Two years after Indonesia's New Mining Law: what has been achieved?

By A. Supriyani Kardono

Two years after the promulgation of Law No. 4/ 2009 on Mineral and Coal Mining, the Indonesian regulatory regime for mining is still far from ideal, although several implementing regulations and ministerial decrees have been issued. Among the issues faced by the Government of Indonesia in managing mining activity, the following are critical and require the government's immediate action.

Determination of mining zones

The Government of Indonesia has not determined national mining zones nor issued regulations on the bidding process for acquiring a mining area. Therefore, the Government has not been able to issue new mining licences for new investors but rather can only extend or upgrade existing mining licences. As a result, potential investors are limited to exploring or producing by way of acquiring shares in existing mineral and coal concession holders.

Clarification of DMO requirements

The Minister of Energy and Natural Resources issued Regulation No 34 of 2009 and its implementing Domestic Market Obligation (DMO) decrees which require a percentage of domestic coal production be prioritized for domestic needs. Although this is not a new policy, the Government has now seriously monitored and enforced the requirements. Pursuant to the 2011 DMO decree, the forecast for coal domestic requirements is 78.97 million tons while the forecast for coal production is 326.65 million tons. Based on these forecasts, the Government has determined that for 2011 the identified coal producers are obligated to sell 24.17 percent of their production to the domestic market at a benchmark price determined based on market mechanisms and/or in accordance with the generally effective price on the international market. However, producers of minerals other than coal have not received similar DMO regulations.

Requirement to process and refine mining products domestically

The Government should provide clarification as to the precise meaning of processing and refining, and define when the mining company would be able to sell the mining products. For example, it is unclear whether crushing, sorting and screening are considered to be processing or refining activities.

Forestry issues

We understand that there are numerous COWs/CCOWs (Contract of Work/Coal Contract of Work) as well as IUPs (mining business licences) that have not obtained licences from the Ministry of Forestry to conduct mining activities in forest areas, not to mention a number of unresolved overlapping issues between mining and forest areas.

Finalizing the renegotiation of COWs/CCOWs and conversion of mining authorizations (KP) into IUPs

As mandated by the transitional provisions of Law 4/ 2009, existing COWs and CCOWs must be adjusted to conform to the New Mining Law. While certain provisions in the existing COWs and CCOWs are "nailed down," parties should mutually agree on any amendments. The Government must consider the investments that have been carried out by the COW/CCOW holders in order to establish a fair solution.

On the conversion of KPs into IUPs, we understand that there are a significant number of KPs that have not been converted. As the deadline has passed, it is the Government's resposibility to determine whether unconverted KPs are still valid. The absence of this decision also creates uncertainty for investors looking to acquire and invest in existing KPs.

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