

TABLE OF CONTENTS :

Overview.....	1
Types of Licenses	2
Securing Licenses.....	4
IUP and IUPK for Exploration	4
IUP or IUPK for Production Operations.....	6
IUP for Processing and Refining.....	7
IUJP	7
Validity Period	8
Entitlements, Mandatory Activities and Prohibitions	9
Entitlements	9
Mandatory Activities.....	10
Prohibitions.....	11
Conclusion	12

Licensing Policy for Minerals and Coal Business Activities Simplified

In May 2017, the Ministry of Energy and Mineral Resources created a milestone within the minerals and coal sector by issuing Regulation No. 34 of 2017 on the Licensing of Minerals and Coal.

Overview

Licensing matters within the minerals and mining sector are highly complex when compared with those governing other energy sectors, such as oil and gas, geothermal, etc. This complexity is primarily due to several factors, including the substantial involvement of regional government at the regency/mayoral levels as regards the issuance of licenses (although the latter such authority was abolished through the issuance of Law No. 23 of 2014 on Regional Level Government). Other problems have included non-compliance by mining companies in terms of them securing other related permits or approval from the environmental and forestry sectors, an excessive amount of license types, changes in cooperation regimes between government and mining companies as regards the conversion of Working Contracts (“KK”) and Coal-Mining Business Work Agreements (“PKP2B”) into Mining-Business Licenses (*Izin Usaha Pertambangan* – “IUP”) and so forth.

This general complexity and overlap as regards licensing matters has ultimately had an effect upon the levels of state revenue that the sector can generate. Indeed, the contribution of the mining sector to Indonesia’s Gross Domestic Product (GDP) steadily declined from 6.14% in 2011 to 4.23% in 2016.¹ In early 2017, the government set a somewhat ambitious target for annual state revenue generated through the mining sector of IDR 2.4 trillion, which represents an increase of 7.9% over last year’s target.

¹ PricewaterhouseCoopers, [Mining in Indonesia: Investment and Taxation Guide](#), 9th Edition, Pg. 22. (Accessed on 4 June 2017).

In order to increase economic growth as generated through this important sector, the government has now redefined several main provisions on minerals and coal mining. Earlier this year, the government finally put in place a new regime governing the conversion of KK and PKP2B into IUP. Moreover, just recently, the Ministry also issued a new regulation which alters and hopefully improves licensing matters within the mining sector, specifically Ministry Regulation [No. 34 of 2017](#) on Licensing for the Minerals and Coal Sector (“**Regulation 34/2017**”).

Regulation 34/2017 repeals and replaces all previous regulations which set out various provisions relating to mining licensing matters (collectively referred to “**Previous Regulations**”), specifically:²

1. Ministry Regulation [No. 18 of 2009](#) on Procedures for Changes to Investments for the Implementation of Contracts of Work and Coal-Mining Business Working Agreements (“**Regulation 18/2009**”);
2. Ministry Regulation [No. 28 of 2009](#) on the Organization of Minerals and Coal-Mining Businesses, as amended by Ministry Regulation [No. 24 of 2012](#) (“**Regulation 28/2009**”);³
3. Ministry Regulation [No. 27 of 2013](#) on Procedures for Divestment, Share Pricing and Changes to Investments for Minerals and Coal-Mining Businesses (“**Regulation 27/2013**”);⁴
4. Ministry Regulation [No. 32 of 2013](#) on Procedures for the Granting of Special Licenses for the Minerals and Coal Sector, as amended by Ministry Regulation [No. 32 of 2015](#) (“**Regulation 32/2013**”);⁵ and
5. Ministry Decree [No. 555.K/26/M.PE/1995](#) on Health and Safety for General Mining Work, specifically as it applies to the granting of licenses (“**Regulation 555/1995**”).

This week’s Indonesian Law Digest (ILD) will analyze and discuss various issues which relate to Regulation 34/2017 and will specifically address the following matters:

1. Types of Licenses;
2. Securing Licenses;
3. License Validity Periods; and
4. Entitlements, Mandatory Activities and Prohibitions.

Types of Licenses

Regulation 34/2017 sets out four types of licenses that can be applied for by any mining companies which take the form of business entities [i.e. State-Owned Companies (BUMN), Regionally Owned Companies (BUMD) and private entities], cooperatives, and unincorporated entities (firms, limited partnerships and individuals), specifically:⁶

² Recital (Parts A and B), Regulation 34/2017.

³ For further information, see ILB [No. 2040](#).

⁴ For further information, see ILB [No. 2247](#).

⁵ For further information, see ILB [No. 2295](#).

⁶ Art. 2 (1-4), Regulation 34/2017.

License Type	Scope of Activities
Mining Business License for Exploration (<i>Izin Usaha Pertambangan Eksplorasi</i> – “IUP for Exploration”) ⁷	1.General surveys; 2.Exploration; and 3.Feasibility studies.
Special Mining Business License for Exploration (<i>Izin Usaha Pertambangan Khusus Eksplorasi</i> – “IUPK for Exploration”) ⁸	
Mining Business License for Production Operations (<i>Izin Usaha Pertambangan Operasi Produksi</i> – “IUP for Production Operations”) ⁹	1.Construction; 2.Extraction; 3.Processing and refining; and 4.Transportation and sales.
Special Mining Business License for Production Operations (<i>Izin Usaha Pertambangan Operasi Produksi</i> – “IUPK for Production Operations”) ¹⁰	
Mining Business License for Production Operations, Specifically for Processing and/or Refining (<i>Izin Usaha Pertambangan Operasi Produksi khusus untuk Pengolahan dan/atau Pemurnian</i> – “IUP for Processing and/or Refining”) ¹¹	1.Processing and refining activities for metallic and non-metallic minerals, rocks and coal; 2.Transportation and sale of processed or refined products.
Mining Service Business License (<i>Izin Usaha Jasa Pertambangan</i> - “IUJP”) ¹²	1.Consultation, planning and the implementation of the various activities listed under Article 21 (1) of Regulation 34/2017, including: general surveys, exploration, feasibility studies, transportation, post-mining and reclamation, occupational health and safety, and so forth; 2.Consultation and planning for mining activity, as further described under Appendix IVB to Regulation 34/2017, as well as processing/refining activities. Note that any individuals who are holders of IUJPs are only allowed to undertake consultation and planning activities.

⁷ Arts. 4 and 9 (1), Regulation 34/2017.

⁸ Arts. 6 and Art. 9 (1), Regulation 34/2017.

⁹ Art. 10 and Art. 14 (1), Regulation 34/2017.

¹⁰ Art. 11 and Art. 14 (1), Regulation 34/2017.

¹¹ Art. 16 and Art. 18 (1-3), Regulation 34/2017.

¹² Art. 19 and Art. 21 (1-3), Regulation 34/2017.

Prior to the issuance of Regulation 34/2017, the Previous Regulations also acknowledged Working Contracts (“KK”) and Coal-Mining Business Working Agreements (“PKP2B”), collectively referred to as “Mining Contracts”, as the basis upon which mining companies could operate. In terms of mining companies which are currently parties to Mining Contracts, Regulation 34/2017 mandates the following obligations:¹³

1. Compliance with various provisions which address mandatory working plans and budgetary approval, as well as compliance with various provisions which address any changes which are made to shares, boards of directors and/or commissioners;
2. The implementation of the following adjustments before 6 November 2017:
 - a. Exploration activities must comprise of general investigation, exploration and feasibility-study stages;
 - b. Production operations must comprise of construction, extraction, processing/refinement, transportation and sales stages.

Note that existing mining companies which have been enforcing different mining-stage regimes than those detailed above are required to secure approval from the Ministry prior to entering the production-operation stages. Such approval must be secured by no later than 9 October 2017.

As additional information, parties to Mining Contracts will now be subject to the mandatory conversion of their current contracts into IUPs, as regulated under Ministry Regulation [No. 15 of 2017](#) on Procedures for the Granting of Special Mining Business Licenses for Production Operations as a Continuation of Contracts of Work or Coal-Mining Business Working Agreements.¹⁴

Furthermore, Regulation 34/2017 no longer incorporates several types of licenses originally set out under the Previous Regulations, including:

1. Temporary License for the Transportation and Sale of Mining Products;
2. IUP Production Operation for Sales Activity;
3. IUP Production Operation for Transportation and Sales Activity;
4. Non-Core Mining Business Service License.

Securing Licenses

IUP and IUPK for Exploration

In order to secure either an IUP or an IUPK for Exploration, mining companies must first apply for working areas designated for holders of IUPs for Exploration (*Wilayah Izin Usaha Pertambangan* –“WIUP”) or IUPKs for Exploration (*Wilayah Izin Usaha Pertambangan Khusus* –“WIUPK”), as determined by the government.

¹³ Art. 45, Regulation 34/2017.

¹⁴ For further information, see ILB [No. 3081](#).

The granting of WIUP to holders of IUPs for Exploration is to be undertaken through an auction process organized by the Ministry. Meanwhile, WIUPKs for holders of IUPKs for Exploration may be granted through direct appointment (for BUMN/BUMD mining companies only) or through an auction process.

Once a mining area has been obtained, a mining company must then apply for an IUP or IUPK for Exploration by submitting an application to the Ministry or relevant Governor, as detailed below:

License Type ¹⁵	Issuing Authority	Submission Timeframe ¹⁶
IUP for Exploration ¹⁷	<ol style="list-style-type: none"> 1. The Ministry, if: <ul style="list-style-type: none"> • The WIUP is located across more than one province; • The WIUP is located within a marine area lying more than 12 miles from the coast; or • The WIUP lies directly adjacent to another country; or • The applicant is a public company which will subsequently apply for an IUP for Exploration. 2. The relevant Governor, if <ul style="list-style-type: none"> • The WIUP is located within a single province; or • The WIUP is located within a marine area lying up to 12 miles from the coast. 	<ol style="list-style-type: none"> 1. After the mining company has been determined as a winner at an WIUP auction (for metallic minerals or coal); or 2. After the issuance of the relevant WIUP map (for non-metallic minerals or rocks).
IUPK for Exploration	The Minister	<ol style="list-style-type: none"> 1. After the BUMN or BUMD has been directly appointed or declared at a WIUPK auction; or 2. After the mining company has been determined as a successful WIUPK bidder.

¹⁵ Art. 4, Regulation 34/2017.

¹⁶ Art. 7 (3-5), Regulation 34/2017.

¹⁷ Arts. 4 and 5, Regulation 34/2017.

Moreover, applications for IUPs and IUPKs for Exploration must also satisfy the following requirements:¹⁸

1. Must comply with various administrative, technical, environmental and financial requirements, as further described under Appendix I to Regulation 34/2017;
2. Must provide a receipt for an exploration commitment bond (*jaminan kesanggupan*) in the form of a term-deposit (*deposito berjangka*) on behalf of the Directorate General of Minerals and Coal (“**Directorate General**”) or the relevant Governor representing the holder of an IUP or IUPK for Exploration. The amount of this bond should be:
 - a. IDR 5 million (for WIUP or WIUPK ≤ 40 hectares); or
 - b. IDR 150,000 for every hectare covered by the WIUP or WIUPK (if the WIUP or WIUPK > 40 hectares).

The Ministry or Governor will issue the IUP or IUPK for Exploration within 14 days of a completed application being lodged.¹⁹

The abovementioned matters were not addressed under the Previous Regulations.

IUP or IUPK for Production Operations

In order to secure an IUP or IUPK for Production Operations, mining companies must first complete the exploration stage. Applications for IUPs or IUPKs for Production Operations should be submitted to the Ministry or to the relevant Governor, as detailed below:

License Type ²⁰	Issuing Authority	Submission Timeframe ²¹
IUP for Production Operations ²²	1. The Ministry, if the mining, processing and/or refining operations, or special seaport are located: <ul style="list-style-type: none"> • Across more than one province; or • Adjacent to another country; or 2. The relevant Governor, if the mining, processing and/or refining operations or special seaport are located within a single province.	1. Six months before the expiration dates of the following licenses: (a) IUP or IUPK for Exploration for metallic minerals; (b) IUP for Exploration for non-specific metallic minerals; (c) IUP or IUPK for Exploration for coal; or 2. Three months before the expiration dates of IUPs for Exploration of non-metallic minerals or rocks.
IUPK for Production Operations	The Ministry	

¹⁸ Art. 8, Regulation 34/2017.

¹⁹ Appendix I, Regulation 34/2017.

²⁰ Art. 10, Regulation 34/2017.

²¹ Art. 13 (1-3), Regulation 34/2017.

²² Art. 10, Regulation 34/2017.

In addition, the application described must satisfy a number of administrative, technical, environmental and financial requirements, as further described under Appendix IIA to Regulation 34/2017. The Ministry or relevant Governor will then issue the IUP or IUPK for Production Operations within 14 days of the application being submitted.²³

IUP for Processing and Refining

There are two types of IUP for Processing and Refining, namely:²⁴

1. IUP for Processing and Refining for metallic minerals, non-metallic minerals and coal (for business entities); and
2. IUP for Processing and Refining for rocks (for business entities, cooperatives or individuals).

Mining companies are required to submit their applications for IUPs for Processing and/or Refining to the following issuing authorities:²⁵

<i>Ministry</i>	<i>Governor</i>
<p><i>If the following conditions are satisfied:</i></p> <ul style="list-style-type: none"> • <i>The mining commodity is being sourced from other provinces while the processing and/or refining facilities are located or imported from overseas; or</i> • <i>The processing and/or refining facilities are located across more than one province.</i> 	<p>If the following conditions are satisfied:</p> <ul style="list-style-type: none"> • The mining commodity is being sourced from a single province where the processing and/or refining facility is located; or • The processing and/or refining facility is located within a single province.

Note that applications for IUPs for Processing and/or Refining must satisfy the various administrative, technical, environmental and financial requirements which are further described under Appendix IIIA to Regulation 34/2017. The Ministry or Governor will issue the relevant IUP for Processing and Refining within 14 days of taking receipt of a completed application.²⁶

Previously, Regulation 32/2013 required businesses to first secure a principle license before the relevant authorities could issue an IUP for Processing and Refining.²⁷

IUJP

Two types of IUJP are described under Regulation 34/2017. Firstly, there is an IUJP which is valid throughout the entirety of Indonesia's territory and this license can only be applied for by business entities. Secondly, there is an IUJP which is only valid within a single province and this license can only be applied for by business entities, cooperatives or unincorporated entities. Applications for the former should be submitted to the Ministry, while applications for the latter should be submitted to the relevant Governor.

²³ Art. 13 (4-5), and Appendix IIA, Regulation 34/2017.

²⁴ Art. 17 (1-2), Regulation 34/2017

²⁵ Art. 16, Regulation 34/2017.

²⁶ Art. 17 (3-4) and Appendix IIIA, Regulation 34/2017.

²⁷ Art. 34, Regulation 32/2013.

Applications for IUP must satisfy the various administrative and technical requirements which are further described under Appendix IVA to Regulation 34/2017.²⁸ The relevant IUP will be issued within 14 days of any completed application being submitted.²⁹

Validity Period

Each type of license has a different validity period, as described in the table below:³⁰

Type of License	Validity Period
IUP and IUPK for Exploration	<ol style="list-style-type: none"> 1. ≤ 8 years for IUP and IUPK for metallic minerals; 2. ≤ 7 years for IUP and IUPK for coal and IUP for certain non-metallic minerals; 3. ≤ 3 years for IUP for non-metallic minerals and stones.
IUP and IUPK for Production Operations	<ol style="list-style-type: none"> 1. ≤ 20 years, which can be extended twice with each extension period being up to a maximum of 10 years for the following licenses: (1) IUP for metal minerals, coal, certain non-metallic minerals; and (2) IUPK for metallic minerals and coal; 2. ≤ 10 years, which can be extended twice with each extension period being up to a maximum of five years for IUP for non-metallic minerals; 3. ≤ five years, which can be extended twice with each extension period being up to a maximum of five years for IUP for rocks.
IUP for Processing and/or Refining	≤ 30 years with each extension period being up to a maximum of 20 years.
IUJP	≤ five years with each extension period being up to a maximum of three years.

Prior to the issuance of Regulation 34/2017, the Previous Regulations did not set out any validity periods for IUP and IUPK for Exploration.

²⁸ Art. 20, Regulation 34/2017.

²⁹ Appendix IVA, Regulation 34/2017.

³⁰ Art. 9 (2), Art. 14 (2), Art. 18 (4) and Art. 21 (5), Regulation 34/2017.

Entitlements, Mandatory Activities and Prohibitions

Entitlements

After the aforementioned licenses have been secured, businesses are entitled to enjoy the following rights:³¹

License Type	Entitlement
IUP and IUPK for Exploration	<ol style="list-style-type: none"> 1.Undertake the various activities which are described under Article 23 of Regulation 34/2017, including: <ol style="list-style-type: none"> a.The sale of minerals or coal overseas, as long as domestic needs have first been fulfilled, as well as the sale of minerals or coal from exploration or feasibility studies based on prevailing regulations; b.Possess minerals including related minerals or coal which has been produced after the relevant royalties have been paid, with the exception of radioactive minerals; and c. Etc. 2.Undertake the various activities which are described under Article 24 of Regulation 34/2017, including: <ol style="list-style-type: none"> a.The utilization of infrastructure and facilities for the support of mining activities; b.Cooperation with other business entities as regards the utilization of public facilities and infrastructure for the support of mining activities; and c. Etc. 3.Cooperate with IUJP holders for the undertaking of mining-service activities, as determined under Article 21 of Regulation 34/2017; 4.Cooperate with other parties as regards other activities, as determined under Article 21 of Regulation 34/2017, and also as regards transportation and sales activities, as long as the other parties have first secured registration certificates, as further described under Appendices VA - VB to Regulation 34/2017.
IUP for Processing and Refining	<p>Undertake various activities, as further described under Article 30 of Regulation 34/2017, including:</p> <ol style="list-style-type: none"> 1.The purchase, sale and transportation of mining commodities which are still being processed or which have already been smelted; 2.The setting of the composition of mining commodities in order to satisfy buyer specifications; and 3.Etc.
IUJP	<p>Undertake various activities, as determined under working plans and budgets which have first been approved by the Ministry or the relevant Governor.</p>

³¹ Arts. 23-25, 30 and 34, Regulation 34/2017.

Prior to the issuance of Regulation 34/2017, the Previous Regulations did not set out any comprehensive provisions relating to any entitlements which could be enjoyed under each type of license, as detailed above.

Mandatory Activities

Holders of the following licenses are obliged to meet the following obligations:³²

License Type	Mandatory Activities
IUP and IUPK	<ol style="list-style-type: none"> 1. Undertake various activities, as described under Article 26 (1) of Regulation 34/2017, including: <ol style="list-style-type: none"> a. Engage in mining activities based on prevailing regulations; b. Implement best technical mining practices; and c. Etc. 2. Appoint an underground mining foreman who has been approved by the Head of Mining Inspectors (if utilizing an underground mining method); 3. Secure an explosives license from the Head of Mining Inspectors (if license holders are utilizing explosive materials); 4. Submit a commissioning application to the Director General or to the relevant Governor before engaging in any production operations and/or implementing any new technologies; 5. Secure a recommendation from the Director General or Governor as regards any changes which are made to shares or boards of directors and/or commissioners, as further described under Appendix VIA to Regulation 34/2017; 6. Provide sufficient compensation to any related communities as a result of any negative impact caused by the relevant mining activities.
IUP for Processing and/or Refining	<ol style="list-style-type: none"> 1. Undertake various activities, as further described under Article 31 of Regulation 34/2017, including: <ol style="list-style-type: none"> a. Submission of periodic reports on working plans and budgeting, as well as reports on the implementation of any mining activities which have been undertaken; b. Prioritization of domestic need as regards minerals and coal; and c. Etc. 2. Submit an commissioning application to the Director General or to the relevant Governor before engaging in any production operations and/or implementing any new technologies;

³² Arts. 26-28, 31-32 and 35, Regulation 34/2017.

	3. Secure a recommendation from the Director General or from the relevant Governor as regards any changes which are made to shares or boards of directors and/or commissioners, as further described under Appendix VIB to Regulation 34/2017
IUJP	<ol style="list-style-type: none"> 1. Draft and submit working plans to the Ministry or to the relevant Governor; 2. Implement best technical mining practices; 3. Prioritize locally based products, services and manpower; and 4. Submit periodic reports on the implementation of any business activities to the Ministry or to the relevant Governor via the Head of Mining Engineering.

Prior to the issuance of Regulation 34/2017, the Previous Regulations did not set out any comprehensive provisions relating to any mandatory activities for each type of license, as detailed above.

Prohibitions

Holders of the following types of licenses are prohibited from undertaking any of the activities which are described in the table below:³³

Type of License	Prohibited Activities
IUP and IUPK for Exploration and for Production Operations	Undertake any of the activities which are further described under Article 29 of Regulation 34/2017, including: <ol style="list-style-type: none"> 1. The exporting of any mining products before they have been processed domestically; 2. The transferring of the IUP or IUPK to any other parties; and 3. Etc.
IUP for Processing and Refining	<ol style="list-style-type: none"> 1. Process or refine any mining commodities supplied by businesses who are not in possession of an IUP, Community Mining License (<i>Izin Pertambangan Rakyat</i>) or IUPK; 2. Possession of other type IUPs, Community Mining License, IUPK or IUJP; and 3. Transfer a license to any other parties.
IUJP	<ol style="list-style-type: none"> 1. Possession of other type of IUPs, Community Mining License, IUPK, and IUP for processing and/or refining ; and 2. Transfer an IUJP to any other parties.

Prior to the issuance of Regulation 34/2017, the Previous Regulations did not set out any comprehensive provisions relating to any prohibited activities for each type of license, as detailed above.

³³ Arts. 3, 29 and 36, Regulation 34/2017.

Conclusion

Overall, Regulation 34/2017 simplifies a number of licensing issues within the Indonesian minerals and coal sector. Indeed, under Regulation 34/2017, six different types of licenses have now been unified, whereas previously they were dealt with under five separate regulations.

Holders of KK and PKP2B are now required to comply with the various provisions which are set out under Regulation 34/2017. This new Regulation also offers special treatment as regards the issuance of IUPs for Exploration and IUPs for Production Operations in order to ensure the effectiveness and viability of any mineral and coal business activities. Last but not least, Regulation 34/2017 sets out a number of comprehensive provisions which the Previous Regulations failed to address, especially as regards entitlements, mandatory activities and prohibited activities for license holders. Hopefully this new framework will give the sector a much needed boost. ^{AP2}

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