

ClientAlert

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Domestic Mineral Processing and Beneficiation in Indonesian Mining Sector

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Introduction and Background

As participants in the Indonesian mining sector continue to consider the implications of the 2009 mining law requiring certain types of in-country processing and beneficiation, the Indonesian Government has introduced related regulations on (a) the thresholds that will trigger compliance and (b) an interim tax regime governing exports of processed but not yet beneficiated metal minerals until a complete ban takes effect in 2017.

In 2009, the Indonesian legislature passed the mining law that requires certain mining industry participants to process raw materials within Indonesia before exporting them to other markets. Under Articles 103 and 170 of the law, which took effect in January 2014, companies working under relevant contracts and licenses (which are Contracts of Works ("COW"), Operation Production Mining Business Licenses ("IUP"), or Operation Production Special Mining Business Licenses ("IUPK")) must process and beneficiate raw minerals within Indonesia. On 11 January 2014, the Government of Indonesia issued several new, related regulations to inform compliance with the law. Under one regulation¹, the Indonesian Government reaffirms that Articles 103 and 170 of 2009 now govern most processing and beneficiation in Indonesia. In another regulation², the government revokes previous rules and (i) establishes thresholds specifically, minimum beneficiation levels of concentration or processed levels of the mining commodities that trigger compliance under the 2009 law and (ii) regulates exceptions for domestically processed but not yet beneficiated metal minerals which may still be exported until 2017. In a third regulation³, the government imposes a progressive export duty (bea keluar) for certain domestically processed but not yet beneficiated metal minerals.



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¹ Government Regulation No. 1 of 2014 on the Amendment of Government Regulation No. 23 of 2010 on Mineral and Coal Mining Business Activities ("GR 1/2014").

² Regulation No. 1 of 2014 on Enhancement of Minerals' Value Added through Domestic Mineral Processing and Beneficiation Activities ("MEMR 1/2014").

³ Regulation No. 6/PMK.011/2014 on the Second Amendment to Ministerial Regulation No. 75/PMK.011/2012 on the Determination of Exported Goods Subject to Export Duties and Export Duty Tariffs ("MOF 6/2014").

Salient Matters to Note

Processing and beneficiation of mining commodities

Under the regulations, relevant industry participants must process or beneficiate various mining commodities—including metal minerals, non-metal minerals, rocks, and the byproducts and residues of such materials—within Indonesia and to certain levels of refinement. For instance, copper cathode must be beneficiated to at least 99.9%.

Mining commodities not yet covered in the appendices of MEMR 1/2014 may not be exported from Indonesia until the Minister of Energy and Mineral Resources (MEMR) has determined the minimum levels of concentration or processing levels.

Cooperation

To satisfy domestic processing or beneficiation requirements, a holder of an IUP or an IUPK may directly conduct their own processing and beneficiation of minerals or cooperate with other holders of IUPs or IUPKs, or cooperate with IUP holders which are specifically carrying out the processing and refinery activities. Relevant rights holders may cooperate by:

- (i) the sale and purchase of raw minerals/ore or concentrate; or
- (ii) implementing activities for the processing and/or beneficiation.

A prospective cooperation arrangement requires approval from the MEMR, the relevant governor or regent, depending on the authorities which have issued the IUPs or IUPKs held by the respective parties entering into the cooperation. (For example, MEMR approval for a cooperation plan will be required if the cooperation is between IUP holders where different governors have issued the IUPs, whereas a governor's approval will be required if the cooperation is between IUP holders who acquired rights from two different regents in one province.)

Applicability of the domestic processing and beneficiation requirements

Domestic processing and beneficiation requirements apply to:

- (i) IUP holders;
- (ii) IUPK holders;
- (iii) COW holders (whose commodities are metal or non-metal minerals or rocks); and
- (iv) IUP holders (whose commodities are metal or non-metal minerals or rocks) where IUP was a conversion from Mining Authorization (*Kuasa Pertambangan*).

Moreover, even after these mining companies domestically process or beneficiate their commodities, regulations limit the quantity of the processed minerals which can be exported—but this limitation remains unclear.

Exemptions

- (i) **Anoda slime and telluride copper** – Anoda slime and telluride copper as by-product or residue of the beneficiation of copper may be exported abroad within certain limited quantities (which has not yet been determined) to the extent the beneficiation of anoda slime and telluride copper is not available in Indonesia.
- (ii) **Certain processed metal minerals** – Although the Government had been expected to strictly apply the (general) raw minerals export ban on 12 January 2014, the new regulations allow holders of COWs IUPs and IUPKs to mine metal minerals and export certain quantities of domestically processed but not yet beneficiated minerals until 2017, but only after obtaining a recommendation from the Director General of Minerals and Coal on behalf of the MEMR and satisfying the minimum levels of the domestic processing.

To obtain the recommendation, the relevant mining companies must fulfill certain requirements, such as owning sufficient reserves to conduct domestic processing, showing a serious intention to build smelting facilities (independently or in cooperation with other parties), and complying with the good environmental practices.

The recommendation must be renewed every 6 months (based on progression in building smelting facilities) and is used to obtain an Export Approval Letter from the Minister of Trade to allow export to occur.

Any such export would, however, still be subject to the export duty referred to below. (Note: The metal minerals exemption does not apply to nickel, bauxite, tin, gold, silver and chromium, which must be beneficiated domestically to meet with the levels set under the relevant regulation.)

Progressive export duty for the exempted metal minerals

The progressive export duty (*bea keluar*) applies to copper (*tembaga*), iron (*besi*), manganese (*mangan*), lead (*timbal*), zinc (*seng*), ilmenite, and titanium. The export duty is set at 20% to 25% for the 2014 fiscal year, which will increase gradually on a semester basis, at the rate of up to 60% by the second semester of 2016.

This progressive export duty is in line with the general regulatory framework on the domestic processing and beneficiation requirements for all mining commodities to reach certain minimum concentration levels or beneficiated levels by 11 January 2017.

Conclusion

By issuing these laws and regulations, the Indonesian Government aims to increase the mining commodities price received by Indonesian mining companies for mineral commodities (by requiring the adding of value through domestic processing or beneficiation); increase Indonesia's tax revenue; and create more jobs through the increase of production capacity in Indonesia.

But the broader effects of these laws and regulations remain uncertain. It remains to be seen, for example, whether the Indonesia Government will benefit from this export ban even in the near future: new obligations may make Indonesia a less competitive location for foreign investment in mining even as a downturn grips the global mining industry. Additionally, requiring strict compliance with the processing or beneficiation requirements in the absence of adequate smelting capacity within Indonesia may cause in country-wide production cuts and deferred investment. To date, local news outlets have suggested that only seven out of 30 licensed smelters are operational—an insufficient number to take the raw minerals currently extracted by mining companies in Indonesia.

Meanwhile, many industry participants continue to contest the laws and regulations. The Association of Mineral Entrepreneurs, to take an example, has filed a class action lawsuit against the ban and proposed a judicial review of the laws and regulations.

While the Indonesian Government has initially aimed to generate revenue and local jobs through new legislation, the phased export ban has taken hold during a global minerals industry downturn, amid inadequate infrastructure in Indonesia. Therefore, the overall effect of these new rules—particularly on investment, jobs, and revenue in Indonesia—remains unclear.

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