*, IUP for Sales), are now further elaborated under provisions of GR 96/2021.

As stipulated in Article 173C of the Mining Law, the issuance of mining business licenses by the Minister of Energy and Mineral Resources (“MEMR”) and Governors was put on hold until the implementing regulation for the Mining Law was issued. By issuance of GR 96/2021 as the current implementing regulation, it is viewed that MEMR can now issue mining business licenses in accordance with the provisions of GR 96/2021. Under Article 9 of the GR 96/2021, IUP can be granted by the MEMR to the following parties:

1. The following types of business entities: (i) State Owned Enterprises (BUMN), (ii) Regional Owned Enterprises (BUMD), and (iii) privately owned business entities, which encompass national privately owned business entities and privately owned business entities that involve foreign investments;
2. cooperatives; or
3. individual businesses (*perusahaan perseorangan*).

#### Transfers of Shares

GR 96/2021 includes several requirements and limitations applicable to transfers of shares, which may affect investment in mining business, specifically those in relation to the foreign investment framework.

It is specifically stipulated that holders of IUP and IUPK are prohibited from transferring shares without approval of the MEMR, and to obtain such approval there are administrative, technical, environmental and financial requirements that need to be fulfilled. MEMR approval is not applicable for transfers of shares performed as part of an initial public offering exercise on the Indonesian Stock Exchange, in which case the holder of IUP and IUPK has the obligation to report to MEMR. The implementing provisions for the issuance of MEMR approval will be issued in a MEMR regulation.

Another highlighted provision on transfers of shares is applicable to holders of IUP and IUPK having a foreign investment status, which correlates with the divestment obligation. GR 96/2021 specifically stipulates that a foreign shareholder having more than 49% (forty nine percent) of shares may transfer its shares to another party before the divestment exercise is initiated, with a condition that the shares intended to be transferred must first be offered to a State Owned Enterprise (*Badan Usaha Milik Negara – BUMN*). If after 75 (seventy-five) days after the shares are offered the BUMN decides it is not interested or does not respond, then the holder of IUP and IUPK may apply to MEMR for approval for the transfer of shares.

#### Granting of Mining Areas and Mining Business Licenses

On the granting of mining areas and mining business licenses, GR 96/2021 stipulates that IUP can be granted through the following phases:

1. Granting of the Area of IUP (*Wilayah Izin Usaha Pertambangan* or “**WIUP**”); and
2. Granting of IUP.

The granting of WIUP depends on the type of mining commodities, whereby GR 96/2021 categorizes the granting mechanism as follows:

Commodities	Granting of WIUP	Remarks
Radioactive Minerals	In compliance with laws and regulations in the field of nuclear energy.	
Metallic Minerals and Coal	Auction mechanism, which includes two phases: pre-qualification (to evaluate the abovementioned requirements); and qualification (to evaluate the auction price offer).	Entities enrolling in the auction must provide administrative, technical and environmental management, and financial requirement documents.
Non-metallic Minerals	Application to MEMR	The MEMR must issue an approval or rejection within 10 (ten) business days from when the application is submitted.
Specific Non-metallic Minerals		
Rocks		

It is to be noted that GR 23/2010, being the former governing regulation, only required business actors to submit their applications to the relevant authorities (MEMR, Governors, or Regents) depending on the location of the WIUP being applied for, and it did not specify the application documents as GR 96/2021 now does.

As also previously stipulated, the IUP licenses 2 (two) stages of activities:

1. Exploration (general investigation/*penyelidikan umum*, exploration and feasibility study); and
2. Production Operation (construction, mining, processing and/or refining, development and/or utilization, and transportation and sales).

On the limitation for transferring an IUP to another party, GR 23/2010 mentioned that IUP can only be transferred to another party if the IUP holder owns 51% (fifty one percent) of that party's shares. This requirement has been modified in GR 96/2021 so that it now stipulates that an IUP can only be transferred to another party after obtaining the approval of MEMR. The aforementioned approval can be granted subject to fulfillment of certain requirements. It is to be noted that one of the requirements is for the holder of IUP to have completed the Exploration activities, as evidenced by available data on resources and reserves. Although it is not explicitly stated that only a Production Operation IUP can be transferred, the transfer can only be performed after Exploration activities have been completed. This provision is viewed as the Government's effort to eliminate the practice of "license brokerage" whereby holders of IUP only obtain the license in order to transfer it later on to a more capable party or one with more resources.

#### Mining Reserve Funds

The amendment of the Mining Law in 2020 introduced the Mining Reserve Funds (*Dana Ketahanan Cadangan*) which are intended to be utilized for discoveries of new reserves. GR 96/2021 further requires holders of Production Operation IUP and IUPK to perform advanced exploration, and to allocate a sum of funds in their annual Work Budgets and Cost Plans (*Rencana Kerja Anggaran dan Biaya – RKAB*) for such advanced exploration. This obligation will not be applicable to holders of Production Operation IUP and IUPK which have obtained data on reserves for the entire WIUP/*Special WIUP* (WIUPK), according to an evaluation by MEMR. This obligation will be further regulated in a MEMR regulation.

#### Mining Service Businesses

GR 96/2021 has provisions pertaining to IUJP, which GR 23/2010 did not. Article 137 of the GR 96/2021 provides that holders of IUP or IUPK are obliged to utilize local and/or national mining service companies that provide services related to the consulting, planning and implementation of activities in the following fields:

1. general survey;
2. exploration;
3. feasibility study;
4. mining construction;
5. transportation;
6. mining environment;
7. reclamation and post-mining;
8. mining safety; and/or
9. mining.

As mentioned above, "mining" activities are now acknowledged as one of the activities that an IUJP holder is allowed to perform. Please note that the Mining Law emphasizes that in the event a holder of an IUP or IUPK appoints a mining services company, the responsibility for the mining business activities remains with the holder of IUP or IUPK.

IUP or IUPK holders may use foreign IUJP companies if no local and/or national mining service companies are technically and/or financially competent to provide the required services even after the IUP or IUPK holders have announced the relevant vacancies through local and/or national mass media.

#### Haulage Roads

GR 96/2021 stipulates the requirement for IUP and IUPK holders to use haulage roads. Haulage roads consist of:

1. haulage roads contained in the mining area or project area that are used and traversed by the main equipment and production support equipment; and
2. supporting roads provided for the transportation of goods or people in a mining area and/or project area supporting mining operations or providing mining facilities.

Haulage roads can be constructed by holders of IUP and IUPK or by cooperation with other IUP and IUPK holders or other parties who owns roads that can be designated as haulage roads, after complying with mining safety regulations.

From the practical point of view, business actors usually have a cooperation agreement between IUP and/or IUPK holders for the use of the road to be utilized as a haulage road. Further, Article 173 of the GR 96/2021 mandates that the cooperation agreement for the use of a road as a haulage road must be in accordance with the principles of justice, fairness and usefulness. It is to be noted that the aspects of mining safety for the development and use of mining roads will be further regulated by a MEMR regulation.

#### Divestment of Shares

Under previous regulation of GR 23/2010, the divestment obligation was applicable to foreign investment companies who hold an IUP or IUPK whereby the divestment exercise was to be initiated after 5 (five) years of production and the foreign shares divested in stages so that the Indonesian entity (BUMD, BUMN or private entity) would own at least 51% (fifty one percent) of the shares in the tenth year as from the commencement of production.

With regard to the divestment obligation, GR 96/2021 provides what can be considered a relaxation of the obligation to divest shares for IUP and IUPK holders in the Production Operation stage. GR 96/2021 stipulates a divestment exercise to be conducted as follows:

Mining Activity	Divestment Obligation
for those carrying out mining activities using <u>open pit mining</u> and <u>not integrated</u> with Processing and/or Purification facilities or Development and/or Utilization activities.	Shareholding of the Central Government, Regional Government, BUMN, BUMD and/or National Private Business Entity should be at least as follows: 1. at the tenth year: 5% (five percent); 2. at the eleventh year: 10% (ten percent); 3. at the twelfth year: 15% (fifteen percent); 4. at the thirteenth year: 20% (twenty percent); 5. at the fourteenth year: 30% (thirty percent); and 6. at the fifteenth year: 51% (fifty one percent); as from the commencement of production.
for those carrying out mining activities using <u>open pit mining</u> and <u>integrated</u> with Processing and/or Purification facilities or Development and/or Utilization activities.	Shareholding of the Central Government, Regional Government, BUMN, BUMD and/or National Private Business Entity should be at least as follows: 1. at the fifteenth year: 5% (five percent); 2. at the sixteenth year: 10% (ten percent); 3. at the seventeenth year: 15% (fifteen percent); 4. at the eighteenth year: 20% (twenty percent); 5. at the nineteenth year: 30% (thirty percent); and 6. at the twentieth year: 51% (fifty one percent), as from the commencement of production
for those carrying out mining activities using <u>underground mining</u> and <u>not integrated</u> with Processing and/or Purification facilities or Development and/or Utilization activities.	Shareholding of the Central Government, Regional Government, BUMN, BUMD and/or National Private Business Entity should be at least as follows: 1. at the fifteenth year: 5% (five percent); 2. at the sixteenth year: 10% (ten percent); 3. at the seventeenth year: 15% (fifteen percent); 4. at the eighteenth year: 20% (twenty percent); 5. at the nineteenth year: 30% (thirty percent); and 6. at the twentieth year: 51% (fifty one percent), as from the commencement of production.
for those carrying out mining activities using <u>underground mining method</u> and <u>integrated</u> with Processing and/or Purification facilities or Development and/or Utilization activities.	Shareholding of the Central Government, Regional Government, BUMN, BUMD and/or National Private Business Entity should be at least as follows: 1. at the twentieth year: 5% (five percent); 2. at the twenty-first year: 10% (ten percent); 3. at the twenty-second year: 15% (fifteen percent); 4. at the twenty-third year: 20% (twenty percent); 5. at the twenty-fourth year: 30% (thirty percent); and 6. at the twenty-fifth year: 51% (fifty one percent), as from the commencement of production.

GR 96/2021 requires the holders of IUP and IUPK to offer the divestment shares directly and sequentially to Central Government, Regional Government, State Owned Enterprise (BUMN), Regional Owned Enterprise (BUMD) and lastly to national private business entities. If none of the abovementioned parties accept the offer of divestment shares, then the offer must be made through the Indonesian stock exchange.

### Community Involvement

GR 96/2021 also includes a chapter on the development and empowerment of communities near WIUP and WIUPK. Holders of IUP and IUPK have the obligation to prepare a master plan for community development as a part of the Annual RKAB, including an sum allocated for this purpose, the minimum amount for which will be determined by MEMR. The community development and empowerment performed must be reported to the MEMR, and further provisions on this matter will be regulated in a MEMR regulation.

## Special Conditions of Mineral and Coal Sales

With regard to the expiry or revocation of mining business licenses, GR 96/2021 allows a holder whose license is no longer valid to continue to sell mining commodities which it already has in the stockpile facility, with the approval of MEMR. After evaluation of certain requirements, an MEMR approval will be granted on submission of an application complete with the sale contract following the expiry or revocation of IUP, IUPK, IPR or SIPB. If the holder of a mining business license does not submit an application for this special license, the mineral and coal will be determined to be the property of the government.

The above special mineral and coal sales can be viewed as the Government's attempt to ensure continuity of ongoing sale contracts which holders of mining business license have. It can also be seen as a clear requirement to be fulfilled, failing which any mineral and coal in stockpiles can be determined as the property of and utilized by the government.

For further information related to the article and the services provided, please contact the Partner listed under key contacts.

*The article above was prepared by [Maurice Maulana Situmorang](#) (Partner), **Akbar Bayu Adisono Putro** (Associate), and **Carlos William Rettobjaan** (Associate).*

*This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions or matters. For more information, please contact us at [dentons.hprp@dentons.com](mailto:dentons.hprp@dentons.com) or Partners listed above.*

*No part of this publication may be reproduced by any process whatsoever without prior written permission from Hanafiah Ponggawa & Partners.*