

Regulation Curbs Power of Local Authorities in Indonesian Mining Sector

By Florence G. Santoso

The Indonesian Government appears to be getting serious about stripping Regents of the authority to issue mining licenses. The Government took the first steps in this direction with Minister of Energy and Mineral Resources (MEMR) Regulation No. 27 of 2013 dated September 13, 2013 regarding Procedures for the Divestment of Shares and Changes to Capital Investment in the Mineral and Coal Mining Sectors. That Regulation ordered all Regents and Governors to submit to the MEMR all mining licenses (IUPs) issued for foreign capital (PMA) companies so the IUPs could be re-issued by the MEMR. This process was to be completed before September 13, 2014, but it seems that not all Regents and Governors complied.

With the issuance of the Regional Governance Law (Law No. 23 of 2014) on October 2, 2014, it was made clearer that Regents no longer have authority to issue IUPs. Rather, the sole authority to issue IUPs for mining companies having a mining area located in just one province was vested to Governors, while the MEMR has the authority to issue licenses for mining companies having a mining area located in more than one province and for PMA mining companies.

In support of the Regional Governance Law, the Government issued Government Regulation No. 77 of 2014 (GR 77/2014) dated October 14, 2014 regarding the Third Amendment of Government Regulation No. 23 of 2010 regarding the Implementation of Mineral and Coal Mining Business. GR 77/2014 reaffirmed the requirement under MEMR 27/2013 that the MEMR reissue any IUPs previously issued by Governors and Regents to PMA mining companies. A new deadline of October 14, 2015 was set for the reissuance of the IUPs. This was reasserted in Directorate General of Minerals and Coal Circular Letter No. 01.E/30/DJB/2015 dated April 7, 2015 regarding the Change of Status of Mining Business License in the Framework of Domestic Capital Becoming Foreign Capital.

Since the issuance of the Regional Governance Law, the MEMR has issued a number of regulations curbing the authority of Regents in the mining sector. On March 4, 2015, MEMR Regulation No. 8 of 2015 was issued to amend MEMR Regulation No. 1 of 2014 regarding Increasing the Added Value of Minerals through Domestic Processing and Refining. One of the main changes under MEMR Reg No. 8 of 2015 was the revocation of the authority of Regents to issue smelter licenses (Mining Business License for Processing and Refining, or IUPOKPP) and giving that authority to Governors. Any future smelter licenses will have to be issued by the relevant Governor, though it is unclear whether smelter licenses issued by Regents prior to this Regulation would have to be reissued by Governors and whether the annual work plans and budgets of such smelter companies must be submitted to and approved by the relevant Governor or the Regent.

Despite the above rules and regulations, Regents' authority to issue IUPs remains unchanged under the 2009 Mining Law. So, there is a conflict between the Mining Law and the Regional Governance Law. While it remains to be seen how this conflict will be resolved there is talk that the 2009 Mining Law will be amended to revoke the authority of Regents to issue IUPs.