

PROMOTING MINING INVESTMENT CERTAINTY AND OTHER AGENDAS – IMPORTANT REGULATORY CHANGES¹²³⁴⁵

INTRODUCTION

A new government regulation has been issued that makes important changes to the regulatory regime for mineral and coal mining business activities.

Promoting investment certainty is clearly one of the agendas behind the new government regulation. However, it is apparent that the new government regulation has also been motivated, in part, by other agendas that have resulted in it becoming possible, for the first time, for “*religious community organizations*” to obtain special mining business licenses. This latter agenda has been the source of considerable public controversy.

In this article, the writer will review the principal changes that have been made to the regulatory regime for mineral and coal mining business activities before discussing their significance and what they may tell us about what actually determines the evolution of local mining industry regulation.

BACKGROUND

The main impetus for the new government regulation was almost certainly the perceived need to make it possible for PT Freeport Indonesia, as the operator of the vast Grasberg underground copper and gold mining project in Papua as well as of the newly completed copper smelter in Gresik (which is said to be the world’s largest such facility) (**Freeport Indonesia**), to extend its special mining services business license (**IUPK**) earlier than was allowed by the then existing regulations.

It is hard to overstate the economic importance of Freeport Indonesia’s operations to the Central Government and to the Provincial Governments of Papua and Central Papua as well as to the Mimika Regional Government and other regional governments in Papua and Central Papua.

Economic benefits can be measured in many different ways and, of course, some might argue that the negative externalities associated with Freeport Indonesia’s mining operations devalue, at least to some degree, the positive economic benefits from those operations. Nevertheless, it is impossible to deny the amount of taxes paid by Freeport Indonesia, the number of jobs created by Freeport Indonesia and the number of supporting infrastructure facilities built by Freeport Indonesia in Papua and elsewhere in Indonesia. The aggregate amount of taxes, royalties, export duties and fees paid by

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Freeport Indonesia to the Indonesian Government, at its various different levels, are said to have been (i) US\$2.7 billion in 2023 and (ii) US\$29.3 billion over the period 1992 to 2023, making Freeport Indonesia one of Indonesia's very largest taxpayers. Freeport Indonesia also claims to have (i) created 210,000 jobs, (ii) provided 12,000 scholarships, (iii) trained 4,100 apprentices and (iv) built 3,200 homes, 4 schools, 1 hospital, 5 health clinics, 1 world-class sports complex, 1 mine training institute, 1 airport and 2 airstrips. These are easily verifiable and extraordinary economic contributions to Indonesia by any standard.

In order to obtain a fuller perspective of the significance, to Indonesia, of the continued success of Freeport Indonesia's operations, it is appropriate to also take into account a number of additional factors. These additional factors include (i) the Indonesian Government (at various levels) is now the majority shareholder of Freeport Indonesia and, therefore, stands to benefit the most financially from Freeport Indonesia's mining and processing & refining operations in the years ahead, (ii) Papua is one of the most economically disadvantaged and politically "restive" provinces in Indonesia with a very active independence movement and (iii) the Central Government has acknowledged that Freeport McMoRan Inc. (being the original parent company of Freeport Indonesia) (**FCX**) is probably the only mining company in the world with the technical expertise needed to operate the Grasberg underground mining complex in Papua in an efficient and effective manner.

The above financial contribution "numbers" and other highlighted factors make it very easy to understand why Indonesia simply cannot afford to allow any impediments to arise in respect of the continuation of Freeport Indonesia's operations and how important it is to Indonesia that the international investment community continues to view FCX/Freeport Indonesia as an attractive investment opportunity. No one, therefore, should be surprised that the Central Government has been willing to entertain the proposal that, given the huge amount of capital needed to develop both Freeport Indonesia's underground mining operations and its huge copper smelter, potential investors require greater certainty that Freeport Indonesia will still be able to operate once the current term of its IUPK, being a continuation of its earlier contract of work (**Continuation IUPK**), comes to an end in 2031 and notwithstanding its right to a further Continuation IUPK extension until 2041.

Government Regulation (**GR**) No. 96 of 2021 re Minerals & Coal Mining Business Activities (**GR 96/2021**), in its original form, allowed for both (i) 2 times 10 year extensions of metal mineral/coal Continuation IUPKs and mining business licenses (**IUPs**) and (ii) unlimited successive 10-year extensions of Continuation IUPKs/IUPKs/IUPs, for the commercial life of the underlying mining project, in the case of Continuation IUPK/IUPK/IUP holders carrying on "integrated" metal mineral/coal mining and processing & refining/development & utilization operations. GR 96/2021 provided that applications for 10-year extensions of Continuation IUPKs/IUPKs/IUPs could be made not earlier than 5 years and not later than 1 year prior to the expiry of the existing Continuation IUPK/IUPK/IUP. There was clearly a concern, however, that it was not acceptable or realistic, from an investor/finance provider certainty perspective, for Freeport Indonesia to have to wait until 2036, being 5 years before the expiry of the presumed second extension of its existing Continuation IUPK, in order to receive a further extension of its Continuation IUPK until 2051 at least.

At the same time, there was a more general concern that the existing concept of "*integrated*" metal mineral/coal mining operations and processing & refining/development & utilization operations was overly restrictive in that it required the relevant Continuation IUPK/IUPK/IUP holder to be the same legal entity which carried out both the metal mineral/coal mining operations and the processing & refining/development & utilization operations. Greater flexibility, in terms of what is required to qualify for successive 10-year extensions, during the commercial life of a metal minerals/coal mining

project and on the basis of having “*integrated*” metal mineral/coal mining operations and processing & refining/development & utilization operations, is something that is, inevitably, of considerable interest to all prospective investors in/prospective financiers of Indonesian metal minerals/coal mining projects and not just to the prospective investors in/financiers of FCX/Freeport Indonesia. This is because qualifying as an “*integrated*” metal mineral/coal mining operator and processing & refining/development & utilization operator provides a high degree of “comfort” that the relevant company will be able to retain its Continuation IUPK/IUPK/IUP for the entire commercial life of its metal minerals/coal mining project. As such, Continuation IUPK/IUPK/IUP holders, carrying on “*integrated*” metal mineral/coal mining operations and processing & refining/development & utilization operations, are likely to find it relatively easier to attract new investment and financing than are non-integrated Continuation IUPK/IUPK/IUP holders.

Several drafts of a proposed new government regulation, amending GR 96/2021 so as to deal with the mining investment certainty issues highlighted above, were circulated but never finalized and issued, apparently because of the failure to resolve, within the Government, what to do about another agenda completely unrelated to mining investment certainty.

Commencing soon after the recent Indonesian presidential elections, it was widely reported in the popular press that Nahdlatul Ulama (NU), being 1 of the 2 “peak” Islamic organizations in Indonesia, would shortly receive a special mining business license area (WIUPK), supposedly in return for the unofficial support it had provided to the winning candidate pair during the presidential election campaign. These popular press reports (i) made no mention of Muhammadiyah (being the 2nd “peak” Islamic organization in Indonesia) or any other “*religious community organization*” being “in-line” to receive a WIUPK and (ii) highlighted the apparent open conflict among cabinet members as to whether or not it could ever be appropriate for “*religious community organizations*” to receive WIUPKs.

GR No. 25 of 2024 re Amendment of GR 96/2021 (GR 25/2024) was finally issued on 30 May 2024 and after the Central Government had attempted to address, in the drafting of GR 25/2024, widespread public criticism of the proposed issuance of a WIUPK to NU.

ANALYSIS AND DISCUSSION

1. Overview of Amendments

GR 25/2024 deals with both (i) various minor “house-keeping issues” and (ii) some substantive changes in respect of the regulation of minerals and coal mining business activities.

With respect to the minor “housekeeping” issues, GR 25/2024 brings the provisions of GR 96/2021 into line with other recent regulatory developments, including the movement away from yearly Ministry of Energy & Mineral Resources approved work plans and budgets for mining projects (RKABs) to RKABs that cover a three-year period. GR 25/2024 also makes provision for the situation where extensions are sought in respect of IUPKs/IUPs that are held by subsidiaries of State-owned enterprises (BUMNs) rather than by the BUMNs themselves, something that was not previously dealt with in GR 96/2021.

Of much greater significance are those provisions of GR 25/2024 that (i) revise the requirements that have to be met in order to qualify as an “*integrated*” metal mineral/coal mining operation and

processing & refining/development & utilization operation that then enables the relevant Continuation IUPK/IUPK/IUP holder to apply for successive 10 year extensions of its Continuation IUPK/IUPK/IUP during the commercial life of the relevant mining project, (ii) the offering of WIUPKs, on a priority basis, to “*religious community organizations*” and (iii) introduce new rules for the extension of certain Continuation IUPKs only. It is these 3 material changes that are the focus of the balance of this article.

2. Main Amendments in Detail

- 2.1 **Clarifying the Meaning of “Integrated” Mining Operations and Processing & Refining Operations:** The requirements, in order to qualify as an Continuation IUPK/IUPK/IUP holder carrying on “*integrated*” metal minerals/coal mining and processing & refining/development & utilization operations, have been relaxed such that it is now sufficient if (i) the processing & refining/development & utilization operations are carried out by a separate company to the Continuation IUPK/IUPK/IUP holder itself, (ii) the Continuation IUPK/IUPK/IUP holder is merely the direct or indirect beneficial owner of at least 30% of the issued shares of the separate company carrying out the processing & refining/development & utilization operations, which minimum beneficial ownership interest cannot be diluted and (iii) the Continuation IUPK/IUPK/IUP holder has sufficient reserves of metal minerals/coal to fulfil the operational needs of the company carrying out the processing & refining/development & utilization operations (GR 25/2024 has amended Article 56 of GR 96/2021).

In addition to making it easier to qualify as a Continuation IUPK/IUPK/IUP holder carrying on “*integrated*” metal minerals/coal mining operations and processing & refining/development & utilization operations, the amendments introduced by GR 25/2024 have important implications for the 51% divestiture requirement applicable to Continuation IUPK/IUPK/IUP holders which are established as foreign investment companies (**PMA Companies**) (**Divestiture Requirement**). Previously, when the processing & refining/development & utilization operations had to be carried on by the Continuation IUPK/IUPK/IUP holder itself, this meant that, in the case of Continuation IUPK/IUPK/IUP holders being PMA Companies, the Divestiture Requirement applied to **both 100%** of the metal mineral/coal mining operations **and to 100%** of the processing & refining/development & utilization operations carried on by the relevant Continuation IUPK/IUPK/IUP holder. Now, however, with it being possible to have the processing & refining/development & utilization operations carried on by another company separate from the Continuation IUPK/IUPK/IUP holder and only beneficially owned as to at least 30% by the relevant Continuation IUPK/IUPK/IUP holder, the impact of the Divestiture Requirement, on the processing & refining/development & utilization operations, is potentially much less significant and may only affect **as little as 30%** of the processing & refining/development & utilization operations.

Allowing the processing & refining/development & utilization operations to be carried on by another company separate from the Continuation IUPK/IUPK/IUP holder, while not forfeiting the benefits of being designated as an “*integrated*” metal minerals/coal mining operator and processing & refining/development & utilization operator, is also more consistent with established liability contagion/risk minimization principles. Established liability contagion/risk minimization principles would normally encourage the separation of ownership of 2 very different operations, each of which operations has considerable

associated potential liabilities/risks for the relevant operating company in the event of an accident or sub-optimal financial performance.

- 2.2 **Priority Offering of WIUPKs to Religious Community Organizations:** For the first time, former coal contract of work (PKP2B) areas, designated as WIUPKs, (i) may be offered to business entities majority owned and controlled by “*religious community organizations*” (**RCO Business Entities**), (ii) without any requirement for a public tender and (iii) for a period of 5 years. RCO Business Entities, receiving WIUPKs, will then be entitled to apply for IUPKs, thereby giving them the necessary business licenses to carry out coal mining activities on their WIUPKs in accordance with RKABs approved by the Director General of Minerals & Coal.

RCO Business Entities, receiving WIUPKs/IUPKs, may not subsequently (i) assign their WIUPKs/IUPKs without prior approval from the Minister of Energy & Mineral Resources (**MoEMR**), (ii) allow the transfer of their issued shares without prior MoEMR approval or (iii) “*cooperate*” with the former PKP2B holders (GR 25/2024 has inserted a new Article 83A between Article 83 and Article 84 of GR 96/2021).

The elucidation to GR 25/2024 provides that “*religious community organizations*” are:

“religious community organizations, one of the organs of which carries out economic activities and aims to empower the economic well-being of members and the welfare of the community.”

The above elucidation is, self-evidently, not of much help in identifying what are the relevant “*religious community organizations*”/RCO Business Entities to which the Government is proposing to offer WIUPKs. MoEMR has, however, subsequently indicated that a total of 6 WIUPKs will be offered to RCO Business Entities associated with NU, Muhammadiyah, the Indonesian Bishops Conference, the Fellowship of Churches in Indonesia, Buddhism and Hinduism.

The 6 targeted WIUPKs are said to comprise parts of the former PKP2B areas of PT Kaltim Prima Coal, PT Arutmin Indonesia, PT Kendilo Coal Indonesia, PT Multi Harapan Utama, PT Adaro Energy Tbk and PT Kideco Jaya Agung, which former PK2B areas were surrendered at the time of the conversion of the relevant PKP2Bs to become Continuation IUPKs. These 6 WIUPKs are said to have a combined area of 262,771 hectares and contain substantial reserves of coal.

It has been reported in the popular press that, to date, only NU has expressed any serious interest in obtaining a WIUPK, with even the chairman of Muhammadiyah’s Legal & Human Rights Council, Trisno Raharjo, being quoted by Tempo Magazine on 5 June 2024 as maintaining that the offering of WIUPKs to “*religious community organizations*”, without any public auction process, (i) contravenes the 2009 Minerals & Coal Mining Law and (ii) is otherwise inconsistent with ensuring a fair and transparent process for awarding IUPKs. More particularly, Trisno Raharjo was quoted as having said that:

“This method of giving away [the license] cannot be justified.”

Meanwhile, spokesmen for both the Fellowship of Churches in Indonesia and the Indonesian Bishops Council were quoted in the 7 June 2024 edition of The Jakarta Post as saying that carrying on/owning mining operations is inconsistent with their role as churches focused on service to humanity. Presumably, however, NU sees no such inconsistency.

The Central Government has sought to deflect the widespread public criticism of WIUPKs being offered to “*religious community organizations*” on various grounds. These grounds include highlighting that (i) certain unnamed “*religious community organizations*” played a material role in Indonesia’s struggle for independence during the period 1945 to 1949, (ii) subsequent to independence, “*religious community organizations*” have provided significant assistance in alleviating the human misery caused by Indonesia’s not infrequent natural disasters, (iii) the Central Government has a responsibility to help “*religious community organizations*” carry out their “*duties to society*” (whatever this might mean!!) without undue reliance upon donations (why???) and (iv) “*religious community organizations*” are said to often play an important role in ensuring acceptance of mining operations by local communities and otherwise avoiding local conflicts over mining operations. It has also been emphasized that WIUPKs are not being offered to “*religious community organizations*” per se but, rather, to RCO Business Entities, something which (for reasons that have not been clearly articulated) is apparently meant to make the new scheme more defensible. Finally, it has been suggested by the President himself that, before RCO Business Entities can receive IUPKs for their newly awarded WIUPKs, they will have to meet “*rigorous*” requirements/standards in respect of technical, financial and management capabilities.

It is hard to know where to start in evaluating the newly introduced scheme of offering WIUPKs to “*religious community organizations*” or, more particularly, to RCO Business Entities as well as the various justifications advanced in support of this scheme. The associated concerns and issues are so numerous that it is not possible to do justice to all of them in one article. Accordingly, the writer will highlight only a couple of the more obvious ones and how they are likely to be viewed by the numerous cynical observers of the Indonesian mining industry.

The timing of the newly introduced scheme would seem to be as good a place as any other to start in evaluating the new scheme. It is, of course, intriguing that this scheme has been introduced so soon after the completion of Indonesia’s recent presidential election. Is this purely coincidental or is there, in fact, a connection? A cynical observer might think that a lot could perhaps be learnt, about the true motivations for the introduction of this new scheme, by “joining the dots” linking those RCO Business Entities which actually receive WIUPKs with the particular candidate pairs their “*religious community organizations*” supported, officially or, at least, unofficially, in the presidential election. Indeed, numerous articles in popular media publications such as Tempo Magazine have explicitly linked the proposed issuance to NU of a WIUPK with NU’s unofficial support of the winning presidential candidate pair. The title, “*Returning the Favor with Mining Permits*”, of the 13 April 2024 article in Tempo Magazine, surely “says it all”, at least in terms of what is the popular perception of the real motivation for the new scheme. The writer would, of course, not presume to express any view at all on what is the real motivation for the proposed issuance to NU of a WIUPK.

The cynical observer might also be tempted to speculate that the Christian, Catholic, Buddhist and Hindu religions are only included in Central Government pronouncements about the

potential recipients of WIUPKs as “window dressing” designed to obscure the actually intended “*religious community organization*” recipients of WIUPKs. In this regard, a cynical observer could confidently be expected to question the likelihood that the Buddhist temples in, for instance, Jakarta’s Glodok will ever be offered a WIUPK!!

This same “window dressing” designation might well be applied by a cynical observer to the “*rigorous*” requirements/standards in respect of technical, financial and management capabilities that are, supposedly, to be applied to RCO Business Entities before they are awarded IUPKs for their WIUPKs. In this regard, the cynical observer would likely take careful note of the fact that NU was widely reported in the popular media as having been assured it would receive a WIUPK many months **before** the issuance of GR 25/2024 and the first publication of the Central Government’s assertions that “*rigorous*” requirements/standards would be applied to RCO Business Entities before they are awarded IUPKs for their WIUPKs. That same cynical observer might then question how likely it is that these “*rigorous*” requirements/standards will ever be seriously applied to NU’s RCO Business Entity when it comes to apply for a IUPK long **after** the decision had, apparently, already been taken to award NU’s RCO Business Entity a WIUPK and given NU will only ever be able to derive any value from this WIUPK if NU’s RCO Business Entity subsequently receives an IUPK in respect of that WIUPK!!!

Perhaps most importantly, it should be pointed out that allowing “*religious community organizations*”/RCO Business Entities to receive WIUPKs, on a priority basis and without a public auction, effectively compromises and undercuts the long-standing priority right of BUMNs and Regional Government-owned enterprises (**BUMDs**) to obtain WIUPKs, including WIUPKs in respect of areas previously covered by PKP2Bs, that have been relinquished or returned to the Central Government, by application and without having to go through a public auction process. This BUMN/BUMD priority right is expressly provided for in Articles 27 to 30 of MoEMR Regulation No. 7 of 2020 re Procedures for Granting Areas, Licensing, and Reporting in Mineral and Coal Mining Business Activities. Although the Government says it only intends to offer 6 WIUPKs to RCO Business Entities and all 6 WIUPKs are former PKP2B areas surrendered by former PKP2B holders at the time of the conversion of their PKP2Bs to Continuation IUPKs, this still effectively means that “*religious community organizations*”/RCO Business Entities are being placed by the Government on the same level as BUMNs/BUMDs when it comes to the priority right to receive, at least some, WIUPKs. The original rationale for allowing BUMNs/BUMDs to receive WIUPKs, on the basis of application and without having to go through a public auction process, was that WIUPKs are areas considered to be of national strategic importance because of their size and/or the mineral resources they are believed to contain and, therefore, the control and development of the same by and for the benefit of the State (**i.e.**, by BUMNs/BUMDs), rather than by and for the benefit of the private sector, should be given priority. Accordingly, elevating “*religious community organizations*”/RCO Business Entities to the same level as BUMNs/BUMDs, in the case of the priority right to even 6 WIUPKs, can be viewed as amounting to a very unfortunate breakdown in the traditional “separation of church and state” which is usually regarded as one of the defining characteristics of democracies and secular states, even in the case of Indonesia. It should be pointed out that there is **nothing** whatsoever in GR 25/2024 about a maximum of 6 WIUPKs only being offered to “*religious community organizations*”/RCO Business Entities. In other words, GR 25/2004 does **not** impose any limits on the number of WIUPKs that may actually be offered to “*religious community organizations*”/RCO Business Entities over time.

There must also be a very real risk that “*religious community organizations*”, which have RCO Business Entities with WIUPKs, will **not** be the parties deriving most of the economic benefits from the carrying out of the subsequent coal mining operations on these WIUPKs. This risk is greatly increased given “*religious community organizations*” will, presumably, not want to or even be able to provide the large amounts of upfront capital investment required to develop WIUPKs as effective and efficient coal mining operations. A cynical observer might wonder whether RCO Business Entities receiving WIUPKs are in danger of just becoming “fronts” for well-connected private sector business interests which will, no doubt, be able to find numerous ways to “siphon off” most of the profits from the resulting coal mining projects and with the “*relevant religious community organizations*” being left with what effectively amounts to just a “commission” for securing the WIUPKs in the first place. It is true that GR 25/2024 specifically requires “*religious community organizations*” to be the “*majority owners*” of and to have “*control*” of RCO Business Entities receiving WIUPKs. However, there is **nothing** in GR 25/2024 about “*religious community organizations*” having to retain all or most of the net profits of RCO Business Entities receiving WIUPKs. Indonesia’s Company Law allows companies to adopt dual share class structures, with different share classes having different rights including with respect to dividends. Accordingly, it would be a relatively straightforward administrative exercise for RCO Business Entities, receiving WIUPKs, to subsequently introduce a dual share class structure that results in the relevant “*religious community organizations*” retaining majority ownership and control of the RCO Business Entities (as required by GR 25/2024) but with a private sector minority shareholder being entitled to most of the dividends and other economic benefits associated with operating coal mines on the WIUPKs awarded to the RCO Business Entities and in return for providing the upfront capital investment needed to develop the coal mines. There is also **nothing** in GR 25/2024 that would prevent RCO Business Entities, receiving WIUPKs, from appointing third party mining business service providers, as contractors, to actually carry out most of the work associated with the coal mining operations and receive, in return, most of the economic benefits from such coal mining operations. In other words, while WIUPKs are supposedly being offered to RCO Business Entities in order to “*improve the welfare of the community*”, there is absolutely **no** direct or inevitable connection between RCO Business Entities receiving WIUPKs and any improvement at all in the “*welfare of the community*”. Any resulting material improvement in the “*welfare of the community*” is, in fact, entirely dependent upon whether or not and to what extent “*religious community organizations*”, having RCO Business Entities with WIUPKs, actually derive a significant part of the net profits generated from the coal mining operations subsequently carried out on those WIUPKs.

Finally, it is interesting to ponder what the cynical observer will make of the Minister of Investment’s extraordinary assertion, during a press conference on 29 April 2024 (as reported by CNBC Indonesia), that giving “*religious community organizations*”/RCO Business Entities WIUPKs on a priority basis can be justified because of the support certain “*religious community organizations*” provided during Indonesia’s struggle for independence, from the evils of colonialism, in the period 1945 to 1949!! In this regard, the cynical observer might just wonder why, if this justification is so compelling and so obvious, it has taken nearly 80 years for the Central Government to appropriately reward “*religious community organizations*” for their support in connection with the independence struggle!!!

- 2.3 **Extension of Continuation IUPKs:** The requirements for and the procedural steps to be followed in extending **certain** Continuation IUPKs **only** have been changed very significantly

(GR 25/2024 has (i) amended Article 120 and (ii) inserted new Articles 195A and 195B between Article 195 and 196 of GR 96/2021).

As is so often the case with mining industry regulations in Indonesia, some “creativity” is required in interpreting the GR 25/2024 amendments made to Article 120 and the GR 25/2024 newly inserted Articles 195A and 195B so as to give a coherent, consistent and sensible meaning to the same. Subject to this caveat, the new requirements for and the procedural steps to be followed in seeking extensions of **certain** Continuation IUPKs **only** may be summarized as follows:

Requirements	Submission of Extension Applications	Evaluation and Decision by MoEMR
a. Holders of Continuation IUPKs, <u>which (i) are carrying on production operation activities and (ii) where the relevant Continuation IUPKs were obtained before the 2020 amendments to the 2009 Minerals & Coal Mining Law, may</u> be granted extensions if they fulfil the following criteria: • <u>carry on “integrated” metal minerals/coal mining operations and processing & refining/development & utilization operations in-country (Integrated Operations Requirement);</u> • have sufficient available metal mineral/coal reserves to meet the operational needs of their processing & refining/development & utilization facilities; • their shares are owned as to not less than 51% by “Indonesian participants”; • <u>have entered into a sale and purchase agreement with a BUMN which will result in the BUMN acquiring additional shares of the relevant Continuation IUPK holder equal to not less than 10% of the issued shares of the relevant Continuation IUPK holder, which additional BUMN</u>	a. Applications for Continuation IUPK extensions (<u>Extension Applications</u>) must be submitted to the MoEMR <u>not later than 1 year</u> prior to the expiration of the existing Continuation IUPK period. b. Extension Applications must be submitted together with: • application letter; • map and boundary coordinates of the relevant production operation mining area; • proof of payment of fixed contributions and production contributions for the last 3 years; • report on the production operation activities that have been carried on by the relevant Continuation IUPK holder up to the date of the Extension Application; • environmental management implementation report; • RKAB; and	a. MoEMR reviews/verifies/evaluates submitted Extension Applications and the accompanying supporting documents and may: • approve the Extension Application not later than the expiration date of the existing Continuation IUPK period; or • reject the Extension Application, in which event MoEMR must inform the relevant Continuation IUPK holder that its Extension Application has been rejected and the reason for the rejection not later than the expiration date of the existing Continuation IUPK period. b. In deciding to approve or reject an Extension Application, MoEMR is meant to take into account <u>the past production operation performance</u> of the relevant Continuation IUPK holder.

Requirements	Submission of Extension Applications	Evaluation and Decision by MoEMR
<u>shareholding may not be diluted (Minimum Additional BUMN Shareholding Requirement);</u> • their operations are expected to result in an increase in state revenue; and • have at least 1 new investment commitment in the form of: 1. advanced exploration activities; and/or 2. an increase in processing & refining/development & utilization facility capacity which has been approved by MoEMR. b. Continuation IUPK extensions are possible: • every 10 years during the commercial life of the metal minerals/coal mining project; and while so long as the relevant Continuation IUPK holder has sufficient metal mineral/coal reserves	• details of available metal mineral/coal resources and reserves.	

It is important to understand that it is **only a very limited subset of holders of Continuation IUPKs** which may submit Extension Applications in respect of their Continuation IUPKs at **any time** prior to 1 year before the expiry of their Continuation IUPKs and so long as they meet the newly specified qualification requirements in new Article 195B (**Early EA Continuation IUPK Holders**). **Other** Continuation IUPK holders, as well as holders of IUPKs and IUPs, will only be able to submit Extension Applications in accordance with the previously existing timeline of **not earlier than 5 years and not later than 1 year** prior to the expiry of their other Continuation IUPKs, IUPKs or IUPs as the case may be. These other Continuation IUPK holders, as well as holders of IUPKs and IUPs, are also **not** subject to the additional requirements applicable to the Early EA Continuation IUPK Holders; namely, the Integrated Operations Requirement and the Additional BUMN Shareholding Requirement among others.

There are various interesting and noteworthy aspects of the new requirements for and the procedural steps to be followed in the case of Early EA Continuation IUPK Holders seeking

extensions of their Continuation IUPKs. The Minimum Additional BUMN Shareholding Requirement should be highlighted in particular. GR 25/2024 and new Article 195B do **not** say anything about the purchase price for or the value, if any, that will be attributed to and paid by the relevant BUMN for the additional minimum shareholding in an Early EA Continuation IUPK holder. In other words, is divesting the additional minimum BUMN shareholding effectively just the “price” that the relevant Early EA Continuation IUPK holder is expected to pay for the early extension of its Continuation IUPK or does the relevant BUMN have to pay the relevant Early EA Continuation IUPK holder market value or some approximation of market value for the additional minimum BUMN shareholding? In the case of Freeport Indonesia and the proposed extension of its Continuation IUPK, the Central Government has been noticeably “coy” about what it has said/not said with respect to this issue. Bloomberg Technoz has quoted MoEMR as having said, on 7 June 2024, that MIND ID would “*not need to dig into its own pockets*” in order to acquire an additional 10% shareholding in Freeport Indonesia as part of the early extension of Freeport Indonesia’s Continuation IUPK in reliance upon newly issued GR 25/2024 but that the acquisition of the additional 10% shareholding in Freeport Indonesia would “*involve a certain mechanism*”. It is possible that the “*certain mechanism*” referred to by MoEMR could be the application of some part of MIND ID’s future dividend entitlement towards compensating FCX for the further divestiture of 10% of its shareholding in Freeport Indonesia although other explanations of the “*certain mechanism*” reference are equally plausible. Whatever the situation actually is, however, it is reasonable to assume that the Central Government has ensured it receives a “good deal” in return for accommodating Freeport Indonesia’s request for an early extension of its Continuation IUPK by way of making this possible through the issuance of GR 25/2024. This is probably not unreasonable in all the circumstances.

SUMMARY & CONCLUSIONS

According to its preamble, the agenda or purpose of GR 25/2024 is to “*continue to provide investment certainty through policy deregulation and de-bureaucratization of the mineral and coal sector*”.

Relaxing the requirements for designation as the operator of an “*integrated*” metal mineral/coal mining and processing & refining/development & utilization project, as well as making possible the early extension of a very limited subset of Continuation IUPKs, are both positive changes that are entirely consistent with providing greater investment certainty. These changes **could** help to make the Indonesian mining industry a more attractive destination for foreign investment.

A thorough reading of GR 25/2024, however, makes it all too clear that, while providing greater investment certainty may well be one of or even the most important agenda of GR 25/2024, it is most certainly **not** the only agenda of GR 25/2024. Allowing “*religious community organizations*”/RCO Business Entities to receive WIUPKs self-evidently has **nothing whatsoever** to do with promoting greater investment certainty and **everything** to do with some other agenda, the reason for which invites endless and wholly unflattering speculation as to the Central Government’s actual motivation.

Whatever the actual motivation for the Central Government’s agenda in offering WIUPKs to “*religious community organizations*”/RCO Business Entities, this is **not** likely to be seen as a positive development by existing and potential foreign investors in the Indonesian mining industry. Many foreign investors will, no doubt, wonder in what direction is Indonesia heading when mining areas, determined to be of national strategic importance, are given to “*religious community organizations*”/RCO Business Entities, rather than to BUMNs/BUMDs, on a priority basis and

without the need to participate in a public auction process. The arguable breakdown that this represents in the traditional “separation of church and state”, something which has generally been observed in Indonesia to date, could well be seen by foreign investors as a worrying sign of what the future may hold not only for the local mining industry but also for Indonesia as a whole.

This article was written by Bill Sullivan, Senior Foreign Counsel with Christian Teo & Partners and Senior Adviser to Stephenson Harwood. Christian Teo & Partners is a Jakarta based, Indonesian law firm and a leader in Indonesian energy, infrastructure and mining law and regulatory practice. Christian Teo & Partners operates in close association with international law firm Stephenson Harwood which has eight offices across Asia, Europe, and the Middle East: Dubai, Hong Kong, London, Paris, Piraeus, Seoul, Shanghai, and Singapore.

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