

A due diligence shortcut for mining rights in Indonesia



By A. Supriyani Kardono

Those looking to invest in Indonesia's mining sector may feel a bit more relieved now as a central database on mining rights in the country has been developed by the Ministry of Energy and Mineral Resources (MEMR). The Directorate General of Minerals and Coal of the MEMR (DGMC) has compiled and reconciled data of all national mining business permits (known as Ijin Usaha Pertambangan or IUP). By gathering and disseminating national data of IUPs, the MEMR aims to ensure coordination, verification and synchronisation of IUPs issued by provincial governors, regents and mayors throughout Indonesia, to stimulate investment and increase state revenues.

The reconciled data consists of IUPs categorised as 'clear and clean' and 'non clear and clean.' An IUP is considered 'clear and clean' if it was validly issued prior to May 1, 2010 and if the IUP area is not subject to overlaps. The DGMC will further nationally announce with respect to the status of 'non clear and clean' IUPs, once the missing information and requirements are completed and delivered to the DGMC. As of May 21, 2011, there were 8,475 IUPs reported to the DGMC, of which only 3,971 IUPs listed in the reconciled data are considered 'clean and clear.' The remaining 4,504 IUPs are categorised as 'non clear and clean', subject to the finalisation of the data collection.

What are the benefits of a central IUP database?

Ever since Indonesia began decentralising power to the provincial and regional governments in the late 1990s, there has been significant confusion with regard to overlapping mining rights and it has been difficult to gather accurate information about a mining area from multiple levels of government. The central database is therefore a short cut resource for investors examining mining rights, aiding significantly in the due diligence of an IUP.

A typical due diligence of mining rights is initially conducted by obtaining and reviewing the maps from various ministries and government agencies. Maps obtained would describe whether the mining area in question overlaps with either other mining rights (mineral, hard rock or oil and gas), forest areas (protected

forests or otherwise) or other surface rights or interests. The same review should be done at the local government level. Further, to ensure the accuracy of information, the investor should also investigate with the local offices of the MEMR, the Ministry of Forestry and the land office as well as a physical inspection of the mine site, the hauling road and any proposed jetty. Such a lengthy process can incur substantial time and costs. With the central database now available to the public, an IUP due diligence should be easier, less expensive and less time-consuming.

Importantly, it also appears that the database may be used to prepare the maps of new mining areas that the government intends to issue in the near future, along with implementing regulations for the auction of these new mining areas as mandated by the Indonesian Mining Law. The Mining Law requires a tender process for mining areas which will then be followed by the issuance of IUPs by region, province or central government depending on the location of the mine for IUPs for exploration, and on the location of the mine and mining facilities, including any ports, for IUPs for production.

What are the risks for those not listed in the database?

There would appear to be a substantial risk that one's mining area will not be marked as an area for which a KP (the old name for IUPs) that is pending conversion into IUP, or an IUP itself, has already been issued. This may result in further complications and additional overlapping, undoubtedly incurring more delays and costs. Therefore, it seems to be in each IUP holder's interest to ensure their issued mining licenses are listed in the new database. IUP holders should assist the authorities by registering in the database and completing the submission of IUP data to the DGMC.

What happens with 'non clear and clean' IUPs?

There remains substantial work to be done in collecting and finalising the remaining information, and we understand that the MEMR will officially announce a progress report in the near future.

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