

New developments for Indonesian mining industry



**By Florence
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The Indonesian Supreme Court (the Court) has revealed the details of two decisions that benefit mining companies and regional governments, and complicate efforts by the central government in Jakarta to tighten mining regulations and prohibit the export of raw minerals.

In the two decisions – No. 09 P/HUM/2012 and No. 10 P/HUM/2012, both on September 12th, 2012 – the Court dismantled several provisions of the controversial Minister of Energy and Mineral Resources (MEMR) Regulation No. 7 of 2012 as amended by MEMR Regulation No. 11 of 2012 (Regulation No. 7). That regulation was issued by the MEMR on February 6th, 2012, and immediately sent ripples through the mining industry, particularly Article 21, which would have prohibited the export of raw minerals as of May 6th, 2012, had it not been subsequently delayed.

The cases were brought separately by the Indonesian Nickel Association and the Association of Indonesian Regency Governments.

In its rulings, the Court slapped down what it viewed as an overstepping of its authority by the MEMR. The Court considered the prohibition in Regulation No. 7 on raw mineral exports a violation of Article 170 of the Indonesian Mining Law, which requires that minerals be refined domestically beginning January 12th, 2014. It said the Mining Law clearly states that controlling the production or export of minerals, or prioritising minerals and/or coal for domestic use must be regulated by a Government Regulation, not a Ministerial Regulation.

The Court also took a dim view of the provision in Regulation No. 7 requiring all holders of Production Operation IUP, a Mining Business License, Special Production Operation IUP and Special IUP for processing and refining to obtain ministerial approval for their mineral processing and refining plans. This requirement, contained in Article 8, paragraph 3, was found by the Court to be a violation of Articles 37 and 48 of the Mining Law. These articles give regional governments the power to approve mineral processing and refining plans, in keeping with the principle of decentralisation under regional autonomy.

Using the same reasoning, the Court struck down Article 9,

paragraph 3 and Article 10, paragraphs 1 and 2 of Regulation No. 7. These provisions required MEMR approval for the construction of smelters under partnership agreements between companies, and gave the minister the authority to step in and take processing and refining rights from one IUP holder and give them to another.

However, with regard to the obligation for IUP and Contract of Work holders to report their plans to meet the minimum processing and refining requirement as stipulated under Regulation No. 7 to the Directorate General of Mineral and Coal and the relevant Governor or Regent/Mayor, the Court found that the requirement was in keeping with the Mining Law and its provisions to protect natural resources in Indonesia. It rejected the request to find Articles 22, 23, 24 and 25 invalid and not binding.

With these decisions revoking the prohibition on raw mineral exports, miners will be allowed to continue to export ore. That is the good news for miners, but it is not all positive. Exporting raw minerals is more cumbersome than previously, with IUP holders required to obtain a recommendation from the Directorate General of Mineral and Coal at the MEMR, along with an acknowledgement from the Minister of Trade. Beyond the increased bureaucratic measures, mining companies will have to pay higher export taxes on their raw minerals.

Outlook

Mining companies and regional governments will no doubt applaud these rulings, but it remains to be seen if these decisions will only provide temporary relief to the industry. With the prohibition on the export of raw minerals, as contained in the

Mining Law, still set to come into force on January 12th, 2014, investors are facing a looming deadline to construct smelter plants to process and refine minerals domestically. A major question is whether Indonesia has the infrastructure and power supply for the industry to thrive.

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