

MEMR ISSUES GUIDELINES ON MINING PERMITS FOR TRANSPORTATION AND SALE, PROCESSING AND REFINING

The Minister of Energy and Mineral Resources (“MEMR”) promulgated Regulation No. 32 of 2013 on Procedure for Granting Special Permits in the Field of Mineral and Coal Mining (“Regulation”) on November 19, 2013. This Regulation sets guidelines on how to acquire the Special Permits, which are not clearly regulated by Law No. 4 of 2009 on Mineral and Coal and Mining (“Mining Law”) and Government Regulation No. 23 of 2010 on Implementation of Mineral and Coal Mining Business Activities, as amended.

The Regulation recognizes four types of Special Permit:

❖ Temporary Permit for Transportation and Sale

This permit may be granted to holders of Exploration Mining Business Permit (“IUP”)/Special Mining Business Permit (“IUPK”) that wish to transport and sell minerals or coal that are unearthed during the course of exploration and feasibility study. This permit is granted by the authority that issued the underlying IUP/IUPK; it can only be granted once, and it cannot be extended. The holder can only transport and sell the unearthed minerals or coal within the same island, and it cannot export to foreign countries.

❖ Production Operation IUP for Sale

This permit may be granted to Business Entities not engaged in mining business, such as building construction and infrastructure companies, that unearth minerals or coal in the course of conducting their primary activities. Similar to the Temporary Permit for Transportation and Sale, holders are entitled to transport and sell excavated minerals or coal domestically within one island, and the permit can only be granted one time and cannot be extended. Companies that intend to use excavated rocks or non-metal minerals solely for their own purposes (e.g., for road building) must still obtain a Production Operation IUP for Sale.

This permit cannot be used to sell minerals or coal that are discovered within the territory of an existing mining area, because the rights to those minerals or coal are retained by the IUP/IUPK or Contract of Work holder.

The issuing authority of this permit correlates to the location of the unearthed minerals or coal. If they are located across provinces or immediately adjacent to another country, the MEMR is the issuing authority. If across regencies/cities within the same province or within a single regency, the relevant governor or regent/mayor, respectively, shall act as the issuing authority.

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❖ **Production Operation IUP specifically for Transportation and Sale**

This permit, which may be granted for three to five years, allows holders to transport and sell mineral or coal mining commodities from holders of Production Operation IUP/IUPK, Production Operation IUP specifically for processing and/or refining, People's Mining Permit (IPR), and certain other holders of Production Operation IUP specifically for transportation and sale. This permit can be extended for three years at a time.

Permits for transportation and sale of mineral or coal mining commodities across regencies/cities within the same province or within a single regency/city are issued by the relevant governor or regent/mayor, respectively, while permits for transportation and sale across provinces or outside of Indonesia are granted by the MEMR. As with other types of IUPs, foreign investment (PMA) companies must apply directly to the MEMR.

Holders of this permit may trade among themselves, but only to holders whose permits are issued by a higher-level authority. For example, companies whose permits are issued by a governor can only sell to companies whose permits are issued by the Minister, and companies whose permits are issued by the MEMR cannot trade among themselves.

❖ **Production Operation IUP specifically for Processing and/or Refining**

This permit, which may be granted for twenty years, enables holders to process and refine mining products in order to meet the needs of the market and regulatory requirements on mineral processing. Holders can transport and sell processed/refined products, as well as the byproducts of their industrial process.

The period of this permit includes two years for construction of facilities, and it can be extended for up to ten years at a time. Prospective holders must first acquire a Principal License for processing and/or refining, which gives the holder three years (extendable by one year) in which to conduct a feasibility study, prepare cooperation agreements with suppliers and customers, and acquire ancillary licenses.

PMA companies must obtain their permit directly from the MEMR. Likewise, companies who intend to process and/or refine a mining commodity originating from an importer of a mining commodity, a holder of Production Operation IUPK, a holder of Production Operation IUP issued by the MEMR, or a holder of Production Operation IUP whose mining area is located in another province must obtain their permit directly from the MEMR. By contrast, companies who intend to process and/or refine mining commodities originating from a holder of Production Operation IUP issued by a governor or a holder of Production Operation IUP located across regencies/cities in the same province apply to the relevant governor. For companies that will process mining commodities from the same regency/city from holders of Production Operation IUP issued by the regent/mayor, they must obtain their permit from the relevant regent/mayor, unless they intend to expand their raw materials sources to include supplies from different provinces.

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The Regulation incorporates several provisions on administrative sanctions in order to deter the relevant actors from violating the Regulation, ranging from temporary suspension of the violator's permit to permanent revocation.

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