

NEWSLETTER

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NEW MINISTER OF ENERGY AND MINERAL RESOURCES REGULATIONS

A. MEMR Regulation No. 5/2017 concerning the Enhancement Value Added of Minerals through Domestic Minerals Processing and Refinery Activities

The Minister of Energy and Mineral Resources has issued a new regulation No. 05 of 2017 concerning the Enhancement Value Added of Minerals through Domestic Minerals Processing and Refinery Activities issued which was promulgated on 11 January 2017 ("**MEMR Regulation No. 5/2017**"). Such regulation came into force on the date of promulgation. MEMR Regulation No. 5/2017 serves to implement Articles 96, 112C and 112F of Government Regulation No. 23 of 2010 concerning the Implementation of Mineral and Coal Mining Activities, which has been amended several times and lastly as amended by Government Regulation No. 1 of 2017. Similar matters were regulated under Minister of Energy and Mineral Resources No. 1 of 2014, which was amended by Minister of Energy and Mineral Resources No. 8 of 2015 ("**Previous Regulations**"). Those Previous Regulations are revoked and shall become invalid by the time MEMR Regulation No. 5/2017 was promulgated.

MEMR Regulation No. 5/2017 generally requires the added value of certain metal minerals, non-metal minerals and rocks to be enhanced through processing and refining for certain minerals, and processing for either non-metal minerals or the various types of rock. The details of such minerals, non-metal minerals or rocks are listed in the annexes of MEMR Regulation No. 5/2017.

This obligation also applies to certain residues (*produk samping*) which are generated from the processing and/or refining of certain minerals, including:

1. Anode mud (from copper refineries) or slag (from tin refineries);
2. Zircon, ilmenite, rutile, monazite and xenotime concentrates (from tin processing);
3. Gold and silver (from lead and zinc refineries),

All of which are required to be further refined and/or processed according to the minimum thresholds which are also regulate in details in the annexes of MEMR Regulation No. 5/2017.

All of the above-mentioned added-value enhancement measures shall be conducted in Indonesia in accordance with the minimum processing and/or refinery thresholds which are specified in the annexes of MEMR Regulation No. 5/2017. Such measures must be conducted by the following parties:

1. Holders of either Production Operation Mining Business Permits (*Izin Usaha Pertambangan Operasi Produksi* – "**IUP OP**") or Special Production Operation Mining Business Permits (*Izin Usaha Pertambangan Khusus Operasi Produksi* – "**IUPK OP**") for metal minerals processing; or
2. Holders of IUP OP for the processing of non-metal minerals or rocks.

However these various added-value enhancement obligations do not apply to IUP OP or IUPK OP holders who are utilizing the minerals in Indonesia.

The holders of any of the mining business permits outlined above may then process and/or refine any of the minerals concerned either individually or in cooperation with other IUP OP, IUPK OP holders or holders of Production Operation Mining Business Permits specifically for processing and/or refining. Such cooperation can be implemented through the sale and purchase of raw materials (ores) or concentrates, as well as through the implementation of other measures designed to support processing and/or refining activities and shall be set forth in the form of an agreement. Any such cooperation plan must first be submitted to the Directorate General of Coal and Minerals on behalf of the Ministry or to the relevant governor depends on the permits issuance.

MEMR Regulation No. 5/2017 also requires holders of IUP OP, IUPK OP, IUP OP for processing and refining, as well as any other parties (which are also undertaking mineral processing and refining activities) and which have built smelting facilities in Indonesia to utilize domestic metal minerals which meet certain criteria, specifically:

1. Nickel of < 1.7 % grade amounting to at least 30% of the total input capacity of the nickel smelter; and
2. Washed bauxite ($Al_2O_3 > 42 \%$) of $\geq 42 \%$ grade.

In order to support the downstream implementation, MEMR Regulation No. 5/2017 gives an opportunity to several parties to export certain amounts of minerals for a period of five years as from the date of this regulation coming into force, specifically:

1. Holders of IUP OP for metal minerals;
2. Holders of IUP OP for specific processing and refining activities which were issued prior to MEMR Regulation No. 5/2017 coming into force;
3. Other parties involved in the production of anode mud; or
4. Parties to Mining Working Contracts (*Kontrak Karya* – “KK”).

The above parties are first required to comply with the various minimum processing thresholds which are set out in Annex I to Regulation 5/2017 and to also pay the relevant export duties, with the exception of the various parties. Furthermore, these parties must also secure a recommendation from the Directorate General of Coal and Minerals as a supporting document for the securing of export approval from the Ministry. This recommendation shall be further regulated under the Minister of Energy and Mineral Resources No. 6 of 2017 concerning Procedures and Requirements for the Granting of Recommendation for the Sale and Processed and Purified Minerals to Overseas as detailed below.

B. MEMR Regulation No. 6/2017 concerning Procedures and Requirements for the Granting of Recommendations for the Sale of Processed and Purified Minerals to Overseas

Whereas in order to implement the export of minerals resulting from the processing and refining, the Minister of Energy and Mineral Resources issued a new regulation No. 06 of 2017 concerning Procedures and Requirements for the Granting of Recommendations for the Sale of Processed and

Purified Minerals to Overseas which was promulgated on 11 January 2017 (“**MEMR Regulation No. 6/2017**”). MEMR Regulation No. 6/2017 came into force on the date of promulgation. By the time MEMR Regulation No. 6/2017 promulgated, the Minister of Energy and Mineral Resources Regulation No. 5 of 2016 is revoked and is no longer valid.

This regulation principally contains the following matters:

1. The Parties which are allowed to export processed and/or refined minerals

MEMR Regulation No. 6/2017 allows the following parties to conduct the export of the processed and/or refined minerals: (i) the holders of IUP OP; or (ii) the holders of IUPK OP; or (iii) the holders of IUP OP specifically for processing and refining; or (iv) the holders of IUP OP specifically for transportation and sales; or (v) parties to KK or (vi) other parties which produce anode mud.

2. The requirements and procedures for export recommendations

The relevant parties shall submit an application form (as describe in Annex III A and III B of MEMR Regulation No. 6/2017) to the Minister of Energy and Minerals Resources c.q. Directorate General of Coal and Minerals, by attaching the following:

- a. Statement Letter of the documents’ validity in accordance with the form as describe in Annex I of MEMR Regulation No. 6/2017;
- b. An integrity pact relating to commitment to construct refinery facilities in Indonesia in accordance with the form as describe in Annex I of MEMR Regulation No. 6/2017;
- c. Clean and Clear Certificate;
- d. Report of Analysis or Certificate of Analysis of products which have met the minimum requirement of processing and published within 1 (one) month by independent surveyor appointed by the Minister;
- e. Certificate of Proof of Payment Obligation of Non-Tax Revenue for the last 1 (one) year issued by Directorate General of Coal and Minerals;
- f. Cooperation Agreement for IUP OP specifically for processing and refining;
- g. Development plans for refining facilities which have been verified by Independent Verifier;
- h. Work Plan and Budget of current year which has been approved by Minister or Governor;
- i. Verification Report for the parties who have or are building the refinery facilities;
- j. The latest Estimated Reserves Report; and
- k. Overseas Sales Plan.

As for other parties which produce anode mud, the requirement documents shall be as follows:

- l. Statement Letter of the documents’ validity in accordance with the form as describe in Annex I of MEMR Regulation No. 6/2017;
- m. An integrity pact relating to commitment to construct refinery facilities in Indonesia in accordance with the form as describe in Annex I of MEMR Regulation No. 6/2017;

- n. Sale and Purchase of Concentrate Agreement with the holder of IUP OP;
- o. Development plans for refining facilities which have been verified by Independent Verifier; and
- p. Overseas Sales Plan.

The Directorate General of Coal and Minerals evaluates the application of recommendation, and based on such evaluation the Directorate General of Coal and Minerals will approve or reject such application within 14 (fourteen) working days as from the complete application is submitted. The recommendation will be valid for 1 (one) year and can be extended for a period 1 (one) year for each extension. The application for extended recommendation (as describe in Annex IV A and IV B of MEMR Regulation No. 6/2017) shall be submitted within 30 (thirty) calendar days at the soonest and 14 (fourteen) calendar days at the latest prior to the expiry date of such recommendation.

The recommendation is needed as one of the requirements to obtain Export Approval (*Persetujuan Ekspor-“PE”*) from Ministry of Trade.

Supervisory measures.

On behalf of the Ministry, the Directorate General of Coal and Minerals will periodically supervise any mineral export activities, as well as the physical progress of the construction of any refinery facilities, every six months or at any time that this is deemed necessary. MEMR Regulation No. 6/2017 requires that any physical progress that is made amounts to at least 90% of the previous month's construction progress or the Directorate General of Coal and Minerals will issue a recommendation to the Minister of Trade to revoke the PE that has been granted.